

Federal Court



Cour fédérale

Date: 20220314

Docket: T-284-20

Citation: 2022 FC 333

Ottawa, Ontario, March 14, 2022

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

LIETTE SAVOIE

Applicant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] On October 20, 2007, two motor vehicles collided in Bas-Caraquet, New Brunswick. A total of five people were taken to hospital by ambulance. On October 21, 2007, a 17-year-old female died as a result of the injuries she suffered during the collision. The same

day, an individual was charged with, among other things, impaired driving causing death, dangerous driving causing death, and leaving the scene of an accident. The individual was later convicted and, according to the Applicant, he is now deceased.

[2] The Applicant, Ms. Liette Savoie, is the mother of the 17-year-old who tragically lost her life. The Applicant, who is self-represented, has been, over the course of approximately thirteen years, seeking further information surrounding the events that lead to her daughter's death. She has on multiple occasions attended the Royal Canadian Mounted Police [RCMP] detachment in Caraquet to seek further information, and written to the RCMP, the Privacy Commissioner, and the Federal Ombudsman for Victims of Crime, among others.

[3] In the present matter, Ms. Savoie seeks judicial review of a decision by the RCMP dated January 31, 2013, under section 41 of the *Access to Information Act*, RSC 1985, c A-1 [Act]. Section 44.1 provides that an application under section 41 is to be a *de novo* review.

[4] Ms. Savoie had submitted a request for access to information pursuant to which she sought to be provided with all the information in the possession of the RCMP concerning the accident. Of the responsive records, the RCMP disclosed eight (8) pages. The remainder of the requested records were not disclosed on the basis that they fell within certain exceptions provided for in the *Act*.

[5] Ms. Savoie requests that the RCMP files be disclosed to her. Both in her written representations and during the hearing, Ms. Savoie described the lengths she has gone to in order

to obtain further information about the events surrounding her daughter's death. She considers that rather than help her, the RCMP has impeded her at every turn. During the hearing, Ms. Savoie pled that obtaining the requested RCMP files is a necessary part of her grieving process.

[6] Although I have great sympathy for Ms. Savoie's loss, and her grief and frustration at not being able to access the information that she seeks, for the reasons that follow, this Application is dismissed. While one can certainly understand why Ms. Savoie is seeking the disclosure of the records, the *Act* does provide for a number of exceptions to disclosure. Such exceptions include instances where the record contains information obtained in the course of a lawful investigation, provided the record came into existence less than twenty years prior to the request. Having carefully reviewed the RCMP files at issue, I find that the provisions of the *Act* were properly applied. In other words, as shall be explained in greater detail below, the RCMP files fall within an exception to disclosure contained in the *Act*.

II. Background

[7] In the days following the accident on October 20, 2007, Ms. Savoie attended the RCMP detachment in Caraquet [Detachment] to collect her daughter's personal belongings. In the year that followed the accident, Ms. Savoie attended the Detachment in person on two further occasions to request that she be provided with the RCMP's report on the accident. It was Ms. Savoie's understanding from the officer on duty that the investigation was ongoing and thus the file could not be disclosed.

[8] In a handwritten letter to the Director of Access to Information of the RCMP, dated September 27, 2012, Ms. Savoie requested all the information that the RCMP had on the accident involving her daughter. She requested the accident reports, files and any recordings. On October 1, Ms. Savoie also sent the same request to Yvon Martineau, Access to Information Coordinator, at the RCMP.

[9] In October and November 2012, Ms. Savoie sent copies of the request and made further requests to, among others, the Federal Ombudsman for Victims of Crime, the Privacy Commissioner, and the Minister of Public Security. These additional requests are not the subject of the present Application.

[10] On November 19, 2012, Ms. Savoie lodged a complaint with the Information Commissioner of Canada [Information Commissioner] concerning the time it was taking for the RCMP to respond to Ms. Savoie's Access to Information Request [ATIP Request].

[11] In a letter dated January 31, 2013, with enclosures, a ministerial coordinator of the RCMP informed Ms. Savoie that only a small portion of the RCMP file would be disclosed [the Decision] in response to the ATIP Request.

[12] The Decision was comprised of the letter and 16 pages. The letter informed Ms. Savoie that a search had been done of the RCMP file at Caraquet, New Brunswick, but that all the information requested was subject to an exception by virtue of subparagraph 16(1)(a)(i) of the *Act*. The letter further informed Ms. Savoie that upon examining the documents, the RCMP

exercised its discretion and decided to disclose certain portions of the documents. Copies of three (3) RCMP news releases and three (3) partially redacted pages were enclosed with the letter. The balance of the enclosures were pages indicating the number of pages withheld and the reasons for same, namely: (i) Pages 377 – 381 withheld pursuant to subparagraph 16(1)(a)(ii) of the *Act*; (ii) Pages 383 – 562 withheld pursuant to subparagraph 16(1)(a)(ii) of the *Act*; (iii) Pages 1 – 109 withheld pursuant to section 16(1)(a)(ii) and subsection 19(1) of the *Act*; (iv) Pages 110 – 143 withheld pursuant to subparagraph 16(1)(a)(ii) of the *Act*; (v) Pages 144 – 196 withheld pursuant to subparagraph 16(1)(a)(ii) of the *Act*; (vi) Pages 199 – 375 withheld pursuant to subparagraph 16(1)(a)(ii) of the *Act*.

[13] In summary, the RCMP cover letter referred to subparagraph 16(1)(a)(i) of the *Act*, and the appended pages referred to subparagraph 16(1)(a)(ii) and subsection 19(1) of the *Act*. The package also included a copy of subsections 16(1) and 16(2) of the *Act*. Subparagraphs 16(1)(a)(i) and (ii) address lawful investigations that are less than twenty (20) years old. Subsection 19(1) of the *Act* concerns the disclosure of personal information.

[14] On February 7, 2013, the Information Commissioner responded to Ms. Savoie's complaint, finding it to be well founded on the basis that the RCMP did not provide reasonable assistance to Ms. Savoie in the context of the steps she took to lodge a formal ATIP Request and failed to respond to her within thirty (30) days.

[15] On February 8, 2013, Ms. Savoie filed a complaint with the Information Commissioner concerning the fact that the RCMP had not granted her access to the complete file.

[16] The Office of the Information Commissioner completed its investigation in 2019, and informed Ms. Savoie of the result by way of letter dated December 31, 2019. The first page of the Information Commissioner's letter notes that the RCMP refused the request, in part, on January 31, 2013 and thanked Ms. Savoie for her patience given the length of time the investigation had taken. The Information Commissioner's letter conveys that the office undertook an exhaustive analysis of the information that was withheld, considered and discussed the reasons it was withheld with the RCMP, and requested that the RCMP review and reconsider the file.

[17] The Information Commissioner liaised with the RCMP as to the reasons the information was withheld. The RCMP confirmed to the Information Commissioner that it remained of the view that subparagraph 16(1)(a)(ii) of the *Act* applied.

[18] The Information Commissioner investigated and concluded that the information withheld from the disclosure fell within the exception to disclosure found in section 16(1)(a)(ii) of the *Act* at the time the request was made, namely that it was information obtained and/or prepared by the RCMP, a federal institution, in the course of a lawful investigation pertaining to the enforcement of federal or provincial laws. At the time the ATIP Request was made, as per subparagraph 16(1)(a)(ii) of the *Act*, the requested documents were less than twenty years old.

[19] The Information Commissioner requested that the RCMP provide further details surrounding its decision to exercise its discretion not to disclose the documents. In effect, the Information Commissioner sought to ascertain whether the RCMP had reasonably exercised its

discretion. In response, the RCMP explained that it had based its decision not to exercise its discretion on the fact that (i) the personal information of the deceased is protected for twenty years following her death, and (ii) the public interest in disclosure did not outweigh the invasion of privacy that would result from the disclosure (*Privacy Act*, RSC 1985, c P-21 [*Privacy Act*]).

[20] The Commission nevertheless requested that the RCMP review the file again in order to determine whether there could be a larger interest weighing in favour of divulging the information so as to enable a parent to understand the circumstances of the death of a close relative. In other words, members of the public in similar situations would naturally wish to obtain the information in order to turn the page. As requested, the RCMP agreed to review the file again taking into account Ms. Savoie's particular circumstances and the public interest in such disclosures on compassionate grounds.

[21] Following the review, the RCMP concluded, on the basis of the *Act* and the *Privacy Act*, that the remaining documentation should not be disclosed.

[22] The Information Commissioner concluded that the RCMP's decision to refuse to disclose the remainder of the documents on the basis of subparagraph 16(1)(a)(ii) of the *Act* was justified. The Information Commissioner also found it [translation] "impossible" to conclude that the RCMP exercised its discretion in an unreasonable manner. Consequently, the Information Commissioner found Ms. Savoie's complaint to be unfounded and closed the file.

[23] The Commission did, however, inform Ms. Savoie that circumstances such as those in which Ms. Savoie finds herself had shone a light on shortcomings in the interplay between the *Act* and the *Privacy Act*, resulting in recent recommendations by the Information Commissioner to provide the head of an institution with the discretionary power to disclose personal information about a deceased person to their spouse or parent for compassionate reasons. The Information Commissioner indicated that her recommended amendments were to section 19 of the *Act* and section 26 of the *Privacy Act*. As of the date of this judgment, the amendments recommended by the Information Commissioner have not been made.

III. Preliminary Issue

[24] The Information Commissioner's letter dated December 31, 2019, informed Ms. Savoie that section 41 of the *Act* provided for an application before the Federal Court, should she not be satisfied with the outcome of the investigation. The Information Commissioner's letter also stated that Ms. Savoie had to file her application within forty-five days following the receipt of the Information Commissioner's report. The Information Commissioner's letter also enclosed an extract of the *Act*.

[25] The forty-five-day deadline provided by the Information Commissioner to Ms. Savoie was, at the time, incorrect. The extract of the *Act* provided was no longer in force and had since been amended. Formerly, the *Act* provided for a forty-five-day deadline however since June 21, 2019, subsection 41(1) the *Act*, provides for a deadline of thirty business days after the day upon which the head of the institution receives the Information Commissioner's report. Subsection 41(6) deems that the head of the institution is deemed to have received the report on the fifth

business day after the date of the report. Effectively, deadline is thirty-five business days after the date of the report.

[26] At the hearing on December 17, 2021, the issue was raised as to whether Ms. Savoie had complied with the deadline provided in the *Act*. Accordingly, on December 17, 2021, the Court issued a direction providing the parties with the opportunity to submit written arguments by January 14, 2022, on the following: (1) Whether the application was filed within the deadlines provided for under the applicable law? (2) If not, does the Court have the power to extend the deadline? (3) If so, should the Court extend the deadline?

[27] Both parties filed written submissions on the issue. Ms. Savoie submits, relying on the information provided to her by the Information Commissioner, that she received the Information Commissioner's report on January 14, 2020, and filed her application on February 25, 2020, within the forty-five-day deadline. Ms. Savoie further submits that if the thirty business day deadline applies, she complied with it on the basis that February 17, 2020, was a provincial holiday (Louis Riel Day). Ms. Savoie calculates thirty business days from the date she received the report. I note that this calculation is not in accordance with subsection 41(1) of the *Act*.

[28] The Respondent submits that the Information Commissioner inadvertently caused Ms. Savoie to err, thus resulting in Ms. Savoie filing the application after the deadline passed. On the basis of the foregoing, the Respondent took no position on questions two and three of the Court's direction.

[29] For the reasons that follow, I conclude that Ms. Savoie filed her application within the deadline provided for in subsection 41(1) of the *Act*. Consequently, I need to not consider the question of whether this Court has the power to grant an extension of the deadline under the recently amended language of section 41 of the *Act*.

[30] Subsection 41(1) requires an application to this Court to be brought within thirty business days after the day on which the head of the government institution receives the Information Commissioner's report. Subsection 41(6) deems the date of receipt to be the fifth business day after the date of the report. Section 3 of the *Act* defines a "business day" to be any day other than a Saturday, Sunday or other holiday, or a day that falls during the Christmas recess as defined in section 2 of the *Federal Courts Rules*, SOR 98-106. The Information Commissioner's report was dated December 31, 2019. The Christmas recess ended on January 7, 2020. Taking into account the Christmas recess, the deemed day of receipt of the Information Commissioner's report is January 14, 2020. Taking into account Louis Riel Day, thirty business days from the deemed day of receipt is February 26, 2020. Given the Application was filed on February 25, 2020, it was filed within the deadline provided for in the *Act*.

[31] I find that, through no fault of her own, Ms. Savoie relied on the misinformation provided by the Information Commissioner when filing the present Application. Fortunately, the fact that the Information Commission released her report during the Christmas recess resulted in the Application ultimately being filed within the deadline.

IV. Issues and Standard of Review

[32] The issues to be determined in this Application are as follows:

- A. Do the records withheld by the RCMP fall within the exceptions provided for in subparagraph 16(1)(a)(ii) of the *Act*?
- B. If the records do fall within the exception provided for in subparagraph 16(1)(a)(ii), then did the RCMP reasonably exercise its discretion to withhold the records from Ms. Savoie?

[33] A review under section 41 of the *Act* is not a review of the report of the Information Commissioner's report despite the fact that when the report is issued it triggers the applicant's right to seek a review by this Court (*Lukács v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 1142 at para 44). Rather, it is a review of the RCMP's Decision to withhold the records.

[34] Section 44.1 of the *Act*, entitled "*De novo* review", provides that an application to this Court under section 41 is to be conducted as a new proceeding. When conducting a review on a *de novo* basis, this Court must determine, on its own, whether or not the records fall within the exceptions provided for in the *Act* (*Suncor Energy Inc. v Canada-Newfoundland and Labrador Offshore Petroleum Board*, 2021 FC 138 at paras 62-68). On a *de novo* review, the Court does not give any deference to the RCMP.

[35] During the hearing, I confirmed to the parties that the complete and unredacted records had been provided to the Court by the RCMP under seal, enabling the Court to review the records and decide whether or not they fall within the exceptions. Also during the hearing, I

informed the parties that I had reviewed the records in preparation for the hearing. I confirm that I have reviewed them again in the course of determining this Application on its merits.

[36] Once the RCMP determined that subparagraph 16(1)(a)(ii) applied, it exercised its discretion to withhold the complete records from Ms. Savoie. The decision by the RCMP to withhold is a discretionary decision to which the standard of reasonableness applies (*Canada (Office of the Information Commissioner) v Canada (Prime Minister)*, 2019 FCA 95 at para 31; *Schoendorfer v Canada (Attorney General)*, 2021 FC 896 at para 46 [*Schoendorfer*]). Unlike a *de novo* review, a reasonableness review requires that a reviewing court defer to the decision made by an administrative decision maker, provided that such a decision “is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85; *Schoendorfer* at para 47).

V. Analysis

[37] Ms. Savoie’s submissions speak to effort she has put in and the lengths she has gone to over the course of thirteen years in order to obtain further information surrounding the accident, without success. She expressed great frustration at the manner in which the RCMP have dealt with her and the disclosure process in general. Ms. Savoie pleads that the RCMP did not assist her, but instead impeded her progress and had her turning in circles. I note that the Information Commissioner faulted the RCMP in 2013 for not offering reasonable assistance to Ms. Savoie in the context of her ATIP Request. Moreover, the fact that the Information Commissioner’s investigation took almost seven (7) years, is most unfortunate and certainly did not help matters.

[38] Ms. Savoie raises a concern that the RCMP have not been dealing with her in good faith. She bases this concern on, among other things, having been told by certain residents of Caraquet that there may have been a high speed chase leading up to the accident and thus the RCMP may bear some responsibility. Moreover, she has also been informed that there may have been another driver involved. She thus considers that the RCMP are concealing the truth of what happened that evening. Ms. Savoie requests that this Court assist her in her grieving process and permit her to gain more insight into the events surrounding the accident by ordering the disclosure of the requested records.

[39] The Respondent pleads that the RCMP reasonably identified the records as falling within subparagraph 16(1)(a)(ii) of the *Act*, and pursuant to that subparagraph, the RCMP reasonably exercised its discretion to refuse to disclose the records at issue. The Respondent also raised certain deficiencies of form with Ms. Savoie's record, however, I do not find them to be determinative.

A. *Do the records withheld by the RCMP fall within the exceptions provided for in subparagraph 16(a)(1)(ii) of the Act?*

[40] The purpose of the *Act* is, among other things, to provide a right of access to information under the control of a government institution and that the necessary exceptions to the right of access should be limited and specific (*Act*, subsection 2(2)). In the Decision, specifically in the attachments to the letter, the RCMP relied on the exemption in subparagraph 16(1)(a)(ii) of the *Act* for each grouping of withheld records. The Information Commissioner investigated the

matter as withheld under 16(1)(a)(ii), and the submissions of the Respondent also addressed the matter as one under 16(1)(a)(ii). This subparagraph of the *Act* provides:

Law enforcement and investigations	Enquêtes
16 (1) The head of a government institution may refuse to disclose any record requested under this Part that contains	16 (1) Le responsable d'une institution fédérale peut refuser la communication de documents :
(a) information obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to	a) datés de moins de vingt ans lors de la demande et contenant des renseignements obtenus ou préparés par une institution fédérale, ou par une subdivision d'une institution, qui constitue un organisme d'enquête déterminé par règlement, au cours d'enquêtes licites ayant trait :
(i) the detection, prevention or suppression of crime,	(i) à la détection, la prévention et la répression du crime,
...	...

[41] The RCMP is a “government institution” as required by above exception (*Schoendorfer* at paras 59-61; s 9 and Schedule I of the *Access to Information Regulations*, SOR/83-507).

[42] Subparagraph 16(1)(a)(ii) covers information obtained or prepared by the RCMP in the course of a lawful investigation pertaining to the enforcement of any law of Canada or a province. The records withheld by the RCMP all pertain to the investigation into the accident and the resulting charges, based on numerous sections of the *Criminal Code*, RSC 1985, c C-46, against the intoxicated driver. A careful review of the records satisfies me that the information contained therein was indeed obtained and prepared by the RCMP in the course of their investigation into the accident and the criminal charges that resulted therefrom.

[43] The RCMP files in question concern the accident that took place the evening of October 20, 2007, and the resulting investigation. The file was opened on October 20, 2007, with records added thereto as the investigation progressed. Paragraph 16(1)(a) of the *Act* provides for the twenty-year moratorium to be calculated from the date upon which the access request is made (see also *Fontaine v Royal Canadian Mounted Police*, 2009 FCA 150 [*Fontaine*] at para 13). In the matter at hand, the file and records in question came into existence less than twenty (20) years prior to the date of the receipt of Ms. Savoie's access to information request, being October 2, 2012.

[44] Based on the foregoing, I find that the records withheld by the RCMP all fall squarely within the exception provided for in subparagraph 16(1)(a)(ii) of the *Act*, rendering them exempt from disclosure.

[45] As noted above, Ms. Savoie raised a concern that the RCMP may not be dealing with her in good faith, and more particularly, may be favouring non-disclosure of the record in order to conceal a high speed police chase that either led to or contributed to the accident and therefore shield themselves from responsibility.

[46] I have considered Ms. Savoie's allegation that the RCMP may be improperly withholding disclosure of the record in order to protect themselves. Having reviewed the record, including the recordings in the record, I do not find that the record was improperly withheld.

B. *Did the RCMP reasonably exercise its discretion to withhold the records from Ms. Savoie?*

[47] The RCMP disclosed a small portion of the responsive records but the ministerial coordinator exercised the discretion provided for in subparagraph 16(1)(a)(ii) of the *Act* to withhold the balance of the records.

[48] In exercising its discretion, the RCMP had determined that the personal information of the deceased is protected for twenty years following her death, and the public interest in disclosure did not outweigh the invasion of privacy that would result from the disclosure. The RCMP adhered to the Information Commissioner's request that the RCMP reconsider the file again in order to determine whether there could be a larger interest weighing in favour of divulging the information so as to enable a parent to understand the circumstances of the death of a close relative. The RCMP ultimately determined that the remaining documentation should not be disclosed. The Information Commissioner determined that the RCMP had exercised its discretion in a reasonable manner.

[49] As noted by the Federal Court of Appeal, "the considered opinion of the Information Commissioner should not be ignored by the Court ... and that the Information Commissioner has expertise not possessed by the Court with respect to access to information" (*Blank v Canada (Minister of Justice)*, 2005 FCA 405 at para 12, citations omitted). Indeed, the Federal Court of Appeal has stated that an investigation report by the Information Commissioner "deserves significant weight" (*Blank v Canada (Justice)*, 2010 FCA 183 at para 35).

[50] Taking into account the report of the Information Commissioner and my review of the unredacted records, I find that it was not unreasonable for the RCMP to exercise its discretion to withhold portions of the records based on the contents of those records and the lack of public interest in the disclosure. In other words, I find the exercise of discretion in this case to be reasonable based on the contents of the unredacted records, the Information Commissioner's report, and the law that constrains the RCMP, being subparagraph 16(1)(a)(ii) of the *Act* and subsection 8(1) and paragraph 8(2)(m) of the *Privacy Act*.

VI. Conclusion

[51] For the foregoing reasons, this application is refused. I have no doubt that Ms. Savoie will find this result to be extremely disappointing. As noted by my colleague Justice Elliot in *Schoendorder*, and by the Information Commissioner in her report, there may be some light at the end of the tunnel for family members, such as Ms. Savoie, who are seeking disclosure of information on compassionate grounds. If the Information Commissioner's recommended amendments to the *Act* and the *Privacy Act* do not materialize, the eventual expiration of the twenty-year moratorium offers some hope.

[52] In light of length of time that has passed since Ms. Savoie first requested a copy of the records pertaining to the accident from the RCMP, I exercise my discretion in deciding that no costs shall be awarded.

JUDGMENT in T-284-20

THIS COURT'S JUDGMENT is that:

1. Ms. Savoie's application for judicial review is dismissed;
2. There is no award of costs.

"Vanessa Rochester"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: TM-284-20

STYLE OF CAUSE: LIETTE SAVOIE v MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: OTTAWA, ONTARIO BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 16, 2021

JUDGMENT AND REASONS: ROCHESTER J.

DATED: MARCH 14, 2022

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