Federal Court  Cour fédérale

Date: 20131210

Docket: T-1851-12

Citation: 2013 FC 1234

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 10, 2013

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

JULIE GRANT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Julie Grant, an employee of the Canada Revenue Agency, used section 12 of the *Privacy Act*, RSC 1985, c P-21 (the Act) to obtain personal information about herself from her employer. Subsection 12(1) reads as follows:

12. (1) Subject to this Act, every individual who is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* has a right to and shall, on request, be given access to	**12.** (1) Sous réserve des autres dispositions de la présente loi, tout citoyen canadien et tout résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* ont le droit de se faire communiquer sur demande:

(*a*) any personal information about the individual contained in a personal information bank; and

(*b*) any other personal information about the individual under the control of a government institution with respect to which the individual is able to provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.

a) les renseignements personnels le concernant et versés dans un fichier de renseignements personnels;

b) les autres renseignements personnels le concernant et relevant d'une institution fédérale, dans la mesure où il peut fournir sur leur localisation des indications suffisamment précises pour que l'institution fédérale puisse les retrouver sans problème sérieux.

[2] The original request for access, made on November 8, 2010, was worded as follows:

> [TRANSLATION]
> A copy of documents and information about me, including but not limited to all documents and information relating to my tax file and all investigation reports directly or indirectly about me, correspondence, memoranda, photographs, films, sound recordings, videotapes, machine-readable records, e-mails etc.

This initial request was, so to speak, amended on March 7, 2011, to, for all intents and purposes, extend the period from November 8, 2010, to March 7. The amended request reads as follows:

> [TRANSLATION]
> A copy of documents and information about me, including but not limited to all documents and information relating to my tax file and all investigation reports directly or indirectly about me, correspondence, memoranda, photographs, films, sound recordings, videotapes, machine-readable records, e-mails etc. for the period beginning November 8, 2010, to today.

[3] The Canada Revenue Agency (the CRA) considered that the request was received on March 7, 2011, for the purpose of calculating time limits.

[4] On April 5, 2011, the CRA extended its time limit to process the access request for an additional 30-day period. Despite this extension, the time limits were not met and, ultimately, the Office of the Privacy Commissioner of Canada (the Office) found that the time limits prescribed by the Act had not been complied with. However, that issue is not before this Court.

[5] What is before this Court is the complaint made by the applicant on March 15, 2012, which the Office received on March 16. The applicant alleged that the respondent had used sections 12, 25 and 26 of the Act to exclude passages that had been there.

[6] A decision was issued regarding this complaint on September 27, 2012. The Director General of Investigations for the Office concluded [TRANSLATION] "that the complaint is not founded." The Report of Findings contains the following paragraphs that explain the decision:

> [TRANSLATION]
>
> 4. In her letter dated March 15, 2012, the complainant challenged the application of sections 12(1), 25 and 26 of the *Act* to the information redacted at pages 25 to 37 of the documents provided by the CRA. She sought written clarification about their application and demanded an explanation for the unjustified delay in dealing with her request and her inability to reach the CRA's representative.
>
> 6. Given that only sections 25 and 26 of the *Act* were applied to pages 25 to 37 of the documents the complainant received, the investigation was limited to examining whether those sections had been validly applied.
>
> 8. After a thorough review of the circumstances surrounding this case, the explanations of the CRA representatives and the pertinent files, we have concluded that the complainant was not deprived of a right of access to the requested information.
>
> 9. Section 26 directs a government institution to refuse to disclose personal information about other individuals except in certain circumstances. Personal information may be disclosed where the other

> individuals have given their consent, if the disclosure is authorized under subsection 8(2) of the *Act*, which authorizes disclosure without consent in certain specific cases only or where the information is already publicly available.
>
> 10. Our review of the information confirms that the information withheld does not concern the complainant, and none of the exceptions in this provision apply in this case.

[7] The applicant availed herself of section 41 of the Act to seek judicial review of the refusal decision. Section 41 reads as follows:

41. Any individual who has been refused access to personal information requested under subsection 12(1) may, if a complaint has been made to the Privacy Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Privacy Commissioner are reported to the complainant under subsection 35(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.	**41.** L'individu qui s'est vu refuser la communication de renseignements personnels demandés en vertu du paragraphe 12(1) et qui a déposé ou fait déposer une plainte à ce sujet devant le Commissaire à la protection de la vie privée peut, dans un délai de quarante-cinq jours suivant le compte rendu du Commissaire prévu au paragraphe 35(2), exercer un recours en révision de la décision de refus devant la Cour. La Cour peut, avant ou après l'expiration du délai, le proroger et en autoriser la prorogation.

[8] The applicant presented the issue as being whether the respondent correctly applied sections 25 and 26 of the Act. The respondent no longer relies on section 25 and invokes only section 26 with respect to the pages that concern the applicant. Accordingly, it is only the application of section 26 that is the subject of this judicial review.

[9] The very nature of section 26 is such that it is not possible for the applicant to control its use by examining the redactions herself. This section reads as follows:

26. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) about an	**26.** Le responsable d'une institution fédérale peut refuser la communication des renseignements personnels demandés en vertu du

individual other than the individual who made the request, and shall refuse to disclose such information where the disclosure is prohibited under section 8.	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.

[10] The respondent obtained permission from this Court to file a confidential affidavit and a memorandum of fact and law also confidential. This permission was granted by an order of Prothonotary Morneau on January 25, 2013. Applying section 46 of the Act, the Prothonotary gave the authorisation sought by the respondent.

[11] The effect of this order is to permit the Court to review the unredacted documents without the applicant present. In addition, it follows, of course, from this first order that the respondent may submit arguments to the Court in the absence of the applicant, *ex parte* and *in camera*. The applicant does not have access to the redactions or the specific arguments presented in support of the redactions. Clearly, this means that the reviewing judge must be particularly vigilant in order to protect the applicant's rights, given the position she is in.

[12] I have examined the 167 pages that were identified by the CRA in response to the applicant's amended request. With respect to pages 38 to 167, there is no question that they are not covered by the amended request, and the applicant did not seek access to them in any way. It would obviously be inappropriate to describe why these documents are not covered other than to say they do not constitute any of the items identified in the amended request. It should be noted that the Act specifically provides that the right to be given access on request applies only to personal information about the applicant. The applicant does not wish to challenge the decision about these pages.

[13] As for the 37 other pages, they were redacted only in some places. In this regard, the respondent contends that the only excluded information deals with an individual other than the applicant. Indeed, the respondent removed the redactions at pages 26, 28, 32 and 36 the morning of the hearing. It was explained at the hearing that this information, which undoubtedly would be excluded information under section 26, no longer has to be excluded because it is now in the public domain. Accordingly, there are only a few remaining redactions.

[14] I examined each and every one of the 37 pages. I agree with the Office's opinion that the redactions were authorized under section 26; in my view, they were necessary. Section 8 of the Act, which permits disclosure in certain circumstances to an applicant of information that would otherwise be excluded, does not apply to the remaining redactions and, in particular, I cannot imagine what public interest reasons could justify such a violation of privacy or how the persons concerned could benefit from the disclosure if it had to be done.

[15] The applicant, who is not represented by counsel, submitted an excellent memorandum of fact and law. In it, she expresses concern about the respondent's use of power, referring in particular to a lack of good faith. At paragraph 46 of the memorandum, she concedes that she [TRANSLATION] "does not dispute the fact that the CRA removed certain passages where they constituted personal information concerning another individual." She made the same concession just as elegantly at the hearing. My review of the 37 pages leads me to conclude that the redactions that were made are of this ilk.

[16] After reviewing the documents, I must therefore conclude, as the Director General of Investigations at the Office of the Privacy Commissioner of Canada did, that the information that was not disclosed does not concern the applicant. Likewise, I noted that the exceptions in section 8 of the Act do not apply in this case.

[17] The applicant seems to have been upset by pages 33 to 37, all of which were completely redacted with the exception of the middle of page 36, which directly concerns the applicant. Both the public affidavit and the memorandum of fact and law submitted by the respondent give the reason for this redaction. They state: "CRA internal document that refers to incident relating to different employees".

[18] I obviously paid particular attention to those pages, and I am completely satisfied that this information relates to other individuals.

[19] The parties submitted various authorities to the Court. Given that, like the Office, I concluded that it was particularly clear that the redactions were required under the Act, I do not consider it necessary to review these authorities.

[20] Both parties requested that costs be awarded to them. The applicant did not have the benefit of seeing the information that was excluded, and it is understandable that she had suspicions.

[21] Hence she wondered why entire sections were not disclosed to her, particularly at pages 33 to 37. In her view, [TRANSLATION] "the fact that entire pages were not disclosed to her on the ground

that they did not concern her while the initial request was specifically directed at obtaining personal information about her" (paragraph 49 of the memorandum) fuelled her suspicions.

[22] In the same way, she questioned the application of section 25 of the Act.

[23] As we have seen, the respondent was originally relying on both sections 25 and 26 of the Act but argued only the application of section 26 on the judicial review.

[24] In my opinion, the specific invoice of this case provided a basis for the applicant's suspicions, which were not unreasonable. It would be unfortunate, it seems to me, if costs were ordered against the applicant who was unable by herself to be satisfied with the use of section 26 in a context where one can understand, at least in part, the suspicions that motivated her. Even though her application before this Court must fail, it was not frivolous on its face. However, this is not one of those rare cares where costs should be awarded despite the result. In the end, I find that this is not a case where costs should be ordered against the unsuccessful party.

JUDGMENT

The application for review under section 41 of the *Privacy Act*, RSC 1985, c P-21, is dismissed. There will be no award of costs.

"Yvan Roy"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1851-12
STYLE OF CAUSE:	JULIE GRANT v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	December 2, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	Roy J.
DATED:	December 10, 2013

APPEARANCES:

Julie Grant	THE APPLICANT ON HER OWN BEHALF
Tamara Thermitus Sébastien Gagné	FOR THE RESPONDENT

SOLICITORS OF RECORD:

	THE APPLICANT ON HER OWN BEHALF
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT