Date: 20060908

Docket: T-2049-05

Citation: 2006 FC 1075

Ottawa, Ontario, the 8th day of September 2006

PRESENT: THE HONOURABLE MR. JUSTICE BLAIS

BETWEEN:

LES VIANDES DU BRETON INC.

Applicant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 44 of the *Access to Information Act*, R.S.C. 1985, c. A-1 (the Act), filed by Les Viandes du Breton Inc. (the applicant) against a decision of the Canadian Food Inspection Agency (the respondent) to authorize the disclosure of certain documents relating to the applicant, in response to an access to information application.

RELEVANT FACTS

[2] On September 25, 2005, an access to information application under the Act was received by the respondent. This access to information application initially concerned the obtaining of inspection reports on abattoirs filed between January 2003 and December 2004, and was then amended by telephone to concern Quebec abattoir inspection reports filed between January and March 2005.

[3] Among the documents covered by this application were three [TRANSLATION] “plant inspection reports” (the reports) relating to the applicant’s abattoir and dated January, February and March 2005.

[4] On October 17, 2005, Denis Châtelain of the respondent’s access to information division sent the applicant a letter telling it of this access to information application along with a copy of the three reports mentioned in paragraph 3. In this letter the applicant was invited to submit its comments on whether these three reports met the exceptional criteria set out in subsection 20(1) of the Act for denying disclosure of the documents.

[5] On November 3, 2005, the applicant sent the respondent a letter containing its comments in this regard, through its counsel.

[6] On November 8, 2005, the respondent sent the applicant its decision in another letter, informing it that the comments submitted did not meet the exceptional criteria set out in the Act and accordingly that it intended to release the reports to the party requesting them.

[7] On November 16, 2005, the applicant filed an application for judicial review pursuant to section 44 of the Act.

ISSUES

[8] The issues are the following:

(1) Should the applicant have been informed of the identity of the party applying for the documents under the Act?

(2) Did the respondent fail in its duty to give reasons, and so to observe procedural fairness, in its decision dated November 8, 2005?

(3) Did the applicant adequately establish that the reports in question met the exceptional criteria set out in subsection 20(1) of the Act?

ANALYSIS

[9] As the Federal Court of Appeal determined in *Wyeth-Ayerst Canada Inc. v. Canada (Attorney General)*, 2003 FCA 257, according to the pragmatic and functional approach the

standard of review applicable to consideration of a decision to disclose certain documents under the Act is that of correctness.

(1) Disclosure of identity of party applying for documents

[10] First, the applicant submitted that the access to information application form sent by the respondent did not meet the requirements set out in the Act in that it did not specify the identity of the party applying for the documents or whether that party was a Canadian citizen or permanent resident.

[11] Contrary to the position taken by the applicant, there is nothing in the Act requiring the respondent to disclose to the applicant the identify of the party applying for the documents or whether that party is a Canadian citizen or permanent resident. Under subsection 27(1) of the Act, the respondent had to notify the applicant in writing of its intention to disclose certain documents relating to it. Subsection 27(3) indicates what should be included in such a notice:

(*a*) a statement that the head of the government institution giving the notice intends to release a record or a part thereof that might contain material or information described in subsection (1);	*a*) la mention de l'intention du responsable de l'institution fédérale de donner communication totale ou partielle du document susceptible de contenir les secrets ou les renseignements visés au paragraphe (1);
(*b*) a description of the contents of the record or part thereof that, as the case may be, belong to, were supplied by or relate to the third party to whom the notice is given; and	*b*) la désignation du contenu total ou partiel du document qui, selon le cas, appartient au tiers, a été fourni par lui ou

(*c*) a statement that the third party may, within twenty days after the notice is given, make representations to the head of the government institution that has control of the record as to why the record or part thereof should not be disclosed.

le concerne;

c) la mention du droit du tiers de présenter au responsable de l'institution fédérale de qui relève le document ses observations quant aux raisons qui justifieraient un refus de communication totale ou partielle, dans les vingt jours suivant la transmission de l'avis.

[12] Further, the release by the respondent of personal information on the party applying for the documents would have been a breach of section 19 of the Act and section 3 of the *Privacy Act*, R.S.C. 1985, c. P-21 (PA), which provide:

Access to Information Act

19. (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Act that contains personal information as defined in section 3 of the *Privacy Act*.

19. (1) Sous réserve du paragraphe (2), le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant les renseignements personnels visés à l'article 3 de la *Loi sur la protection des renseignements personnels*.

Privacy Act

3. In this Act,

"personal information" means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

. . . . .

(*f*) correspondence sent to a government

3. Les définitions qui suivent s'appliquent à la présente loi :

. . . . .

« renseignements personnels »

Les renseignements, quels que soient leur forme et leur support, concernant

institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,

. . . . .

(*i*) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual . . .

un individu identifiable, notamment :

. . . . .

f) toute correspondance de nature, implicitement ou explicitement, privée ou confidentielle envoyée par lui à une institution fédérale, ainsi que les réponses de l'institution dans la mesure où elles révèlent le contenu de la correspondance de l'expéditeur;

. . . . .

i) son nom lorsque celui-ci est mentionné avec d'autres renseignements personnels le concernant ou lorsque la seule divulgation du nom révélerait des renseignements à son sujet . . .

[13] Finally, the identity of the party applying is not relevant to the ultimate decision of whether to disclose the documents requested. As Charles Doherty Gonthier J. noted in *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, [2003] 1 S.C.R. 66, the Act "does not confer on the heads of government institutions the power to take into account the identity of the applicant or the purposes underlying a request". Accordingly, any argument made by the applicant and based on the identity of the party applying for the documents could not be considered by the respondent as part of its analysis.

[14] At the hearing the applicant relied heavily on the fact that the respondent's representative had not taken the minimum action necessary to ensure that the party applying for the documents met the requirements of the Act.

[15] In the circumstances the requirements are minimal, since the order adopted pursuant to section 4(2) of the Act extended the right of access to documents to every artificial or natural person present in Canada.

[16] The replies by Mr. Châtelain, the respondent's representative, in his written examination are eloquent and show that he was probably convinced that the applicant for access was eligible under the Act.

[17] Accordingly, I conclude that the respondent discharged its minimal obligation and that there is nothing to justify the Court's intervention.

[18] As to the description of the access to information application ([TRANSLATION] "inspection reports filed on Quebec abattoirs from January to March 2005"), this was clearly disclosed in Mr. Châtelain's letter dated October 17, 2005. The Court is satisfied that the three plant inspection reports dealing with the applicant's abattoirs were clearly covered by this access application.

[19] In the case at bar, the respondent had no duty to disclose the identity of the party applying for the documents and the lack of disclosure thus does not in any way affect the validity of the access application.

(2) Failure to give reasons (procedural fairness)

[20] In his letter dated November 8, 2005, Mr. Châtelain said the following: [TRANSLATION] “We have considered your comments and decided they do not meet the exceptional criteria set out in section 20(1) of the Act” (applicant’s confidential record, page 26). The applicant maintained that the respondent had failed in its duty to give reasons, and accordingly in procedural fairness, since this letter dismissed the arguments made by the applicant without explaining how the comments submitted did not meet the exceptional criteria.

[21] Subsection 28(3) of the Act requires that the third party concerned (here the applicant) be informed of the decision to disclose the documents requested in a notice containing:

(a) a statement that the third party to whom the notice is given is entitled to request a review of the decision under section 44 within twenty days after the notice is given; and	a) la mention du droit du tiers d’exercer un recours en révision en vertu de l’article 44, dans les vingt jours suivant la transmission de l’avis;
(b) a statement that the person who requested access to the record will be given access thereto or to the part	b) la mention qu’à défaut de l’exercice du recours en révision dans ce délai, la personne qui a fait la demande recevra

thereof unless, within twenty days after the notice is given, a review of the decision is requested under section 44.	communication totale ou partielle du document.

There is thus nothing in the Act requiring the respondent to give detailed reasons for dismissing the arguments submitted by the applicant.

[22] Turning now to the question of procedural fairness, the Court must conclude that the paucity of details contained in Mr. Châtelain's letter dated November 8, 2005 did not in any way affect the applicant's ability to present its arguments fully through the judicial review process, since the procedure in court is a *de novo* procedure. Yvon Pinard J. put it clearly in *Merck Frosst Canada & Co. v. Canada (Minister of Health)*, 2003 FC 1422, at paragraph 3:

> In the underlying application for review pursuant to section 44 of the *ATIA*, the Court is not reviewing the legality of the respondent's decision, but will decide *de novo*, based in part on new evidence that was not before the respondent, whether the information contained in the records is of such a confidential or prejudicial nature that it should be exempt from disclosure under section 20 of the *ATIA*.

[23] As the situation at bar is virtually identical to that which gave rise to *Viandes du Breton Inc. v. Canada (Canadian Food Inspection Agency)*, 2006 FC 335, we can also cite Johanne Gauthier J., who concluded at paragraphs 40-41:

> On the duty to provide reasons, the Court is satisfied that in the circumstances of the case at bar, this was carried out. In view of the exchanges between the parties, the nature of the records to be

> disclosed and the access application, there was no reason for the respondent to give further details than it did in its letter of May 31.
>
> The Court is completely able to understand the basis for the decision, and in view of the nature of the remedy the Court is satisfied that the applicant's ability to raise all the arguments it wished to present has not been adversely affected.

[24] For the reasons mentioned above, the duty to provide reasons was met and there was thus no breach of procedural fairness by the respondent.

(3) Analysis of exemption criteria

[25] First, it is important to note that, as mentioned in subsection 2(1) of the Act, the purpose of this legislation is "to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public" and that exceptions to this right should be "limited and specific". Those exceptions, concerning the disclosure of information on third parties such as the applicant, are found in subsection 20(1) of the Act:

20. (1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Act that contains

(a) trade secrets of a third party;

(b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;

(c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or

(d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

20. (1) Le responsable d'une institution fédérale est tenu, sous réserve des autres dispositions du présent article, de refuser la communication de documents contenant :

a) des secrets industriels de tiers;

b) des renseignements financiers, commerciaux, scientifiques ou techniques fournis à une institution fédérale par un tiers, qui sont de nature confidentielle et qui sont traités comme tels de façon constante par ce tiers;

c) des renseignements dont la divulgation risquerait vraisemblablement de causer des pertes ou profits financiers appréciables à un tiers ou de nuire à sa compétitivité;

d) des renseignements dont la divulgation risquerait vraisemblablement d'entraver des négociations menées par un tiers en vue de contrats ou à d'autres fins.

[26] As access is the rule, the burden of showing that a document should not be disclosed rests with the party seeking an exemption. James A. Jerome A.C.J., in *Cyanamid Canada Inc. v. Canada (Minister of Health and Welfare)* (1992), 41 C.P.R. (3d) 512 (F.C.T.D.), affirmed by (1992), 45 C.P.R. (3d) 390 (F.C.A.), summed up this principle as follows at page 527:

> In a third party application under s. 44 of the Act, the party opposing disclosure bears the burden of showing that clear grounds exist to justify exempting the documents in issue from disclosure to the requester: *Merck Frost Canada Inc. v. Canada (Minister of Health*

> *and Welfare)* (1988), 30 C.P.R. (3d) 473 at p. 476 […]. The *Access to Information Act* codifies the public right of access and the basic premise that access to records gathered for a public purpose and at public expense ought to be available. In this light, the court will not frustrate public access to government information except under the clearest grounds and any doubt ought to be resolved in favour of disclosure: *Maislin Industries Ltd. v. Canada (Minister of Industry, Trade and Commerce)* (1984), 80 C.P.R. (2d) 253 at p. 256 . . .

[27] The applicant submitted that the three reports in question contained financial and commercial information the disclosure of which could damage the effective operation of the business and make the business vulnerable, but it presented no evidence in support. As Marc Nadon J. explained at paragraph 9 of *Viandes du Breton Inc. v. Canada (Department of Agriculture and Agri-Food)*, [2000] F.C.J. No. 2088, in order to obtain an exemption under paragraphs 20(1)(*c*) and (*d*),

> . . . the plaintiff should not only state in an affidavit that disclosure of the documents would probably cause it harm, it should also submit evidence of the likelihood of such harm.

[28] The applicant also stressed the confidential nature of the information contained in the reports, in fact maintaining that if disclosure of the information contained in the reports had been anticipated it would never have allowed access to its abattoirs. This argument disregards the fact that the information was not voluntarily [TRANSLATION] “provided” to the respondent by the applicant. On the contrary, Canadian Food Inspection Agency inspectors must be allowed access to such premises under the *Meat Inspection Act*, R.S.C. 1985, c. 25 (1st Supp.).

[29] In this regard, this Court also concurs in the analysis by Gauthier J. of the applicability of paragraph 20(1)(*b*) at paragraphs 44 to 52 of *Viandes du Breton Inc. v. Canada (Canadian Food Inspection Agency)*, 2006 FC 335:

> As the Federal Court of Appeal indicated in 1989 in *Canada Packers Inc. v. Canada (Minister of Agriculture)*, [1989] 1 F.C. 47 (F.C.A.), at paragraph 13, dealing with the reports of a meat inspection verification team on abattoirs in the Kitchener area, none of the information contained in this kind of report was supplied by the appellant. "The reports are, rather, judgments made by government inspectors on what they have themselves observed. In my view, no other reasonable interpretation is possible, either of this paragraph or of the facts, and therefore paragraph 20(1)(*b*) is irrelevant in the cases at bar".
>
> On the confidentiality of the information brought together in the inspection reports, Pinard J. indicated in *Coopérative fédérée du Québec (c.o.b. Aliments Flamingo) v. Canada (Agriculture and Agri-Food)*, [2000] F.C.J. No. 26 (F.C.) (QL), at paragraph 16:
>
>> Finally, although the applicants do not specifically rely on the exemption contained in paragraph 20(1)(*b*) of the Act, they do treat the inspection reports as confidential. In this regard, suffice it to recall that these records are collected by a government agency and in legal terms constitute records of the Government of Canada subject to the Act (see the recent decision of the Federal Court of Appeal in *The Information Commissioner of Canada and The President of the Atlantic Canada Opportunities Agency* (November 17, 1999), A-292-96).
>
> The Court has carefully examined each of the reports which were the subject of the review application and is satisfied that no distinctions need be made here.
>
> The Court cannot accept the applicant's interpretation that, as it [TRANSLATION] "opened its doors" to the inspectors, it to some extent provided the information contained in the reports. The applicant is legally required to allow inspectors to go about their work.

> Further, as I indicated at the hearing, in view of their past experience, it is clear that Les Viandes du Breton Inc. could not reasonably think that these inspection reports were or might be kept confidential by the respondent.
>
> . . . . .
>
> In view of the foregoing, the applicant knew or should have known that as a general rule these reports are disclosed to persons requesting them under the Act.
>
> The fact that the reports and the information they contain are treated confidentially within the business does not in any way alter the way in which they are treated by the Agency or the principles set out in the Act.

[30] Finally, the applicant submitted that the information contained in these reports is protected by the professional secrecy governing the relationship between the client and the veterinary surgeon who prepared and signed the inspection reports, pursuant to sections 23 to 25 of the *Code of Ethics of Veterinary Surgeons*.

[31] Essentially, professional secrecy can exist in such circumstances only if the applicant is regarded as a client of the drafter of the report, acting as a veterinary surgeon. In the context of the inspection of plants under the *Meat Inspection Act* the drafter of inspection reports, while he or she may be a veterinary surgeon by profession (which is not necessarily the case), is acting not as a veterinarian on behalf of the owner of the animals in the plant but as an inspector appointed by the head of the Canadian Food Inspection Agency pursuant to subsection 13(3) of the *Canadian Food Inspection Agency Act*, S.C. 1997, c. 6.

[32] For these reasons, the Court concludes that (1) the applicant did not establish the likelihood of harm which could warrant an exemption under paragraphs 20(1)(*c*) or (*d*) of the Act, and (2) the information in the inspection reports is not protected by professional secrecy and not confidential within the meaning of paragraph 20(1)(*b*) of the Act.

JUDGMENT

1. The application for judicial review is dismissed;

2. With costs.

"Pierre Blais"
Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2049-05
STYLE OF CAUSE:	LES VIANDES DU BRETON INC. v. CANADIAN FOOD INSPECTION AGENCY
PLACE OF HEARING:	Québec, Quebec
DATE OF HEARING:	August 16, 2006
REASONS FOR JUDGMENT AND JUDGMENT BY:	THE HONOURABLE MR. JUSTICE BLAIS
DATED:	September 8, 2006

APPEARANCES:

Louis Masson	FOR THE APPLICANT
Sébastien Gagnon	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Joli-Coeur, Lacasse	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Québec	FOR THE RESPONDENT