Federal Court  Cour fédérale

Date: 20220726

Docket: T-167-20

Citation: 2022 FC 1110

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 [Application] pursuant to section 41 of the *Privacy Act*, RSC 1985, c P-21 [the Act], of the decision of the Canadian Security Intelligence Service [CSIS] dated June 5, 2019, which responded to his request for personal information held by CSIS.

[2] Mr. Kandasamy argues that CSIS erred in not disclosing his personal information, which he contends, is held in data banks retained by CSIS.

[3] Mr. Kandasamy asserts that he sought his records from CSIS because he has been tracked, followed and criminally harassed within Canada and in foreign countries, and his communications have been hacked and/or deleted. He contends that he has been and continues to be under constant surveillance by several agencies, including that he has been "penetrated by energy weapons" and targeted in other ways, all of which affects his daily life. He also believes that incorrect information about him has been shared with other countries, and he alleges that he was mistreated when he travelled abroad between 2008 and 2010. He attests that he made complaints to the local police, who did not respond.

[4] Mr. Kandasamy also seeks judicial review of two other decisions regarding his requests for personal information. In file T-1814-19, he challenges the decision of the Minister of Public Safety [Public Safety] and in file T-953-20, he challenges the decision of the Royal Canadian Mounted Police [RCMP]. The three applications were heard together. Mr. Kandasamy sought the same or similar information from Public Safety, the RCMP and CSIS and has made similar assertions about his belief that these agencies have collected and retained personal information about him.

[5] Mr. Kandasamy has not raised any specific errors in the decision of CSIS regarding its application of the law or the exercise of its discretion. He simply reiterates his belief that he has been and continues to be under constant surveillance by several agencies and that these agencies hold his personal information.

[6] As noted in T-1814-19 and T-953-20, and repeated here, Mr. Kandasamy would have benefitted from legal representation. He explained that he was not able to retain counsel due to the cost and/or because legal aid was not available and/or because counsel he consulted claimed to be unfamiliar with the Act or the legal issues he sought to raise. However, experienced counsel may have been better able to explain to Mr. Kandasamy the principles underlying the Act and how it operates to both provide information and protect other information from disclosure. Counsel could, perhaps, have directed Mr. Kandasamy to resources to address his fears and beliefs, which were not supported by any evidence before this Court. In addition, counsel may have been better able to explain that a judicial review focusses on whether the decision maker—in this case, CSIS—reasonably applied the exemptions in the Act.

I. **Background**

A. *The Request*

[7] On May 5, 2019, Mr. Kandasamy made a request to CSIS for personal records that he believed CSIS held covering the period April 1991 to May 2019. His request stated:

> I am requesting … any and all records that contain my personal information under control of CSIS. Some Documents and Bank Information as follow;
>
> 1) Sharing intelligence, International affair division, Information sharing Foreign Entries, Transnational Crime, Monitoring devices…
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> 2) Self-protect Activity Bank…
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> 3) Security screening verification inquiry Immigration and citizenship Record…
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> 4) Unlawful Conduct Investigation…
>
> 5) Public communication…

> 6) Security Video Surveillance and Temporary Access Controls…
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> 7) Canadian Security Intelligence Record…
>
> 8) Security Incident and Privacy Breaches…
>
> Information sharing Foreign Entries [related to Sri Lanka, India and the UK].
>
> [*Sic* throughout]

[8] Mr. Kandasamy noted several specific data banks in his request for information.

B. *The CSIS Response to Mr. Kandasamy*

[9] CSIS conducted searches of the relevant data banks.

[10] By letter dated June 5, 2019, the Head of Disclosures, Access to Information and Privacy, responded on behalf of CSIS. The letter indicated that several information banks had been searched and no personal information concerning Mr. Kandasamy had been located.

[11] CSIS advised that no personal information had been located in CSIS PPU 015, PPE 832, PSU 907, PSU 914 or PSU 939.

[12] CSIS advised that CSIS DDS 052 is not a personal information bank and contains no personal information.

[13] With respect to PPU 045—CSIS Investigational Records—CSIS advised that this information bank has been designated exempt from disclosure by the Governor-in-Council

pursuant to section 18 of the Act. CSIS advised that if information concerning Mr. Kandasamy did exist in that bank, it would qualify for an exemption under section 21 of the Act, relating to Canada's efforts toward detecting, preventing, or suppressing subversive or hostile activities, or under paragraphs 22(1)(a) and/or (b).

[14] With respect to PPU 050—Self-Protection Activity—CSIS declined to confirm or deny whether any information concerning Mr. Kandasamy exists. CSIS also explained that pursuant to subsections 16(1) and (2), if any personal information existed, it would be expected to be exempt pursuant to section 21 or paragraphs 22(1)(a) or (b) of the Act.

[15] Dissatisfied with the response from CSIS, Mr. Kandasamy made a complaint to the Office of the Privacy Commissioner [OPC].

C. *The Office of the Privacy Commissioner*

[16] By letter dated December 11, 2019, the OPC advised Mr. Kandasamy that it had investigated his complaint. The OPC concluded that CSIS was unable to locate any of the records Mr. Kandasamy sought in PPU 015, PPE 832, PSU 907, PSU 914 and PSU 939 and that "the response provided by CSIS in refusing to reveal whether your personal information exists in PPU 045 and PPU 050 would be in accordance with the requirements of the Privacy Act." In other words, the OPC concluded that CSIS had applied the provisions of the Act and responded in accordance with the law. The OPC found that Mr. Kandasamy's complaint was not well founded.

II. **Issues and Standard of Review**

[17] As explained in the Court's judgment in the related case, T-1814-19 , the law is well established that judicial review pursuant to section 41 of the Act is a two-step process; first, the Court determines whether the requested information is subject to the exemptions relied on, and second, the Court determines whether the government institution reasonably exercised their discretion to withhold the disclosure of the information. Both steps are reviewed on the reasonableness standard (*Chin v Canada (Attorney General)*, 2022 FC 464 at paras 14–17 [*Chin*]).

[18] Decisions to neither confirm nor deny the existence of a record are also reviewed on the reasonableness standard (*Martinez v Canada (Communications Security Establishment)*, 2018 FC 1179 at para 14 [*Martinez*]; *Westerhaug v Canadian Security Intelligence Service*, 2009 FC 321 at para 17 [*Westerhaug*]).

[19] The Respondent agrees that in accordance with section 47 of the Act, the government institution—in this case CSIS—bears the burden to establish that its decision to refuse to disclose information is authorized by the Act.

[20] The issues to be determined are:

- whether it was reasonable for CSIS to conclude that the requested information—if it existed—would be exempt from disclosure pursuant to section 21 of the Act, and
- whether it was reasonable for CSIS to neither confirm nor deny the existence of this information pursuant to subsection 16(2).

III. **The Applicant's Submissions**

[21] Mr. Kandasamy has not made any submissions with respect to how CSIS may have erred in its search for records, in the application of the exemptions in the Act, or in its response that it could not confirm or deny the existence of this information.

[22] Mr. Kandasamy's written submissions include extracts from websites and news articles and other unidentified sources regarding concerns about surveillance and "mind control," artificial intelligence and other topics that have no bearing on the two issues the Court must address. His submissions reiterate his belief that he is under surveillance of various types. He makes bald allegations that his *Charter* rights have been infringed, as have his rights under the Universal Declaration of Human Rights.

IV. **The Respondent's Submissions**

[23] The Respondent submits that CSIS's response to Mr. Kandasamy's request for personal information was reasonable. CSIS conducted the required search and reasonably determined that it could not confirm or deny the existence of the records because this disclosure could reasonably be expected to be injurious to the international affairs or defence of Canada.

[24] The Respondent notes that section 21 of the Act incorporates by reference subsection 15(1) of the *Access to Information Act*, RSC 1985, c A-1 [ATIA]. In responding to a request for personal information, CSIS was required to determine whether the disclosure of information could be expected to be injurious to the conduct of international affairs, the defence of Canada or

any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities.

[25] The Respondent further notes that in accordance with subsection 16(2) of the Act, CSIS has the authority to neither confirm nor deny the existence of a record that would be subject to an exemption under the ATIA. The Respondent, therefore, submits that it was reasonable for CSIS to refuse to confirm or deny the existence of records pursuant to subsection 16(2) (*Westerhaug* at paras 17–19; *Russell v Canada (Attorney General)*, 2019 FC 1137 at para 26 [*Russell*]).

V. **The Decision Is Reasonable**

[26] For the same reasons provided in the related case, T-1814-19, I find that CSIS reasonably responded that the information requested by Mr. Kandasamy, if it existed, would be exempt from disclosure pursuant to section 21.

[27] I also find that CSIS reasonably responded that it could neither confirm nor deny the existence of the information requested by Mr. Kandasamy pursuant to subsection 16(2).

[28] In the present case, a public affidavit was filed describing the process undertaken by the Access to Information and Privacy Analyst at CSIS in responding to Mr. Kandasamy's request for personal information and describing the nature of the information banks that Mr. Kandasamy sought to access.

[29] I am satisfied that CSIS conducted a thorough search for the records requested by Mr. Kandasamy and was authorized to rely on the statutory exemptions.

[30] I also find that CSIS's response that it would neither confirm nor deny the existence of records is authorized by the statute and that CSIS exercised its discretion reasonably. The approach taken by CSIS is well supported by this Court's jurisprudence.

[31] In *Ruby v Canada (Solicitor General)*, [2000] 3 FC 589, 2000 CanLII 17145 (FCA) at paras 65–67 [*Ruby*], the Federal Court of Appeal found that the general or blanket policy of a government institution to neither confirm nor deny the existence of information in accordance with subsection 16(2) is reasonable, and explained the underlying rationale.

[32] As noted by the Respondent, *VB v Canada (Attorney General)*, 2018 FC 394 [*VB*] is analogous to the present case. In *VB*, at para 39, the Court found that CSIS's reliance on the exemptions provided in subsections 15(1) and 16(1) of the ATIA was reasonable because the information sought related to CSIS investigative records. The Court noted that the respondent's affiant had explained that releasing such information would jeopardize CSIS investigations by disclosing whether CSIS had or has an investigation related to that person.

[33] As noted above, in the present case, CSIS's affiant has provided a similar explanation.

[34] In *VB*, the Court noted at paras 42–43:

> [42] In considering the *Privacy Act* provision the Federal Court of Appeal has concluded: (1) subsection 16(2) permits a

> government institution to adopt a policy of neither confirming nor denying the existence of information where the information is of a specified type or nature; (2) adopting such a policy involves the exercise of a discretion; and (3) the discretion must be exercised reasonably (*Ruby* at paras 66-67).
>
> [43] The CSIS practice of neither confirming nor denying the existence of records where the information sought relates to CSIS investigative records has been consistently held to be reasonable where the information has been sought pursuant to the *Privacy Act* (*Llewellyn* at para 37, *Cemerlic* at paras 44 and 45, *Westerhaug* at para 18). The jurisprudence has found that confirming whether such information exists or not would be contrary to the national interest as it would alert individuals who potentially present a security risk as to whether they are the target of a CSIS investigation.

[35] More recently, in *Chin*, the Court found that the CSIS's response that it could neither confirm nor deny the existence of records was reasonable, noting at para 21:

> [21] Subsection 16(2) of the *Privacy Act* permits a government institution not to confirm whether personal information exists within an exempt information bank. The Deputy Chief of the ATIP Section explained in her public affidavit that the response to a request seeking personal information from CSIS PPU 045 must be the same regardless of whether or not any personal information actually exists. Responding in any other manner would jeopardize CSIS' ability to carry out its mandate of investigating and advising the government on threats to the security of Canada.

[36] The reasonableness of a government institution's response to neither confirm nor deny the existence of personal information that could reveal whether a person is or has been the subject of an investigation pursuant to subsection 16(2) of the Act has been repeatedly confirmed in the jurisprudence (see for example *Ruby* at paras 65–66; *Braunschweig v Canada (Public Safety)*, 2014 FC 218 at paras 45, 48; *Llewellyn v Canadian Security Intelligence Service*, 2014

FC 432 at paras 35–36; *Westerhaug* at paras 17–18; *Martinez* at paras 30–31; *Russell* at para 26; *Chin* at paras 21–22).

[37] In *VB*, at para 47, the Court explained that the response of CSIS to neither confirm nor deny the existence of records is typical and suggested that unwarranted inferences should not be drawn, noting:

> [47] The PIB reference in the CSIS response is not a confirmation that records of the nature sought are held by CSIS. Instead the CSIS response in neither confirming nor denying the existence of the records opens the door to two equally possible scenarios: (1) the records exist but are not being disclosed on the basis that they are exempt from disclosure pursuant to sections 15 and 16 of the ATIA; or (2) no records exist. The absence of certainty this circumstance creates may understandably cause frustration to a requester but this situation is not unique to the applicant. As was noted by Justice Russel Zinn in *Westerhaug:*
>
> > [18] The Federal Court of Appeal in *Ruby* held that adopting a policy of non-disclosure was reasonable given the nature of the information bank in question, because merely revealing whether or not the institution had information on an individual would disclose to him whether or not he was a subject of investigation. I agree. <u>If it is in the national interest not to provide information to persons who are the subject of an investigation, then it follows that it is also in the national interest not to advise them that they are or are not the target of an investigation. It is one of the unfortunate consequences of adopting such a blanket policy that persons who are not the subject of an investigation and who have nothing to fear from the government institution will never know that they are not the subject of an investigation. Nonetheless, and as was noted by Justice Kelen, this policy applies to every citizen of the country, and even judges of this Court would receive the same response as was given to Mr. Westerhaug and would not have any right to anything further.</u> [Emphasis added.]

[38] As in *VB*, *Westerhaug* and many other cases, the response that Mr. Kandasamy received is the same response that any other person requesting the same information would receive. As noted in T-1814-19, there is nothing unusual, exceptional or unreasonable in the response provided by CSIS to Mr. Kandasamy.

[39] In conclusion, CSIS' response to Mr. Kandasamy's request for personal information was reasonable and in complete accordance with the Act and the jurisprudence.

[40] The Respondent seeks costs in the amount of $750.00 for all three matters, T-1814-19, T-953-20 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-167-20

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-167-20
STYLE OF CAUSE:	NAVARATNAM KANDASAMY v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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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
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT