

Federal Court



Cour fédérale

Date: 20220726

Docket: T-953-20

Citation: 2022 FC 1111

Ottawa, Ontario, July 26, 2022

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

NAVARATNAM KANDASAMY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Navaratnam Kandasamy, brings this Application for Judicial Review [the Application] pursuant to section 41 of the *Access to Information Act*, RSC 1985, c A-1 [ATIA] with respect to the April 3, 2019 decision of the Royal Canadian Mounted Police [RCMP] responding to his request for information. Mr. Kandasamy submits that the RCMP erred in not disclosing to him the personal information he sought. He now seeks an order from this Court that the RCMP disclose this information.

[2] Mr. Kandasamy has not raised any specific errors on the part of the RCMP, but rather asserts that the RCMP possesses records about him because he had complained to other police agencies and/or to the RCMP and, in his view, because the RCMP maintains records about all interactions with law enforcement in Canada and abroad.

[3] Mr. Kandasamy states that he sought his personal information because he believes he has been tracked, followed and criminally harassed within Canada and in foreign countries, his communications have been hacked and/or deleted, and incorrect information about him has been shared with foreign nations. He claims that he continues to be under constant surveillance by several agencies. He alleges that he was mistreated when he travelled abroad between 2008 and 2010; however, he has not provided any details of the alleged mistreatment. He also alleges that he has been “penetrated by energy weapons.” Mr. Kandasamy more generally claims that he faces torture, physical and mental harm and that government officials have not addressed his concerns.

[4] Mr. Kandasamy attests that he made complaints to his local police, who did not respond.

[5] Mr. Kandasamy also seeks judicial review of two other decisions that respond to requests for personal information. In file T-1814-19 he challenges the decision of the Department of Public Safety [Public Safety] and in file T-167-20 he challenges the decision of the Canadian Security Intelligence Service [CSIS]. The three applications were heard together.

Mr. Kandasamy sought similar personal information from Public Safety and CSIS based on his similar claims that those agencies retained records about him. He also made similar arguments

on all three applications for judicial review, reiterating his allegations that he has been mistreated and that no one has responded to his complaints.

[6] As noted in T-1814-19 (2022 FC 1100), Mr. Kandasamy would have benefitted from independent legal advice or representation to better explain to him the purpose of the ATIA—notably how it operates both to provide information and to exempt information from disclosure—and to explain the scope of an application for judicial review. Mr. Kandasamy has raised several concerns that are beyond the scope of this Application, including with respect to his fears of surveillance and hacking, which do not appear to be supported by any evidence.

I. **The Background**

[7] On January 24, 2019, Mr. Kandasamy submitted a Personal Information Request Form to the Access to Information and Privacy Coordinator of the RCMP to request any records dated from April 4, 1991 to January 2019 within the control of the RCMP that contain Mr. Kandasamy's personal information.

[8] More specifically, in his own words, his request stated:

I am requesting all records that contain my personal information, as defined [in section] 3 of the Act, from 1991 Apr 4th to 2019 Jan. Any and all records that contain my personal information under control of Royal Canadian Mounted Police. Some of the Bank/Document PPU055

Victim Service Police Reports and occurrence system

Information relates possible threats and Victims of threat Bank

Canadian Police Information Centre (CPIC, RDANO: 91/015 &96/023)

Electronic and paper Narrative Messages, Immigration and Refugee Protection Act under security

National Security and information Ministerial Directions

Information sharing to World and partners (Sri Lanka, India, UK, May 2008-June 2008, 2009 Dec to May 2010

Security Clearance

[*Sic* throughout]

[9] As noted in the affidavit of Kelly Jetté, Senior Access to Information and Privacy Analyst at the RCMP [the Analyst], she contacted Mr. Kandasamy to attempt to clarify the unclear language of his request, but Mr. Kandasamy refused to consent to amend his request. Mr. Kandasamy did not identify a specific location for the search. The Analyst, therefore, focused on conducting a search based on Mr. Kandasamy's home address and requested that federal policing colleagues conduct the searches related to national security.

[10] On or about April 2, 2019, the RCMP advised Mr. Kandasamy by letter that it had conducted searches of the relevant data banks and had not located any records that responded to his request.

[11] Mr. Kandasamy then complained to the Office of the Information Commissioner.

[12] The Information Commissioner responded to Mr. Kandasamy's complaint by letter dated July 29, 2020, noting that it had asked the RCMP for further information regarding its business operations, mandate and program areas in order to contextualize the RCMP's response to Mr. Kandasamy, and that the RCMP had provided this information. The Information

Commissioner concluded that the RCMP had conducted a reasonable search and had met its obligations under the ATIA. The Information Commissioner concluded that Mr. Kandasamy's complaint was not well founded.

II. The Applicant's Submissions

[13] In his written submissions, Mr. Kandasamy states that the Court should determine whether the RCMP erred by keeping his personal information secret and by declining to confirm the existence of some other personal information. However, this submission does not relate to the RCMP's response, which was that it did not locate any records that responded to the request—not that it would not confirm or deny that records existed or that any records were withheld in accordance with the ATIA.

[14] Mr. Kandasamy's other written submissions, as in the related applications, include excerpts from news articles and websites and other thoughts and opinions about surveillance techniques, mind control, artificial intelligence, and microwave weapons. This information does not address the issues before the Court regarding the RCMP's response to his request for personal information.

[15] At the hearing of this Application, the Court reminded Mr. Kandasamy that the purpose of the Application was limited to the decision under review—that of the RCMP—and that the Court was not the forum to address his wide-ranging allegations of mistreatment.

Mr. Kandasamy reiterated his belief that the RCMP collects information about many people, and he remains of the view that the RCMP possesses information about him. He submits that the

RCMP's response that no records were located is not feasible. He also reiterated his concern that he is being monitored or surveilled.

III. **The Respondent's Submissions**

[16] The Respondent submits that the issue is whether it is reasonable to conclude that the requested information does not exist. The Respondent submits that it is. The Respondent acknowledges that this Application, made pursuant to the ATIA, calls for a *de novo* review by the Court, but submits that, in the circumstances, the only possible outcome is that the RCMP's response is also reasonable and in accordance with the ATIA.

[17] The Respondent also acknowledges that, in accordance with section 48 of the ATIA, the burden to establish that the RCMP was authorized to make the decision—that it did not locate any records responding to the request—rests on the Respondent.

[18] The Respondent points to the affidavit of the Analyst, which describes the search she conducted and her conclusion that no records were located responding to Mr. Kandasamy's request. The Respondent submits that this is the only evidence before the Court upon which the Court can determine this Application.

IV. **The RCMP Complied with its Obligations under the ATIA**

[19] In *Suncor Energy v Canada-Newfoundland and Labrador Offshore Petroleum Board* 2021 FC 138 at paras 60–68 [*Suncor*], the Court addressed the standard of review pursuant to the ATIA, section 44 in light of the Supreme Court of Canada's decision in *Canada (Minister of*

Citizenship and Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*]. The Court concluded that the ATIA clearly sets out that the review shall be conducted as a new proceeding—referred to as a *de novo* review (*Suncor* at para 62). The Court noted, citing *Vavilov*, that there is a distinction between a review conducted on the standard of reasonableness and a *de novo* review.

[20] As found in *Suncor*, in an application for judicial review pursuant to sections 41 or 44 of the ATIA, the clear wording of section 44.1 prevails.

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

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

[21] In the present case, the Court is, therefore, required to conduct a *de novo* review—i.e., to decide afresh whether the requested information should be disclosed. However, the Court does not attend at the RCMP and conduct yet another search; the Court must rely on the only evidence available, which is that of the Analyst, who attests that she conducted the search for the requested records in accordance with the ATIA and the relevant policy and procedures and did not locate any records responsive to the request. The Court, therefore, concludes—as did the RCMP and the Information Commissioner—that the RCMP complied with the ATIA and that no records respond to the request.

[22] The Respondent seeks costs in the amount of \$750.00 for all three matters, T-1814-19, T-167-20 and this application) or \$250.00 for each application. For the reasons noted in T-1814-19, the Respondent is entitled to costs in the amount of \$250.00

JUDGMENT in file T-953-20

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.
2. The Applicant shall pay costs to the Respondent in the amount of \$250.00

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-953-20

STYLE OF CAUSE: NAVARATNAM KANDASAMY v ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JULY 5, 2022

**REASONS FOR JUDGMENT
AND JUDGMENT:** KANE J.

DATED: JULY 26, 2022

APPEARANCES:

Navaratnam Kandasamy ON HIS OWN BEHALF

Jacob Blackwell FOR THE RESPONDENT

SOLICITORS OF RECORD:

None FOR THE APPLICANT

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Toronto, Ontario