

Federal Court



Cour fédérale

**Date: 20240123**

**Docket: T-499-22**

**Citation: 2024 FC 88**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, January 23, 2024**

**PRESENT: The Honourable Madam Justice Tsimberis**

**BETWEEN:**

**SYLVIE MATAS**

**Applicant**

**and**

**GLOBAL AFFAIRS CANADA**

**Respondent**

**PUBLIC REASONS AND JUDGMENT**

**(Confidential Judgment and Reasons issued January 23, 2024)**

**I. Overview**

[1] This is an application for judicial review under subsection 41(1) and section 44.1 of the *Access to Information Act*, RSC 1985, c A-1 [ATIA] filed by Sylvie Matas [applicant], a retired

public servant, of a decision by Global Affairs Canada [respondent] dated October 18, 2021, to refuse to disclose records to the applicant on the basis of subsection 19(1) of the ATIA and following a decision made by the Office of the Information Commissioner [OIC] dated March 22, 2022, declaring the applicant's complaint against the respondent not well founded.

[2] The applicant complained to the Office of the Information Commissioner regarding her second access request (A-2021-00779), reproduced below, alleging that the respondent had erroneously refused to disclose records pursuant to subsection 19(1) of the ATIA:

[TRANSLATION]

*I would like a copy of the inspection report that was done by GAC at the Canadian Embassy in Dakar, Senegal, in 2018. Following this inspection, three local employees were dismissed for fraud. GAC regularly conducts inspections in foreign missions to verify the proper management of Canadian embassies.*

[3] The OIC considered the applicant's complaint to be not well founded because the respondent demonstrated that the information meets the criteria for the personal information of individuals and the respondent provided the following detailed justification as to why the circumstances described in subsection 19(2) of the ATIA do not exist in this case:

- A. The respondent has given specific reasons why it would not have been appropriate to seek the consent of the individuals concerned;
- B. The respondent has demonstrated that the personal information covered by the access to information request is publicly available; and
- C. The respondent has demonstrated that the disclosure of personal information is not in accordance with section 8 of the *Privacy Act* [PA].

[4] In her application, the applicant alleges that the respondent refuses, without justification, to disclose the investigation reports under subsection 19(1) of the ATIA that are of interest to the applicant. The applicant believes that her records relate to the circumstances, reasons and conclusions of an investigation report carried out in 2018 on the embassy in Dakar

[REDACTED]

[REDACTED]

[REDACTED]. The applicant is seeking the issuance of an order to compel the respondent to disclose the information in the documents concerned to clear up the facts that, according to her, prejudiced her right to adequate housing during the first year of her assignment in Dakar; caused duly documented damage to her health during the first year of her assignment (2015–2016) to the embassy in Dakar; forced her to take sick leave and disability leave upon her return from assignment in August 2028; and resulted in her premature retirement.

[5] The applicant also alleges that the respondent did not properly exercise its discretionary right to allow disclosure of all or part of the investigation reports under subsection 19(2) of the ATIA, including by not severing from the investigation reports any parts that do not contain any personal information under section 25 of the ATIA.

[6] The respondent defends its decision (and that of the OIC) to refuse to disclose the records to the applicant because it determined as follows:

- A. The documents relating to the second access request No. A-2021-00779 (the three investigation reports) contain the personal information of identifiable individuals other than the applicant. The respondent determined that it cannot disclose the

requested personal information, in whole or in part, without disclosing the personal information of individuals;

- B. The personal information was not subject to one of the exceptions set out in subsection 19(2) of the ATIA, which permits the disclosure of information if (a) the individual to whom it relates consents to the disclosure; (b) the information is publicly available; or (c) the disclosure is in accordance with section 8 of the PA; and
- C. The OIC cannot disclose the requested records, in whole or in part, without disclosing the personal information of individuals because the three reports at issue concern [REDACTED] and given the nature of the investigations, the details in the reports and their roles, disclosure of the reports, in whole or in part, risks identifying the individuals concerned and disclosing their personal information.

[7] The Court reproduces in the attached Appendix the legislative provisions relevant to its judgment.

[8] For the following reasons, the Court dismisses this application for review.

## II. Issues

[9] This matter raises the following issues:

- a. What is the standard of review applicable to issues raised in an application for review under the ATIA?
- b. Is the information requested by the applicant subject to the personal information provisions in subsection 19(1) of the ATIA?
- c. If so, has the respondent reasonably exercised its discretion under subsection 19(2) of the ATIA?
- d. Did the respondent err in refusing to sever the records required under section 25 of the ATIA?

### III. **Analysis**

#### A. **The applicable standard of review**

(a) *Subsection 41(1) and section 44.1 of the ATIA*

[10] The applicant's application is made under subsection 41(1) of the ATIA, which confers a right of review by the Federal Court.

[11] Pursuant to section 44.1 of the ATIA, the Federal Court hears and determines applications under subsection 41(1) of the ATIA as if they were new matters (*de novo* review), where 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 (*Suncor*) at paras 64 and 68).

[12] Therefore, this application must be treated as a new proceeding. In this way the Court will act *de novo* independently of the case as a whole, which will allow the parties to present new evidence and the Court to hear new arguments, to make its own findings and to order any

corrective measures (*Perrault v Canada (Foreign Affairs)*, 2023 FC 1051 [*Perrault*] at para 27, which cites the Federal Court of Appeal in *Canada (Health) v Preventous Collaborative Health*, 2022 FCA 153 at paras 12 and 14).

(b) *Subsections 19(1) and 19(2) and section 25 of the ATIA*

[13] In this case, in a trial *de novo*, the Court is not reviewing a decision of the federal institution in and of itself, but it is determining for itself whether the exemptions from disclosure provided for in section 19 of the ATIA are applicable. However, section 44.1 provides for the Court to simply ask what decision it would have made (*Canada (Minister of the Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 83; *Perrault*, at paras 29 and 43).

[14] Subsection 19(1) of the ATIA creates a prohibition on the disclosure of “personal information” within the meaning of section 3 of the PA. However, subsection 19(2) of the ATIA permits the disclosure of personal information on a discretionary basis in the cases set out in paragraphs (a) to (c). Discretionary decisions of administrative decision makers are to be reviewed on a standard of reasonableness (*Canada (Office of the Information Commissioner) v Canada (Prime Minister)*, 2019 FCA 95 at para 31).

[15] The Court must consider two aspects when evaluating whether the decision made by the administrative decision maker was unreasonable—the administrative decision maker’s rationale for the decision and the outcome to which it led (*Vavilov* at para 83). A reasonable decision is one that is based on a coherent and rational chain of analysis and that is justified in relation to the

facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision (*Vavilov* at para 85).

[16] In this case, the Court will proceed with a *de novo* analysis to determine whether the information required by the applicant is subject to the personal information provisions in subsection 19(1) of the ATIA to refuse to disclose the information, and consequently, to analyze whether the discretionary decision of the respondent not to permit the disclosure of information in accordance with subsection 19(2) of the ATIA is reasonable. Finally, the Court must give due consideration to the issue of severability of any part that does not contain personal information to determine whether the institutional head properly applied section 25 of the ATIA (*Merck Frosst Canada Ltd. v Canada (Health)*, 2012 SCC 3 [*Merck*] at para 232; *Cain v Canada (Health)*, 2023 FC 55 [*Cain*] at para 42).

(c) *Burden of proof*

[17] Subsection 48(1) of the ATIA establishes that, in any proceedings before the Court arising from an application under subsection 41(1) of the ATIA, the burden of establishing that the head of a government institution is authorized to refuse to disclose a record requested, or a part of such a record, is on the government institution concerned.

[18] Consequently, the burden of actually proving the head of a government institution is authorized to refuse to disclose the records requested by the applicant is on the respondent, and the Court will then draw its own conclusion as to whether any part that does not contain the personal information at issue should be exempt from disclosure.

**B. Is the information requested by the applicant subject to the personal information provisions in subsection 19(1) of the ATIA?**

[19] Subsection 19(1) of the ATIA provides that the head of a government institution shall refuse to disclose any record requested under this Part that contains personal information.

[20] The definition of “personal information” in section 3 of the ATIA refers to the definition of “personal information” in section 3 of the PA, which reads as follows:

**personal information:** means information about an identifiable individual that is recorded in any form. . . .

[21] Section 3 of the PA and subsection 19(1) of the ATIA therefore deal with information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing, information described in paragraphs (a) to (i) of section 3 of the PA. The information must be given a generous interpretation and the enumeration in paragraphs (a) to (i) of section 3 is not limitative but illustrative only (*Canada (Information Commissioner) v Canada (Transportation Accident Investigation and Safety Board)*, 2006 FCA 157 [*Investigation Board*] at para 34).

[22] Moreover, the definition of “personal information” requires that the information make an individual identifiable and that he or she not be truly identified. An individual will be identifiable where there is a serious possibility that an individual could be identified through the use of that information, alone or in combination with other available information (*Gordon v Canada (Health)*, 2008 FC 258 at para 34).



(a) *Paragraphs 3(a) to (i) of the PA*

[23] The records in issue, in particular Exhibits D to F of the respondent, cannot be disclosed without disclosing personal information on identifiable individuals, specifically information relating to the employment history of the individual (3(b) of the PA) or the views or opinions of another individual about the individual (paragraph 3(g) of the PA). The investigation reports contain specific information, such as the names of the individuals under investigation and those who were part of the investigations, their functions, their responsibilities, their roles, their employment history, [REDACTED] and other information, that could identify the individuals.

[24] The very nature of the investigations into the three individuals, following the disclosure of all or part of their information, could make the persons involved not only identifiable, but could also make it possible to identify the persons involved in the investigations.

