Federal Court  Cour fédérale

Date: 20140506

Dockets: T-554-13
T-1203-13

Citation: 2014 FC 432

Ottawa, Ontario, May 6, 2014

PRESENT: The Honourable Mr. Justice S. Noël

Docket: T-554-13

BETWEEN:

GARETH DAVID LLEWELLYN

Applicant

and

CANADIAN SECURITY INTELLIGENCE SERVICE

Respondent

Docket: T-1203-13

AND BETWEEN:

GARETH LLEWELLYN

Applicant

and

THE CANADA BORDER SERVICES AGENCY

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review brought by Gareth David Llewellyn [the Applicant] under section 41 of the *Privacy Act*, RSC, 1985, c P-21 [the Act] with respect to two decisions of the Canadian Security Intelligence Service [CSIS] and the Canada Border Services Agency [CBSA] [together, the Respondents] regarding requests for access to personal information made by the Applicant to the Respondents. Indeed, the Applicant had previously sought but was denied access to information held by the CSIS in personal information banks ["PIB"] CSIS PPU 005 and CSIS PPU 045 [respectively, PIB 005 and PIB 045] as well as to information concerning him that is in possession of the CBSA.

[2] This Court renders these reasons jointly for the two applications undertaken by the Applicant and further described herein, i.e. T-554-13 (against the CSIS) and T-1203-13 (against the CBSA).

II. Facts

[3] According to the Applicant's affidavit, the requests for access to information referred to herein are the "culmination of efforts to obtain information to remedy wrongdoing by CSIS,

CBSA and by the Rt. Hon. Stephen Harper with a history that dates back roughly 26 years." The Applicant, who claims that he has been under wrongful investigation since about 1987 and that the CSIS has used the Rt. Hon. Stephen Harper as an operative agent between 1988 and 1992, seeks to know what information related to him these organizations detain in view of pursuing further action against the government, possibly an action for damages.

Application against the CSIS: T-554-13

[4] On January 24, 2011, the Applicant presented a request to the CSIS under the Act and the *Access to Information Act*, RSC, 1985, c A-1, for the disclosure of any information concerning him that was in its possession, specifically in personal information banks [PIBs] 005, CSIS PPU 010, CSIS PPU 015 and CSIS PPU 035 [respectively, PIB 010, PIB 015 and PIB 035]. On February 28, 2012, the CSIS responded to the Applicant's request and specified that some of the information in PIB 005 had been exempted through exemptions applied by virtue of one or more of sections 21 and 26 and of paragraph 22(1)(*b*) of the Act.

[5] The Applicant presented a second request to the CSIS by a letter dated March 1, 2011 in order to obtain access to any information concerning him that was in the CSIS' possession, this time for PIB 005, PIB 010, PIB 015, CSIS PPU 025 [PIB 025], PIB 035, CSIS PPU 040 [PIB 040], CSIS PPU 045 [PIB 045], and CSIS PPU 055 [PIB 055]. On May 12, 2011, the CSIS responded to this second request, informing the Applicant that no new information had been located in PIBs 005, 015, 025, 035 and 055. The CSIS further informed the Applicant that PIBs 010 and 040 held records which did not contain information on identifiable individuals. Lastly,

the CSIS informed the Applicant that PIB 045 was an exempt bank pursuant to section 18 of the Act.

[6] The Applicant filed complaints before the Office of the Privacy Commissioner [OPC] regarding the CSIS' decisions to withhold personal information in PIBs 005 and 045. On February 25, 2013, the OPC found that the complaints were not well-founded and prepared a Report of findings stating that the CSIS had correctly applied the exemptions under the Act.

[7] The application forming part of this judicial review as it concerns file T-554-13 was filed on April 4, 2013.

Application against the CBSA: T-1203-13

[8] The Applicant sent a letter dated February 14, 2011 to the CBSA. This broad request called for the disclosure of all the personal information concerning him in the CBSA's possession. The CBSA responded to this request on January 6, 2012 by releasing nearly 5,000 pages and withholding 51 pages, in whole or in part, pursuant to sections 21 and 26 and paragraph 22(1)(*b*) of the Act.

