

Federal Court



Cour fédérale

Date: 20240116

Docket: T-479-23

Citation: 2024 FC 63

Toronto, Ontario, January 16, 2024

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

ZULFIQAR ALI

Applicant

and

MINISTER OF IMMIGRATION,
REFUGEES, AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application by a self-represented Applicant made pursuant to section 41 of the *Access to Information Act*, RSC 1985, c A-1 [ATIA] following a report by the Office of the Information Commissioner [OIC] on a complaint relating to a decision of Immigration, Refugees, and Citizenship Canada [IRCC] that neither confirmed nor denied the existence of information requested by the Applicant relating to his minor child.

[2] Upon *de novo* consideration set out further below, I find that IRCC properly invoked subsections 10(2) and 19(1) of the *ATIA* and refused the information request, without confirming its existence, as the information was personal information of the minor child and reasonably interpreted subsection 19(2) of the *ATIA* to find that the Applicant did not have sole authority to make the request. The application is accordingly dismissed.

II. Background

[3] On April 12, 2021, the Applicant, Zulifiqar Ali, made an access to information request to IRCC for the file materials relating to the minor child. The Decision refers to the request as being for “the medical file” of the minor child, which was later amended to include “the electronic notes of the immigration or citizenship officer(s) and the application, supporting documents and correspondences sent to and/or from IRCC for the humanitarian & compassionate and the medical file concerning [the minor child]”. The OIC similarly summarized the request in its subsequent decision, as being for the minor child’s “medical and immigration records”.

[4] The request followed an earlier request for information by the Applicant pertaining to his permanent residence file. In response to that request, IRCC initially provided unrelated records to the Applicant involving a different individual with the Applicant’s name, and only conducted an additional search to provide corrected information after it was determined by the OIC that the initial disclosure was in error. When the follow-up information was provided it did not include any information from the Applicant’s file that related to his spouse or minor child. The omission of this family information allegedly prompted the Applicant’s further access to information request.

[5] Upon receiving the present request for information on the minor child, IRCC communicated to the Applicant that pursuant to IRCC policy, in order to process the request the Applicant needed to provide additional information to confirm consent for the requested access. The Applicant was advised that the additional information could include either a properly completed consent form from both parents, or a Canadian court order confirming a custody agreement that permitted the Applicant to obtain the information requested.

[6] The Applicant provided a copy of an Ontario Superior Court of Justice (Family Court) Order, indicating that he was separated from the minor child's mother and advised that he was attempting to obtain the requested consent of the mother, but that it might not be provided. The evidence refers to the following two paragraphs from the Court Order:

4. The respondent father is entitled to receive ongoing copies of the child's school report cards directly from the school, and to meet with teachers when the child is not at school.

5. The respondent father is entitled to receive ongoing medical reports regarding the child's health status directly from his doctors, and he may communicate with these professionals outside appointments.

[7] On June 22, 2021, the IRCC communicated its Decision indicating that they would neither confirm nor deny that the requested information existed and that if it did exist it would be withheld because it was personal information.

[8] The Applicant subsequently filed a complaint with the OIC alleging that IRCC had improperly responded to his access request by invoking subsection 10(2) of the *ATIA*. On February 15, 2023, the OIC rejected the complaint finding that it was not well-founded. The present application was filed on March 10, 2023.

III. Analysis

A. *Relevant Statutory Provisions and Standard of Review*

[9] Subsection 19(1) of the *ATIA* provides that a government institution shall refuse to disclose any record requested under the *ATIA* that contains personal information subject to certain exceptions where disclosure is authorized, including as relevant to this application, where the individual to whom the information relates consents to the disclosure:

Personal Information	Renseignements personnels
<p>19 (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Part that contains personal information.</p>	<p>19 (1) Sous réserve du paragraphe (2), le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant des renseignements personnels.</p>
Where disclosure authorized	Cas où la divulgation est autorisée
<p>(2) The head of a government institution may disclose any record requested under this Part that contains personal information if</p>	<p>(2) Le responsable d'une institution fédérale peut donner communication de documents contenant des renseignements personnels dans les cas où :</p>
<p>(a) the individual to whom it relates consents to the disclosure;</p>	<p>a) l'individu qu'ils concernent y consent;</p>
<p>(b) the information is publicly available; or</p>	<p>b) le public y a accès;</p>
<p>(c) the disclosure is in accordance with section 8 of the <i>Privacy Act</i>.</p>	<p>c) la communication est conforme à l'article 8 de la <i>Loi sur la protection des</i></p>

*renseignements
personnels.*

[10] Personal information is defined in section 3 of the *ATIA* with reference to section 3 of the *Privacy Act*, RSC, 1985, c P-21, s 3 [*Privacy Act*] and includes, *inter alia*, information relating to the race, national or ethnic origin, colour, religion, age, any identifying number, symbol or other particular assigned to the individual, their address, fingerprints, or blood type, and information relating to their education or medical history.

[11] As set out in IRCC policy, where information relates to a minor child under 16 years old, consent to disclosure is made by the parents of the minor child. Both parents have to approve the release of their child’s information in writing or the parent making the request must submit a signed form and a valid Canadian court order providing proof of custody.

[12] If access to information is refused, the government is not required to confirm whether the requested documents exist (subsection 10(2) *ATIA*), but must inform the requestor of the *ATIA* provision on which refusal could “reasonably be expected to be based” if the records did exist (paragraph 10(1)(b); *VB v Canada (Attorney General)*, 2018 FC 394 at para 15). Section 10 of the *ATIA* provides as follows:

Where access is refused

10 (1) Where the head of a government institution refuses to give access to a record requested under this Part or a part thereof, the head of the institution shall state in the

Refus de communication

10 (1) En cas de refus de communication totale ou partielle d’un document demandé en vertu de la présente partie, l’avis prévu à l’alinéa 7a) doit mentionner, d’une part, le droit de la personne qui a fait la demande

notice given under paragraph 7(a)

de déposer une plainte auprès du Commissaire à l'information et, d'autre part :

(a) that the record does not exist, or

a) soit le fait que le document n'existe pas;

(b) the specific provision of this Part on which the refusal was based or, where the head of the institution does not indicate whether a record exists, the provision on which a refusal could reasonably be expected to be based if the record existed,

b) soit la disposition précise de la présente partie sur laquelle se fonde le refus ou, s'il n'est pas fait état de l'existence du document, la disposition sur laquelle il pourrait vraisemblablement se fonder si le document existait.

and shall state in the notice that the person who made the request has a right to make a complaint to the Information Commissioner about the refusal.

Existence of a record not required to be disclosed

Dispense de divulgation de l'existence d'un document

(2) The head of a government institution may but is not required to indicate under subsection (1) whether a record exists.

(2) Le paragraphe (1) n'oblige pas le responsable de l'institution fédérale à faire état de l'existence du document demandé.

Deemed refusal to give access

Présomption de refus

(3) Where the head of a government institution fails to give access to a record requested under this Part or a part thereof within the time limits set out in this Part, the head of the institution shall, for the purposes of this Part,

(3) Le défaut de communication totale ou partielle d'un document dans les délais prévus par la présente partie vaut décision de refus de communication.

be deemed to have refused to give access.

[13] The OIC receives and investigates complaints from persons who have been refused access to a requested record (subsection 30(1) of *ATIA*) and once investigations are complete provides a report of its results (subsection 37(2) of *ATIA*). Pursuant to subsection 41(1) of the *ATIA*, a complainant who receives a report under subsection 37(2) may apply to the Federal Court for “a review of the matter that is the subject of the complaint” within 30 business days after the government institution receives the report.

[14] In any such review proceeding, the burden is on the government institution to establish that it was authorized to refuse to disclose the information sought (subsection 48(1) of *ATIA*).

[15] Pursuant to section 44.1 of the *ATIA*, applications filed under section 41 of the *ATIA* are to be “heard and determined as a new proceeding”. As clarified by Justice Stratas in *Canada (Health) v Preventous Collaborative Health*, 2022 FCA 153 at paragraph 15:

This interpretation of section 44.1 is supported not only by the plain text of the Act and *Merck Frosst*, but also by the express statement of purpose in the Act that “the disclosure of government information should be reviewed independently of government”: para. 2(2)(a). Vesting the independent and impartial Federal Court with the power to review, *de novo*, the disclosure of government information furthers that statutory purpose.

[16] In a *de novo* analysis, “the Court ‘steps into the shoes’ of the initial decision-maker and determines the matter on its own.”: *Suncor Energy Inc v Canada-Newfoundland and Labrador Offshore Petroleum Board*, 2021 FC 138 at para 64. Although the decision of the OIC is an essential step in the process, which triggers the right to seek judicial review, the decision of the

OIC is not subject to review: *Lukács v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 1142 [*Lukács*] at paras 8 and 44. The role of the Court instead is to determine whether the original decision-maker correctly applied the exemptions under the *ATIA* and whether the decision-maker reasonably exercised their discretion to either disclose or withhold records:

Lukács at paras 8 and 44. This means that the Court “is to reach its own conclusion as to whether the information at issue is exempt from disclosure under subsection 19(1), i.e., it must determine whether the mandatory exemption has been applied correctly”: *Canada (Information Commissioner) v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1279 at para 40; *Merck Frosst Canada Ltd v Canada (Health)*, 2012 SCC 3 at para 53.

B. *Application of Legal Principles*

[17] The Applicant asserts that the information requested is information that he provided to IRCC as the father of the minor child. It is information that is contained in the Applicant’s immigration file in support of his application for permanent residence and not in respect of a separate application of the mother or minor child as they are both alleged to be Canadian citizens.

[18] The Applicant argues that the previous error made by IRCC where it provided incorrect information to the Applicant in response to his earlier request raises concern that the information relating to his family on his pending permanent residence file is incorrect and justifies his current request for information on the minor child.

[19] As asserted by the Respondent, there is no evidence on the record that suggests the Applicant's records have been compromised or contain incorrect information. The Applicant's materials suggest only that IRCC made a previous administrative error in providing someone else's file information in response to the Applicant's prior access to information request.

[20] As noted by the Respondent, the *ATIA* and IRCC's policy on disclosure of information relating to minor children does not differentiate between who supplied the information or on whose file it is contained. Even if this could be considered, the information before me does not indicate that the request as made was limited to only the information on the minor child that the Applicant had himself provided. Rather, all correspondence suggests instead that the request was broader and was for all medical and immigration information on the minor child.

[21] In this case, IRCC was advised of a family law dispute between the Applicant and the child's mother and family violence allegations made in 2017. In correspondence between the Applicant and IRCC, the Applicant indicated that he required the information on the minor child for the purposes of "the legal trial in family court" to keep "the historic facts in mind about the child that was in [his] care since birth" and "to avoid confusion and also keep the matter of immigration clear to the court". In my view, it cannot be concluded that the information was requested solely for immigration purposes.

[22] Rather, in my view, the Respondent has satisfied their burden and established that IRCC was authorized to neither confirm nor deny the existence of the records (subsection 10(2) of *ATIA*) and was correct in finding that even if the records did exist, they should be withheld as

personal information as they would relate to personal details about the minor child (subsection 19(1) of *ATIA*).

[23] Further, I find it was reasonable that IRCC found that paragraph 19(2)(a) would not be satisfied.

[24] IRCC communicated to the Applicant that information about minors can only be released with the consent of both parents or by providing a valid court order indicating that the person making the request is permitted to obtain the information being requested. However, the Applicant did not satisfy either of these requirements. The Applicant did not provide consent from both parents, nor did he provide a court order confirming a custody agreement that allowed for sole authorization.

[25] While the excerpts from the Court Order indicate that the Applicant is entitled to receive ongoing medical reports from their child's doctor, it does not provide the Applicant entitlement to medical information in possession of IRCC. The Court Order does not give the Applicant entitlement to any and all information relating to the minor child in the possession of IRCC.

[26] For all of these reasons, the application is dismissed.

[27] Although the Respondent requested costs in the amount of \$1,000, as the Applicant was self-represented and in view of the nature of the application, I exercise my discretion and will not award costs associated with this application.

JUDGMENT IN T-479-23

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There shall be no award as to costs.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-479-23

STYLE OF CAUSE: ZULFIQAR ALI v MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA

PLACE OF HEARING: FREDERICTON, NEW BRUNSWICK

DATE OF HEARING: JANUARY 9, 2024

JUDGMENT AND REASONS: FURLANETTO J.

DATED: JANUARY 16, 2024

APPEARANCES:

Zulfiqar Ali

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Jan Jensen

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Halifax, Nova Scotia

FOR THE RESPONDENT