[25] The Court agrees with the respondent that the disclosure of the three administrative investigations will make it possible to identify the individuals involved, given the limited number of individuals employed by the Embassy with particular roles at the relevant time, the nature of the allegations at the heart of the investigations and the details contained in the reports.

[26] The fact that the applicant claims to know the individuals identified in the investigation reports who were her colleagues because it is a small embassy does not diminish the individual privacy rights of all the people identified in the reports. The ATIA and the PA do not provide for information already known to the requester to be excluded from personal information (*Perrault*,

para 48). The protection of the privacy of individuals is paramount over the right of access, except as prescribed by law, as privacy is a fundamental value in modern, democratic states (*H.J. Heinz Co. of Canada Ltd. v Canada (Attorney General)*, 2006 SCC 13 [Heinz] at para 2; *Dagg v Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), [1997] 2 SCR 403 [Dagg] at para 48; *Canada (Information Commissioner) c Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1279 [Public Safety] at para 30). Moreover, the Supreme Court of Canada has recognized that the “importance of privacy rights is such that unauthorized release of personal information should be avoided, even if only some members of the public could draw the connections that would link the information to an identifiable individual” (*Public Safety* at para 62).

[27] With regard to the applicant’s allegation that her name is cited in the investigation reports, the Court can, with the respondent’s consent, confirm for the applicant that her name does not appear in the records at issue.

[28] Consequently, the Court concludes that the records in question do indeed contain personal information about identifiable individuals which, under subsection 19(1) of the ATIA, must not be disclosed by the respondent.

(b) *Paragraphs 3(j) to (m) of the PA*

[29] Paragraphs (j) to (m) of section 3 of the PA provide exceptions to the definition of “personal information” that apply to subsection 19(1) of the ATIA (*Investigation Board* at para 34). More specifically, paragraph (j) of section 3 of the PA, which was alleged by the

applicant and is relevant to the present case, describes information that concerns a current or former officer or employee of a government institution and relates to his or her position or functions:

but, for the purposes of (. . .) and section 19 of the *Access to Information Act*, does not include:

- (j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,
  - (i) the fact that the individual is or was an officer or employee of the government institution,
  - (ii) the title, business address and telephone number of the individual,
  - (iii) the classification, salary range and responsibilities of the position held by the individual,
  - (iv) the individual on a document prepared by the individual in the course of employment, and,
  - (v) the personal opinions or views of the individual given in the course of employment,

[30] The Supreme Court of Canada in *Canada (Information Commissioner) v Canada (Commissioner of the Royal Canadian Mounted Police)*, 2003 SCC 8 [*Mounted Police*] stated as follows at para 38:

However, s. 3(j) does have a specified scope, as the information must be related to the position or functions held by a federal employee. For instance, in *Canada (Information Commissioner) v. Canada (Solicitor General)*, [1988] 3 F.C. 551 (T.D.), Jerome A.C.J. held that certain opinions expressed about the training, personality, experience or competence of individual employees did not fall under s. 3(j). Such information is not a direct function of the individual's position — rather, it concerns the competence and characteristics of the employee. Section 3(j)

should apply only when the information requested is sufficiently related to the general characteristics associated with the position or functions held by an officer or employee of a federal institution. As La Forest J. explained in *Dagg, supra*, at para. 95:

Generally speaking, information relating to the position, function or responsibilities of an individual will consist of the kind of information disclosed in a job description. It will comprise the terms and conditions associated with a particular position, including such information as qualifications, duties, responsibilities, hours of work and salary range.

[31] Indeed, if the information requested is related to the general characteristics of the position or duties of an employee of a government institution, such as the examples in the non-exhaustive list in subparagraphs (i) to (v) of paragraph 3(j) of the PA, the government institution must refuse to disclose the requested records.

[32] The purpose of paragraph 3(j) of the PA is to ensure that public servants are accountable to the general public, not to completely deprive individuals of their right to privacy. The activities to which paragraph 3(j) of the PA refers are those set out in a job description [*Mounted Police* at para 38]. As pointed out by the respondent, Parliament did not refer to the expression “employment history” in the subparagraphs of paragraph 3(j) of the PA when it had the opportunity to do so, having used it expressly in paragraph 3(b) of the PA.

[33] The respondent alleges that the personal information requested by the applicant clearly exceeds the exception provided for in paragraph (j) of section 3 of the PA, as it does not concern the very fact that the individuals were employed by the institution, their titles or contact information, their classifications or salaries, or their names. I agree with the applicant that the

reports requested by the applicant [REDACTED]

are not of the same nature as those that would be found in a job description and are not a direct function of the position or duties of the job. Rather, the reports refer to highly personal characteristics, such as employment history and the views or opinions of another individual about the individual, and do not focus on the general nature of the employee's position or functions (*Mounted Police* at para 38) and therefore do not fall within the exception in paragraph 3(j) of the PA.

[34] The applicant alleges that paragraph 3(l) of the PA, reproduced below, applies to the situation at hand, since the three dismissed employees received discretionary benefits of a financial nature in the course of their duties. The applicant misinterpreted paragraph 3(l) of the PA. She claims that the three local employees who were dismissed received discretionary benefits of a financial nature in the course of their duties:

(l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit

[35] Section 3(l) refers to discretionary benefits, in particular the granting of permits or licences. Investigation reports revealing [REDACTED]

[REDACTED], are not examples that fall within the exception of paragraph 3(l) of the PA.

[36] Consequently, the Court concludes that the respondent is obliged to refuse disclosure of the investigation reports which contain personal information of individuals within the meaning of section 3 of the PA and are not covered by the exemptions set out in paragraphs 3(j) and 3(l) of the PA, since the information is subject to subsection 19(1) of the ATIA.

C. ***Whether the respondent reasonably exercised its discretion under subsection 19(2) of the ATIA***

[37] The purpose of subsection 19(2) of the ATIA is to give government officials discretionary power to disclose records containing the personal information of individuals in certain situations that are otherwise not permitted under subsection 19(1) of the ATIA.

[38] Subsection 19(2) of the ATIA nevertheless allows the head of a government institution to disclose records containing personal information where (a) the individual to whom it relates consents to the disclosure; (b) the information is publicly available; or (c) the disclosure is in accordance with section 8 of the PA.

[39] Subsection 8(1) of the PA prohibits the disclosure of an individual's personal information without his or her consent. Paragraphs (a) to (m) of subsection 8(2) of the PA provide situations where the institution may, at its discretion, authorize disclosure.

[40] Indeed, as long as one or more of the exceptions set out in subsection 8(2) of the PA apply, subsection 19(2) of the ATIA allows the government institution to disclose records containing personal information in the exercise of its discretionary power.

(i) *Paragraph 19(2)(a) - the individual to whom it relates consents to the disclosure*

[41] The applicant criticizes the respondent for failing to produce evidence that the individuals concerned did not consent to the disclosure of personal information. The respondent states that it did not obtain the consent of the individuals concerned because it was unreasonable and inappropriate to seek the consent of the many people involved,

[REDACTED]

[REDACTED]. In this case, the Court can easily understand that it was reasonable not to have sought the consent of all the individuals concerned. Indeed, seeking the concerned persons' consent to investigations [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The same applies to third parties who were involved in the investigation. In my opinion, the chances of obtaining their consent were minimal, if not non-existent.

[42] The applicant also submits that individuals consented to the disclosure of personal information via social media, without, however, demonstrating such disclosure. She refers to a link on the LinkedIn site, but this does not demonstrate that the information or investigation has been published and/or is available to the public. Rather, it demonstrates general information, such as the individuals' experience and the positions they hold. Therefore, the exception provided for in paragraph 19(2)(a) of the ATIA does not apply in this case.

(ii) *Section 19(2)(b) - the information is publicly available*

[43] The Court finds that the applicant's allegation that the information is public because employees and officials have access to it via the respondent's internal Intranet is unfounded.

There is no evidence to this effect in the Court's file. Information such as

██████████ investigations are not generally described in general employee profiles. On the contrary, it would be unreasonable to include this type of information in employee profiles so that it would be accessible to all other employees in the organization.

Moreover, the fact that the profiles of all employees are accessible via the respondent's Intranet does not mean that they are accessible to the public or to portion of the population. Therefore, the exception provided for in paragraph 19(2)(b) of the ATIA does not apply in this case.

(iii) *Section 19(2)(c) – the disclosure is in accordance with section 8 of the PA*

[44] Finally, with respect to subparagraph 8(2)(m)(i) of the PA, there is no reason to believe in this case that the public interest in disclosure clearly outweighs any invasion of privacy of all the individuals involved that could result from the disclosure. Not only would disclosure not clearly outweigh any invasion of privacy, but it would not outweigh at all. The protection of individual privacy prevails over the right of access to information, as privacy is a fundamental value in modern, democratic states (*Heinz* at para 2; *Public Safety* at para 30). Therefore, the exception provided for in paragraph 19(2)(c) of the ATIA does not apply in this case.



[45] For these reasons, the Court is of the opinion that the respondent exercised its discretion appropriately since the circumstances set out in subsection 19(2) of the ATIA do not exist in this case and cannot justify the disclosure of the personal information in question.

**D. Whether the respondent erred in refusing to sever any part of the record, under section 25 of the ATIA**

[46] The Supreme Court of Canada in *Merck* commented on the application of section 25 of the ATIA as follows at paras 236 to 238:

[236] To begin, it is important to recognize that applying s. 25 is mandatory, not discretionary. The section directs that the institutional head “shall [not ‘may’] disclose any part of the record that does not contain” exempted information, provided it can reasonably be severed: see *Dagg*, at para. 80. Thus, the institutional head has a duty to ensure compliance with s. 25 and to undertake a severance analysis wherever information is found to be exempt from disclosure.

[237] The heart of the s. 25 exercise is determining when material subject to the disclosure obligation “can reasonably be severed” from exempt material. In my view, this involves both a semantic and a cost-benefit analysis. The semantic analysis is concerned with whether what is left after excising exempted material has any meaning. If it does not, then the severance is not reasonable. As the Federal Court of Appeal put it in *Blank v. Canada (Minister of the Environment)*, 2007 FCA 289, 368 N.R. 279, at para. 7, “those parts which are not exempt continue to be subject to disclosure if disclosure is meaningful”. The cost-benefit analysis considers whether the effort of redaction by the government institution is justified by the benefits of severing and disclosing the remaining information. Even where the severed text is not completely devoid of meaning, severance will be reasonable only if disclosure of the unexcised portions of the record would reasonably fulfill the purposes of the Act. Where severance leaves only “[d]isconnected snippets of releasable information”, disclosure of that type of information does not fulfill the purpose of the Act and severance is not reasonable: *Canada (Information Commissioner) v. Canada (Solicitor General)*, [1988] 3 F.C. 551 (T.D.), at pp. 558-59; *SNC-Lavalin Inc.*, at para. 48. As Jerome A.C.J. put it in *Montana Band*

*of Indians v. Canada (Minister of Indian and Northern Affairs)*, [1989] 1 F.C. 143 (T.D.):

To attempt to comply with section 25 would result in the release of an entirely blacked-out document with, at most, two or three lines showing. Without the context of the rest of the statement, such information would be worthless. The effort such severance would require on the part of the Department is not reasonably proportionate to the quality of access it would provide. [Emphasis added; pp. 160-61.]

[238] That said, one must not lose sight of the purpose of s. 25. It aims to facilitate access to the most information reasonably possible while giving effect to the limited and specific exemptions set out in the Act: *Ontario (Public Safety and Security)*, at para. 67.

[47] The respondent alleges that personal information that could identify individuals is found throughout the records: for example, the elements of the investigation reports that could identify individuals include their names, workplaces, positions, job descriptions, names of co-workers and third parties involved, [REDACTED] And therefore, severance is not possible without leaving only disconnected snippets of unintelligible information. I agree (*Merck* at para 237). Also, the fact that there are a limited number of people who held limited positions at the Canadian Embassy in Dakar at the time of the investigations would mean that severance is not possible without the risk of identifying the people concerned and disclosing their personal information.

[48] Accordingly, the Court concludes that the respondent met its obligation to consider whether any part of the record that did not contain any such personal information could be severed and properly refused to make the said severance among the records, in accordance with section 25 of the ATIA.

IV. **Conclusion**

[49] The Court dismisses this application for judicial review. Subsection 53(1) of the ATIA provides that the costs of and incidental to all proceedings in the Court under this Part shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise. In its discretion, the Court is of the opinion that it is not appropriate in this case to award the costs of and incidental to this proceeding against the applicant in favour of the respondent.

**JUDGMENT in T-499-22**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.
2. There is no order as to costs.

“Ekaterina Tsimberis”

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Judge

Certified true translation  
Daniela Guglietta

## APPENDIX

*Access to Information Act, RSC 1985, c A-1*

### **Definitions**

3 In this act,

**personal information** has the same meaning as in section 3 of the *Privacy Act* (*renseignements personnels*)

...

### **Personal information**

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.

### **Where disclosure authorized**

(2) The head of a government institution may disclose any record requested under this Part that contains personal information if

(a) the individual to whom it relates consents to the disclosure;

(b) the information is publicly available; or

(c) the disclosure is in accordance with section 8 of the *Privacy Act*.

...

### **Définitions**

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

**renseignements personnels** S'entend au sens de l'article 3 de la *Loi sur la protection des renseignements personnels*. (*personal information*).

...

### **Renseignements personnels**

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.

### **Cas où la divulgation est autorisée**

(2) Le responsable d'une institution fédérale peut donner communication de documents contenant des renseignements personnels dans les cas où :

a) l'individu qu'ils concernent y consent;

b) le public y a accès;

c) la communication est conforme à l'article 8 de la *Loi sur la protection des renseignements personnels*.

...

## **Severability**

25 Notwithstanding any other provision of this Part, where a request is made to a government institution for access to a record that the head of the institution is authorized to refuse to disclose under this Part by reason of information or other material contained in the record, the head of the institution shall disclose any part of the record that does not contain, and can reasonably be severed from any part that contains, any such information or material.

...

## **Review by Federal Court — complainant**

41 (1) A person who makes a complaint described in any of paragraphs 30(1)(a) to (e) and who receives a report under subsection 37(2) in respect of the complaint may, within 30 business days after the day on which the head of the government institution receives the report, apply to the Court for a review of the matter that is the subject of the complaint.

## **Review by Federal Court — government institution**

(2) The head of a government institution who receives a report under subsection 37(2) may, within 30 business days after the day on which they receive it, apply to the Court for a review of any matter that is the subject of an order set out in the report.

## **Prélèvements**

25 Le responsable d'une institution fédérale, dans les cas où il pourrait, vu la nature des renseignements contenus dans le document demandé, s'autoriser de la présente partie pour refuser la communication du document, est cependant tenu, nonobstant les autres dispositions de la présente partie, d'en communiquer les parties dépourvues des renseignements en cause, à condition que le prélèvement de ces parties ne pose pas de problèmes sérieux.

...

## **Révision par la Cour fédérale : plaignant**

41 (1) Le plaignant dont la plainte est visée à l'un des alinéas 30(1)a) à e) et qui reçoit le compte rendu en application du paragraphe 37(2) peut, dans les trente jours ouvrables suivant la réception par le responsable de l'institution fédérale du compte rendu, exercer devant la Cour un recours en révision des questions qui font l'objet de sa plainte.

## **Révision par la Cour fédérale : institution fédérale**

(2) Le responsable d'une institution fédérale qui reçoit le compte rendu en application du paragraphe 37(2) peut, dans les trente jours ouvrables suivant la réception du compte rendu, exercer devant la Cour un recours en révision de toute question dont traite l'ordonnance contenue dans le compte rendu.

**Review by Federal Court — third parties**

(3) If neither the person who made the complaint nor the head of the government institution makes an application under this section within the period for doing so, a third party who receives a report under subsection 37(2) may, within 10 business days after the expiry of the period referred to in subsection (1), apply to the Court for a review of the application of any exemption provided for under this Part that may apply to a record that might contain information described in subsection 20(1) and that is the subject of the complaint in respect of which the report is made.

**Révision par la Cour fédérale : tiers**

(3) Si aucun recours n'est exercé en vertu des paragraphes (1) ou (2) dans le délai prévu à ces paragraphes, le tiers qui reçoit le compte rendu en application du paragraphe 37(2) peut, dans les dix jours ouvrables suivant l'expiration du délai prévu au paragraphe (1), exercer devant la Cour un recours en révision de l'application des exceptions prévues par la présente partie pouvant s'appliquer aux documents susceptibles de contenir les renseignements visés au paragraphe 20(1) et faisant l'objet de la plainte sur laquelle porte le compte rendu.

**Review by Federal Court — Privacy Commissioner**

(4) If neither the person who made the complaint nor the head of the institution makes an application under this section within the period for doing so, the Privacy Commissioner, if he or she receives a report under subsection 37(2), may, within 10 business days after the expiry of the period referred to in subsection (1), apply to the Court for a review of any matter in relation to the disclosure of a record that might contain personal information and that is the subject of the complaint in respect of which the report is made.

**Révision par la Cour fédérale :  
Commissaire à la protection de la vie privée**

(4) Si aucun recours n'est exercé en vertu des paragraphes (1) ou (2) dans le délai prévu à ces paragraphes, le Commissaire à la protection de la vie privée qui reçoit le compte rendu en application du paragraphe 37 (2) peut, dans les dix jours ouvrables suivant l'expiration du délai prévu au paragraphe (1), exercer devant la Cour un recours en révision de toute question relative à la communication d'un document susceptible de contenir des renseignements personnels et faisant l'objet de la plainte sur laquelle porte le compte rendu.

## **Respondents**

(5) The person who applies for a review under subsection (1), (3) or (4) may name only the head of the government institution concerned as the respondent to the proceedings. The head of the government institution who applies for a review under subsection (2) may name only the Information Commissioner as the respondent to the proceedings.

## **Deemed date of receipt**

(6) For the purposes of this section, the head of the government institution is deemed to have received the report on the fifth business day after the date of the report.

...

## **De novo review**

44.1 For greater certainty, an application under section 41 or 44 is to be heard and determined as a new proceeding.

...

## **Hearing in summary way**

45 An application made under section 41 and 44 is to be heard and determined in a summary way in accordance with any special rules made in respect of such applications under section 46 of the *Federal Courts Act*.

## **Défendeur**

(5) La personne qui exerce un recours au titre des paragraphes (1), (3) ou (4) ne peut désigner, à titre de défendeur, que le responsable de l'institution fédérale concernée; le responsable d'une institution fédérale qui exerce un recours au titre du paragraphe (2) ne peut désigner, à titre de défendeur, que le Commissaire à l'information.

## **Date réputée de réception**

(6) Pour l'application du présent article, le responsable de l'institution fédérale est réputé avoir reçu le compte rendu le cinquième jour ouvrable suivant la date que porte le compte rendu.

...

## **Révision de novo**

44.1 Il est entendu que les recours prévus aux articles 41 et 44 sont entendus et jugés comme une nouvelle affaire.

...

## **Procédure sommaire**

45 Les recours prévus aux articles 41 et 44 sont entendus et jugés en procédure sommaire, conformément aux règles de pratique spéciales adoptées à leur égard en vertu de l'article 46 de la *Loi sur les Cours fédérales*.



...

**Burden of proof — subsection 41(1) or (2)**

48 (1) In any proceedings before the Court arising from an application under subsection 41(1) or (2), the burden of establishing that the head of a government institution is authorized to refuse to disclose a record requested under this Part or a part of such a record or to make the decision or take the action that is the subject of the proceedings is on the government institution concerned.

**Burden of proof — subsection 41(3) or (4)**

(2) In any proceedings before the Court arising from an application under subsection 41(3) or (4), the burden of establishing that the head of a government institution is not authorized to disclose a record that is described in that subsection and requested under this Part or a part of such a record is on the person who made that application.

...

**Costs**

53 (1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Part shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.

...

**Charge de la preuve : paragraphes 41(1) et (2)**

48 (1) Dans les procédures découlant des recours prévus aux paragraphes 41(1) et (2), la charge d'établir le bien-fondé du refus de communication totale ou partielle d'un document ou des actions posées ou des décisions prises qui font l'objet du recours incombe à l'institution fédérale concernée.

**Charge de la preuve : paragraphes 41(3) et (4)**

(2) Dans les procédures découlant des recours prévus aux paragraphes 41(3) et (4), la charge d'établir que la communication totale ou partielle d'un document visé à ces paragraphes n'est pas autorisée incombe à la personne qui exerce le recours.

...

**Frais et dépens**

53 (1) Sous réserve du paragraphe (2), les frais et dépens sont laissés à l'appréciation de la Cour et suivent, sauf ordonnance contraire de la Cour, le sort du principal.

## Definitions

3 In this Act,

...

*government institution* means

(a) any department or ministry of state of the Government of Canada, or any body or office, listed in the schedule, and

...

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

(a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,

(b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a

## Définitions

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

...

### **institution fédérale**

a) Tout ministère ou département d'État relevant du gouvernement du Canada, ou tout organisme, figurant à l'annexe;

...

*renseignements personnels* Les renseignements, quels que soient leur forme et leur support, concernant un individu identifiable, notamment :

a) les renseignements relatifs à sa race, à son origine nationale ou ethnique, à sa couleur, à sa religion, à son âge ou à sa situation de famille;

b) les renseignements relatifs à son éducation, à son dossier médical, à son casier judiciaire, à ses antécédents professionnels ou à des opérations financières auxquelles il a participé;

c) tout numéro ou symbole, ou toute autre indication identificatrice, qui lui est propre

d) son adresse, ses empreintes digitales ou son groupe sanguin;

e) ses opinions ou ses idées personnelles, à l'exclusion de celles qui portent sur un autre individu ou sur une proposition de subvention,

prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,

**(f)** correspondence sent to a government 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,

**(g)** the views or opinions of another individual about the individual,

**(h)** the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and

**(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,

but, for the purposes of sections 7, 8 and 26 and section 19 of the Access to Information Act, does not include

**(j)** information about an individual who is or was an officer or employee

de récompense ou de prix à octroyer à un autre individu par une institution fédérale, ou subdivision de celle-ci visée par règlement;

**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;

**g)** les idées ou opinions d'autrui sur lui;

**h)** les idées ou opinions d'un autre individu qui portent sur une proposition de subvention, de récompense ou de prix à lui octroyer par une institution, ou subdivision de celle-ci, visée à l'alinéa e), à l'exclusion du nom de cet autre individu si ce nom est mentionné avec les idées ou opinions;

**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;

toutefois, il demeure entendu que, pour l'application des articles 7,8 et 26, et de l'article 19 de la Loi sur l'accès à l'information, les renseignements personnels ne comprennent pas les renseignements concernant :

**j)** un cadre ou employé, actuel ou ancien, d'une institution fédérale et

of a government institution that relates to the position or functions of the individual including,

**(i)** the fact that the individual is or was an officer or employee of the government institution,

**(ii)** the title, business address and telephone number of the individual,

**(iii)** the classification, salary range and responsibilities of the position held by the individual,

**(iv)** the name of the individual on a document prepared by the individual in the course of employment, and

**(v)** the personal opinions or views of the individual given in the course of employment,

**(j.1)** the fact that an individual is or was a ministerial adviser or a member of a ministerial staff, as those terms are defined in subsection 2(1) of the Conflict of Interest Act, as well as the individual's name and title,

**(k)** information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,

**(l)** information relating to any discretionary benefit of a financial nature, including the granting of a

portant sur son poste ou ses fonctions, notamment :

**(i)** le fait même qu'il est ou a été employé par l'institution,

**(ii)** son titre et les adresse et numéro de téléphone de son lieu de travail,

**(iii)** la classification, l'éventail des salaires et les attributions de son poste,

**(iv)** son nom lorsque celui-ci figure sur un document qu'il a établi au cours de son emploi,

**(v)** les idées et opinions personnelles qu'il a exprimées au cours de son emploi;

**j.1)** un conseiller ministériel, au sens du paragraphe 2(1) de la Loi sur les conflits d'intérêts, actuel ou ancien, ou un membre, actuel ou ancien, du personnel ministériel, au sens de ce paragraphe, en ce qui a trait au fait même qu'il soit ou ait été tel et à ses nom et titre;

**k)** un individu qui, au titre d'un contrat, assure ou a assuré la prestation de services à une institution fédérale et portant sur la nature de la prestation, notamment les conditions du contrat, le nom de l'individu ainsi que les idées et opinions personnelles qu'il a exprimées au cours de la prestation;

**l)** des avantages financiers facultatifs, notamment la délivrance d'un permis ou d'une licence accordés à un individu, y compris le

licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and

**(m)** information about an individual who has been dead for more than twenty years; (renseignements personnels)

...

### **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

**(a)** for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;

**(b)** for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;

**(c)** for the purpose of complying with a subpoena or warrant issued or order made by a court, person or

nom de celui-ci et la nature précise de ces avantages;

**m)** un individu décédé depuis plus de vingt ans. (personal information)

...

### **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 :

**a)** communication aux fins auxquelles ils ont été recueillis ou préparés par l'institution ou pour les usages qui sont compatibles avec ces fins;

**b)** communication aux fins qui sont conformes avec les lois fédérales ou ceux de leurs règlements qui autorisent cette communication;

**c)** communication exigée par subpoena, mandat ou ordonnance d'un tribunal, d'une personne ou d'un organisme ayant le

body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information;

pouvoir de contraindre à la production de renseignements ou exigée par des règles de procédure se rapportant à la production de renseignements;

**(d)** to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or the Government of Canada;

**d)** communication au procureur général du Canada pour usage dans des poursuites judiciaires intéressant la Couronne du chef du Canada ou le gouvernement fédéral;

**(e)** to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;

**e)** communication à un organisme d'enquête déterminé par règlement et qui en fait la demande par écrit, en vue de faire respecter des lois fédérales ou provinciales ou pour la tenue d'enquêtes licites, pourvu que la demande précise les fins auxquelles les renseignements sont destinés et la nature des renseignements demandés;

...

...

**(g)** to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;

**g)** communication à un parlementaire fédéral en vue d'aider l'individu concerné par les renseignements à résoudre un problème;

**(h)** to officers or employees of the institution for internal audit purposes, or to the office of the Comptroller General or any other person or body specified in the regulations for audit purposes;

**h)** communication pour vérification interne au personnel de l'institution ou pour vérification comptable au bureau du contrôleur général ou à toute personne ou tout organisme déterminé par règlement;

**(i)** to the Library and Archives of Canada for archival purposes;

**i)** communication à Bibliothèque et Archives du Canada pour dépôt;

**(j)** to any person or body for research or statistical purposes if the head of the government institution

**(i)** is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and

**(ii)** obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;

**(k)** to any aboriginal government, association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such government, association, band, institution or part thereof, for the purpose of researching or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada;

**(l)** to any government institution for the purpose of locating an individual in order to collect a debt owing to Her Majesty in right of Canada by that individual or make a payment owing to that individual by Her Majesty in right of Canada; and

**j)** communication à toute personne ou à tout organisme, pour des travaux de recherche ou de statistique, pourvu que soient réalisées les deux conditions suivantes

**(i)** le responsable de l'institution est convaincu que les fins auxquelles les renseignements sont communiqués ne peuvent être normalement atteintes que si les renseignements sont donnés sous une forme qui permette d'identifier l'individu qu'ils concernent,

**(ii)** la personne ou l'organisme s'engagent par écrit auprès du responsable de l'institution à s'abstenir de toute communication ultérieure des renseignements tant que leur forme risque vraisemblablement de permettre l'identification de l'individu qu'ils concernent;

**k)** communication à tout gouvernement autochtone, association d'autochtones, bande d'Indiens, institution fédérale ou subdivision de celle-ci, ou à leur représentant, en vue de l'établissement des droits des peuples autochtones ou du règlement de leurs griefs;

**l)** communication à toute institution fédérale en vue de joindre un débiteur ou un créancier de Sa Majesté du chef du Canada et de recouvrer ou d'acquitter la créance;

**(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.

**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.



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-499-22

**STYLE OF CAUSE:** SYLVIE MATAS v GLOBAL AFFAIRS CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** OCTOBER 25, 2023

**PUBLIC JUDGMENT AND REASONS:** TSIMBERIS J.

**DATED:** JANUARY 23, 2024

**APPEARANCES:**

SYLVIE MATAS

FOR THE APPLICANT  
Representing herself

CALINA RITCHIE  
SARAH RAJGURU

FOR THE RESPONDENT

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Ottawa, Ontario

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