[9] Again, the Applicant filed a complaint before the OPC regarding the information he requested but was denied access to on January 6, 2012 by the CBSA. On June 21, 2013, the OPC found that this complaint, too, was not well founded and produced a Report of findings stating that the CBSA had adequately applied the exemptions from disclosure under the Act.

[10] The application forming part of this judicial review as it concerns file T-1203-13 was filed June 21, 2013.

Ex parte in camera hearing

[11] On November 21, 2013, the case management judge granted an order authorizing the Respondents to file the evidence and records that were withheld from the Applicant as well as confidential affidavits and memoranda in view of an *ex parte in camera* hearing to be held on March 25, 2014. Through this *ex parte in camera* hearing, this Court was called upon to appreciate the personal information withheld by the CSIS and the CBSA regarding the Applicant, to determine whether or not the exemptions being claimed were applicable and, if necessary, to review the exercise of the discretion applicable or the assessment of the injury.

[12] In order for this Court to effectively assess the withheld information, this portion of the proceedings was adjourned on March 25, 2014 to be reconvened two days later, on March 27, 2014. During this second session of the *ex parte in camera* hearing this Court was able to further its questioning of the affiant for the CSIS, and all this to understand how the exemptions were applied and, if required, how the discretion was exercised, but also for the purpose of protecting the interests of the Applicant, who, for obvious reasons, could not attend this portion of the proceedings. These *ex parte in camera hearings* were helpful in permitting a good understanding of all matters related to the issues at play.

[13] The Court was not presented with any submissions during this portion of the proceedings given that both parties presented their arguments at the public hearing held on April 16, 2014.

III. Decisions under review

[14] As noted above, these proceedings arise from three decisions, two by the CSIS and the other by the CBSA.

[15] On the one hand, by letters dated February 28, 2011 and May 12, 2011, the CSIS responded to the Applicant's two requests for access to information of January 24, 2011 and March 1, 2011. These letters stated that no new information relating to the Applicant had been located in PIBs 005, 015, 025, 035 and 055 between the first and second request. In its letters, the CSIS also indicated that PIB 045 is an exempt bank pursuant to section 18 of the Act, declined to confirm or deny the existence of any information in that PIB, and further informed the Applicant that, should PIB 045 happen to contain any information, such information would be exempt from disclosure under section 21 or paragraphs 22(1)(*a*) and/or (*b*) of the Act. The CSIS also pointed out that PIBs 010 and 040 constituted a class of records which did not contained information on identifiable individuals.

[16] On the other hand, the CBSA responded to the Applicant's request for access to information dated February 14, 2011 through a letter dated January 6, 2012. This letter accompanied the disclosed documents but specified that certain information had been exempted pursuant to sections 21 and 26 of the Act.

[17] The CBSA and the CSIS decisions both end by inviting the Applicant to file a complaint before the OPC should he be dissatisfied with the response to this request for access to information.

IV. Applicant's submissions

[18] The self-represented Applicant presented this Court with a vast amount of documentation, most of which is of no use for the issues to be tried. However, whilst this Court fails to grasp the connection between most of the documents filed and the judicial review at bar, it can nonetheless appreciate the Applicant's clear objection with regard to the impugned decisions. The Applicant wishes to gain access to all the personal information concerning him that is in the possession of the CBSA and the CSIS, and he challenges the Respondents' reliance on exemptions found in the Act to withhold certain information.

V. Respondents' submissions

[19] The Applicant did not complain to the OPC with respect to the CSIS' response to his request for access to information concerning PIBs 010, 015, 025, 035, 040 and 055. Accordingly, the only decisions that fall within the scope of the current judicial review are the CSIS' responses concerning PIBs 005 and 045 and the CBSA's decision refusing to disclose certain elements of information.

[20] The Respondents' claim that both the CBSA's decision and the CSIS' decision as it concerns PIB 005 reasonably relied on exemptions under sections 21, 22 and 26 of the Act and that proof of this shall be made during the *ex parte in camera* hearing and through the confidential affidavits submitted to the Court in view of this hearing. More generally, they make the following public submissions. The information exempt from disclosure under section 21 of the Act could reasonably be expected to be injurious to "the efforts of Canada toward detecting, preventing or suppressing subversive or hostile activities" within the meaning of this provision. In addition, the Respondents relied upon exemptions under paragraph 22(1)(*b*) of the Act because it had, according to applicable case law, a reasonable expectation of probable harm tied directly to the disclosure of these information. Lastly, in respect to the information withheld on the basis of section 26 of the Act, the Respondents were satisfied that this information constituted personal information within the meaning of section 8 of the Act and also undertook a balancing of the interest of non-disclosure against the Applicant's interest in the disclosure of documents concerning him as per paragraph 8(2)(*m*) of the Act.

[21] More particularly, with respect to the CSIS' decision as it concerns PIB 045, this PIB has been designated as an "exempt bank" under section 18 of the Act. The CSIS has also adopted a policy of neither confirming nor denying whether this PIB contains information regardless of any inferences that a person may claim can be drawn and, what is more, the courts have held this policy as having been validly adopted under section 16 of the Act. The law is quite settled on this issue, and it was reasonable for the CSIS to refuse to either confirm or deny the existence of personal information related to the Applicant in PIB 045.

VI. Issues

[22] The parties disagree with respect to the issues to be addressed in the present matter. For ease of reading, however, and in order to avoid unnecessary duplication in these reasons, I would reword the Respondents' suggested issues as follows:

1. Did the Respondents err when they invoked exemptions under section 21, paragraph 22(1)(*b*) or section 26 of the Act in order to decline to disclose some of the personal information relating to the Applicant that they had in their possession and, more specifically as it concerns the CSIS, in PIB 005?

2. Did the CSIS err when it declined to confirm or deny the existence of any personal information relating to the Applicant in PIB 045?

VII. Standard of review and burden of proof

[23] The law is clear in respect to the standard of review in the case at bar. The review of a government institution's decision not to disclose personal information is a two-fold process. In this regard, at the public hearing, the Respondents referred to a recent decision of this Court, *Braunschweig v Canada (Minister of Public Safety)*, 2014 FC 218, [2014] FCJ No 258 [*Braunschweig*], the circumstances of which are in many ways similar to the present matter. First, the Court must determine whether the withheld information actually falls within the description of the exempt information under the applicable provision of the Act. This first part of

the process is to be reviewed under the standard of correctness. Second, if it finds that the information sought fits into the description of the exemption claimed, the Court must determine whether the government institution, in cases where it is statutorily obligated to do so, appropriately exercised its discretion not to disclose said information. And this second part of the process calls for a review under the standard of reasonableness (see *Barta v Canada (Attorney General)*, 2006 FC 1152 at paras 14-15, [2006] FCJ No 1450; *Leahy v Canada (Minister of Citizenship and Immigration)*, 2012 FCA 227 at paras 96-100, [2012] FCJ No. 1158; *Braunschweig*, above, at para 29).

[24] As for the burden of proof, section 47 of the Act dictates that it lies squarely on the government institutions in question to establish that they were entitled to withhold the personal information concerning the Applicant.

VIII. Analysis

Preliminary matters

[25] In the present matter, the Applicant challenges, among other things, the CSIS' refusal to disclose certain information found in two different PIBs, specifically PIB 005 and PIB 045, established pursuant to section 10 of the Act. As described on the CSIS' website, these two PIBs contain information of the following nature:

SIS PPU 005 – Security Assessments/Advice

The records described in this bank include personal information on individuals who are or have been the subject of a request for a security assessment for pre-employment / employment with federal or provincial government departments and agencies and the private sector working under federal government contracts, when a security clearance is a required condition of employment. […]

SIS PPU 045 – Canadian Security Intelligence Service Investigational Records

The records described in this bank include personal information on identifiable individuals whose activities are suspected of constituting threats to the security of Canada; on identifiable individuals who are or were being managed as confidential sources of information; on identifiable individuals no longer investigated by CSIS but whose activities did constitute threats to the security of Canada and which still meet the collection criteria stipulated in section 12 of the CSIS Act, and on identifiable individuals the investigation of whom relate to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities.

[https://www.csis-scrs.gc.ca/tp/nfsrc-2012-eng.asp)]

[26] The Act provides for two different types of exemptions: class-based exemptions and injury-based exemptions. In *Bronskill v Canada (Minister of Canadian Heritage)*, 2011 FC 983 at para 13, [2011] FCJ No 1199 (reversed on another ground in *Bronskill v Canada (Minister of Canadian Heritage)*, 2012 FCA 250, [2012] FCJ No 1269), this Court distinguished as follows the different types of exemptions likely to be relied upon by a government institution in order to withhold personal information concerning an applicant:

> **[13]** The exemptions laid out in the Act are to be considered in two aspects by the reviewing Court. Firstly, exemptions in the Act are either class-based or injury-based. Class-based exemptions are typically involved when the nature of the documentation sought is sensitive in and of itself. For example, the section 13 exemption is related to information obtained from foreign governments, which, by its nature, is a class-based exemption. Injury-based exemptions require that the decision-maker analyze whether the release of information could be prejudicial to the interests articulated in the exemption. Section 15 is an injury-based exemption: the head of the government institution must assess whether the disclosure of information could "be expected to be injurious to the conduct of international affairs, the defense of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities". [Emphasis added.]

[27] The exemptions under the Act can be further categorized as being either mandatory or discretionary, depending on the wording of the provision creating the exemption (see for example *Braunschweig*, above, at para 34). Indeed, a provision may enact that the government "shall refuse to disclose" or that it "may refuse to disclose". Thus, depending on the provision claimed, the government can either have the obligation or the discretion to enforce an exemption.

[28] That is why, in its analysis, this Court shall determine for each exemption relied upon whether it constitutes a class-based or injury-based exemption as well as a mandatory or discretionary exemption.

A. Did the Respondents err when they invoked exemptions under section 21, paragraph 22(1)(*b*) or section 26 of the Act in order to decline to disclose some of the personal information relating to the Applicant that they had in their possession and, more specifically as it concerns the CSIS, in PIB 005?

[29] Section 12 of the Act enacts the general right for individuals to request and obtain access to personal information concerning them contained in government institution's PIBs. This

general right of access is nonetheless subject to certain limitations, including exemptions under sections 18 to 28 of the Act. In the present case, the Respondents relied upon exemptions under section 21, paragraph 22(1)(*b*) and section 26 of the Act, exemptions which shall be addressed subsequently in the following paragraphs. For ease of reading, the relevant legal provisions of the Act referred to herein are reproduced in Annex A to these reasons.

[30] Section 21 of the Act sets out an injury-based discretionary exemption in respect to information "the disclosure of which could reasonably be expected to be injurious to [*inter alia*] the efforts of Canada toward detecting, preventing or suppressing subversive or hostile activities". A government institution relying on this exemption must undertake an injury assessment, and when evaluating the reasonableness of the assessment undertaken by the CSIS and the CBSA in this regard, this Court must show deference all the while making sure "that the explanation given to show the evaluation of the injury, if disclosure occurs, is serious, in depth, professional and factually based." (*Braunshweig*, above, at para 56).

[31] Paragraph 22(1)(*b*) of the Act allows a government institution to deny the disclosure of any personal information which could reasonably be expected to be injurious to the enforcement of any law of Canada the conduct of lawful investigations. This exemption is also discretionary and injury-based. In addition, as stated by the Supreme Court of Canada, "[t]here must be a clear and direct connection between the disclosure of specific information and the injury that is alleged." (*Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 at para 58, [2002] SCJ No 55).

[32] Section 26 of the Act allows for the non-disclosure of personal information that does not relate to an applicant. Disclosure of personal information of individuals other than the Applicant is prohibited except as prescribed by paragraph 8(2)(*m*) of the Act, which calls for a balancing of competing interests to determine whether the third party's interest in the non-disclosure of the documents outweighs the Applicant's reasonable interest in disclosure.

[33] As indicated above, this Court held *ex parte in camera* hearings in March 2014, where it had the opportunity to appreciate the nature and the content of the personal information the disclosure of which was requested by the Applicant and subsequently denied by the CSIS and the CBSA. Following this hearing, there is no doubt for this Court that the requested information was validly withheld according to the exemptions relied upon by the Respondents. Upon consulting these documents, it appears evident that their content fall squarely within the description of each exemption relied upon, i.e. section 21, paragraph 22(1)(*b*) and section 26. Also, in addition to the public memoranda and affidavits submitted for the proceedings, two confidential affidavits were produced in view of the *ex parte in camera* portion of these proceedings, that of Michel Joyal for the CSIS and that of Alain Belleville for the CBSA. The two affiants were questioned by counsel and by the Court in order to assess both government institutions' processing of the Applicant's requests for access to information, and the answers thus given combined with the parties public submissions presented at the hearing have satisfied me that, where applicable, the possible injury was properly assessed and the institutions' discretion was reasonably exercised as contemplated by case law (see for example *Ruby v Canada (Royal Canadian Mounted Police)*, 2004 FC 594 at paras 21-25, [2004] FCJ No 783; *Fuda v Canada (Royal Canadian Mounted Police)*, 2003 FCT 234 at para 26, [2003] FCJ No

314). Moreover, this Court is also satisfied that with respect to the information withheld under section 26 of the Act the proper balancing of competing interests was undertaken by the Respondents' pursuant to paragraph 8(2)(*m*) of the Act and that there is no evidence that the decision makers acted in bad faith.

[34] Consequently, both the CSIS and the CBSA reasonably applied the exemptions relied upon under the Act and, as such, it was reasonable for them to withhold from disclosure personal information concerning the Applicant which fell within the limits of said exemptions.

B. Did the CSIS err when it declined to confirm or deny the existence of any personal information relating to the Applicant in PIB 045?

[35] For the following reasons, this Court finds that the CSIS committed no error in its response to the Applicant regarding PIB 045. In fact, it is not the first time this Court is called upon to address this particular issue. The PIB 045 was validly designated by Governor in Council as an "exempt bank" under section 18 of the Act by virtue of the *Exempt Personal Information Bank Order*, No 14 (CSIS), SOR/92-688. Following this exemption, the CSIS adopted the policy of declining to either confirm or deny the existence of any information in this PIB considering that under the circumstances related to PIB 045, merely acknowledging that the CSIS does in fact detain or, to the opposite, does not detain information about a particular individual could jeopardize the CSIS' operations and investigations. The Federal Court of Appeal has already held that it is reasonable for the CSIS to adopt this type of policy with respect to exempt banks (see *Ruby v Canada (Solicitor General)*, [2000] 3 FC 589 at paras 45-73, [2000] FCJ No 779 (FCA), reversed on other grounds in 2002 SCC 75, [2002] SCJ No 73 [*Ruby*]).

Moreover, this Court in *Cemerlic v Canada (Solicitor General)*, 2003 FCT 133 at paras 44 and 45, [2003] FCJ No 191 [*Cemerlic*] has held that the CSIS' policy as it applies specifically to PIB 045 is reasonable, finding that:

> **[44]** The Federal Court of Appeal held in *Ruby* (F.C.A.) that subsection 16(2) permits a government institution to adopt a policy of neither confirming nor denying the existence of information in a personal information bank. The implementation of a policy of this nature under subsection 16(2) involves an exercise of discretion by the government institution. That discretion must be exercised reasonably in the context of the factual circumstances involved, see Ruby (F.C.A.) at paras. 65-66. In *Ruby* (F.C.A.) at para. 65, the Court found that the Department of External Affairs had acted reasonably in adopting a policy of this nature because "[g]iven the nature of the bank in question, the mere revealing of the existence or non-existence of information is in itself an act of disclosure; a disclosure that the requesting party is or is not the subject of an investigation."
>
> **[45]** Bank 045 contains information on individuals who are or were under investigation by CSIS on the suspicion that they have been involved in activities that constitute a threat to the security of Canada. Like the situation in *Ruby* (F.C.A.), if CSIS revealed the existence or non-existence of information in bank 045 to a requesting party, it would in effect be disclosing to that individual whether they were a target of a CSIS investigation. In the context of these factual circumstances, the Court finds CSIS acted reasonably in adopting a uniform policy of neither confirming nor denying the existence of information in bank 045. Even a judge of this Court could not obtain confirmation from CSIS that he or she is or is not under investigation with respect to these matters.

[36] This Court subsequently applied this finding in later cases (see for example *Westerhaug v Canada (Canadian Security Intelligence Service)*, 2009 FC 321 at paras 16-21, [2009] FCJ No 414; *Braunschweig*, above, at paras 44-46).

[37] The CSIS' general policy of refusing to confirm or to deny the existence of any information in PIB 045 has thus been held as validly adopted and vastly confirmed by the courts and, as such, I find that the CSIS' response to the Applicant's request in this regard was reasonable and does not warrant the intervention of this Court.

[38] Considering this Court's answers to both issues upholding the legality of the Respondents' responses to the Applicant's request for access to information, this application for judicial review shall be dismissed as a whole.

[39] As a side note, I wish to stress the following. During the period between when leave for judicial review was granted and when the public hearing was held, the Applicant presented this Court with motions, including one that involved the Security Intelligence Review Committee [SIRC], which is not a party to this application for judicial review. The Applicant's motion requested that this Court order the SIRC, which had twice denied the Applicant's complaint, considering it frivolous, to review his files, as investigated by the CSIS, and report its findings to the Court. The Applicant was informed *viva voce* during the public hearing – and is reminded by these reasons – that while these motions fall outside of this Court's jurisdiction as it concerns this specific application for judicial review, he may nonetheless elect to file other applications on the basis of these other motions.

[40] Before signing this judgement, the Court would like to reach to the Applicant in order to appease his impression about his views that he is investigated by the CSIS and the CBSA with the participation of Prime Minister Harper. This Court informs that, having had a full view of all

the information, it did not identify any CBSA or CSIS investigation that would have involved the Prime Minister. Therefore, if that can be understood by the Applicant, he should go on in his life in peace and with the satisfaction that there is no investigation involving him.

[41] Finally, both parties seek costs, and pursuant to this Court's full discretionary power under subsection 400(1) of the *Federal Courts Rules*, SOR/98-106, and keeping in mind the human issues arising from this litigation, it would be neither appropriate nor helpful to condemn the Applicant to any costs. It is the sincere hope of the undersigned that the Applicant closes this chapter of his life and moves on to a new one where he can enjoy life without having these cloudy impressions over his head.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No costs are awarded.

"Simon Noël"

Judge

Annex 1 – Relevant provisions of the Act

Privacy Act, RSC, 1985, c P-21

PROTECTION OF PERSONAL INFORMATION

[…]

Disclosure of personal information

8. (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

Where personal information may be disclosed

(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

[…]

(*m*) for any purpose where, in the opinion of the head of the institution,

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or

(ii) disclosure would clearly benefit the individual to whom the information relates.

[…]

EXEMPTIONS
Exempt Banks

Governor in Council may designate exempt banks

Loi sur la protection des renseignements personnels, LRC (1985), ch P-21

PROTECTION DES RENSEIGNEMENTS PERSONNELS

[…]

Communication des renseignements personnels

8. (1) Les renseignements personnels qui relèvent d'une institution fédérale ne peuvent être communiqués, à défaut du consentement de l'individu qu'ils concernent, que conformément au présent article.

Cas d'autorisation

(2) Sous réserve d'autres lois fédérales, la communication des renseignements personnels qui relèvent d'une institution fédérale est autorisée dans les cas suivants :

[…]

m) communication à toute autre fin dans les cas où, de l'avis du responsable de l'institution :

(i) des raisons d'intérêt public justifieraient nettement une éventuelle violation de la vie privée,

(ii) l'individu concerné en tirerait un avantage certain.

[…]

EXCEPTIONS
Fichiers inconsultables

Fichiers inconsultables

18. (1) The Governor in Council may, by order, designate as exempt banks certain personal information banks that contain files all of which consist predominantly of personal information described in section 21 or 22.

Disclosure may be refused

(2) The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that is contained in a personal information bank designated as an exempt bank under subsection (1).

[…]

Responsibilities of Government

[…]

International affaires and defence

21. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada, as defined in subsection 15(2) of the *Access to Information Act*, or the efforts of Canada toward detecting, preventing or suppressing subversive or hostile activities, as defined in subsection 15(2) of the Access to Information Act, including, without restricting the generality of the foregoing, any such information listed in paragraphs 15(1)(*a*) to (*i*) of the Access to Information Act.

[…]

Law enforcement and investigation

18. (1) Le gouverneur en conseil peut, par décret, classer parmi les fichiers de renseignements personnels inconsultables, dénommés fichiers inconsultables dans la présente loi, ceux qui sont formés de dossiers dans chacun desquels dominent les renseignements visés aux articles 21 ou 22.

Autorisation de refuser

(2) Le responsable d'une institution fédérale peut refuser la communication des renseignements personnels demandés en vertu du paragraphe 12(1) qui sont versés dans des fichiers inconsultables.

[…]

Responsabilités de l'État

[…]

Affaires internationales et défense

21. Le responsable d'une institution fédérale peut refuser la communication des renseignements personnels demandés en vertu du paragraphe 12(1) dont la divulgation risquerait vraisemblablement de porter préjudice à la conduite des affaires internationales, à la défense du Canada ou d'États alliés ou associés avec le Canada, au sens du paragraphe 15(2) de la *Loi sur l'accès à l'information*, ou à ses efforts de détection, de prévention ou de répression d'activités hostiles ou subversives, au sens du paragraphe 15(2) de la même loi, notamment les renseignements visés à ses alinéas 15(1)*a*) à *i*).

[…]

Enquêtes

22. (1) The head of a government institution may refuse to disclose any personal information requested under subsection 12(1)

[…]

(*b*) the disclosure of which could reasonably be expected to be injurious to the enforcement of any law of Canada or a province or the conduct of lawful investigations, including, without restricting the generality of the foregoing, any such information

(i) relating to the existence or nature of a particular investigation,

(ii) that would reveal the identity of a confidential source of information, or

(iii) that was obtained or prepared in the course of an investigation; or

[…]

22. (1) Le responsable d'une institution fédérale peut refuser la communication des renseignements personnels demandés en vertu du paragraphe 12(1) :

[…]

b) soit dont la divulgation risquerait vraisemblablement de nuire aux activités destinées à faire respecter les lois fédérales ou provinciales ou au déroulement d'enquêtes licites, notamment :

(i) des renseignements relatifs à l'existence ou à la nature d'une enquête déterminée,

(ii) des renseignements qui permettraient de remonter à une source de renseignements confidentielle,

(iii) des renseignements obtenus ou préparés au cours d'une enquête;

[…]

Personal Information

Information about another individual

26. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) about an individual other than the individual who made the request, and shall refuse to disclose such information where the disclosure is prohibited under section 8.

Renseignements personnels

Renseignements concernant un autre individu

26. Le responsable d'une institution fédérale peut refuser la communication des renseignements personnels demandés en vertu du paragraphe 12(1) qui portent sur un autre individu que celui qui fait la demande et il est tenu de refuser cette communication dans les cas où elle est interdite en vertu de l'article 8.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-554-13 AND T-1203-13
STYLE OF CAUSE:	GARETH DAVID LLEWELLYN ET AL v CANADIAN SECURITY INTELLIGENCE SERVICE ET AL
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	APRIL 16, 2014
REASONS FOR JUDGMENT AND JUDGMENT:	NOËL S J.
DATED:	MAY 6, 2014

APPEARANCES:

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Helen Gray Helene Robertson	FOR THE RESPONDENTS

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William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENTS