Federal Court Cour fédérale

Date: 20240529

Docket: T-2039-23

Citation: 2024 FC 814

Ottawa, Ontario, May 29, 2024

PRESENT: Madam Justice St-Louis

BETWEEN:

SERGEI SEVERINOV

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] On March 11, 2023, the Applicant, Mr. Sergei Severinov, made a request for records to the Royal Canadian Mounted Police [RCMP] pursuant to subsection 12(1) of the *Privacy Act*, RSC 1985, c P-21 [*Privacy Act*].

[2] On March 13, 2023, Mr. Severinov responded to a query by the RCMP Access to Information and Privacy Branch and provided additional information on the scope of his request for records (Applicant Record at 22).

[3] On April 16, 2023, having received no records in response to his request, Mr. Severinov filed a complaint with the Privacy Commissioner (Applicant Record at 25).

[4] Mr. Severinov indicates that on September 8, 2023, he received the Privacy Commissioner's investigation report (Applicant Record at 31, para 6), which stated that (1) as the institution did not respond to the request within the time limit of 60 days, the complaint was well founded; and (2) given that the RCMP had agreed to respond to the request by January 19, 2024, the Privacy Commissioner's investigator considered the matter conditionally resolved (Applicant Record at 29).

[5] On September 28, 2023, Mr. Severinov filed his Notice of Application in the Federal Court, as provided by section 41 of the *Privacy Act*, whereby he challenges the RCMP's refusal to provide him with the records he requested. Before the Court, Mr. Severinov seeks the following remedies:

> (a) a declaration under section 48 of the *Privacy Act* that RCMP has unlawfully refused to give Sergei Severinov access to the personal information requested by Sergei Severinov on March 11, 2023 within the time permitted by the *Privacy Act*;
>
> (b) an order under section 48 of the *Privacy Act* requiring RCMP to disclose this information to Mr. Severinov;
>
> (c) a declaration that RCMP's refusal to provide Sergei Severinov access to personal information violated Sergei Severinov's rights under sections 2(b), 7, 8 and 15(1) of the *Canadian Charter of Rights and Freedoms* any such remedies that the

> Court considers appropriate and just in the circumstances, under section 24(1) of the *Canadian Charter of Rights and Freedoms*;
>
> (d) an order awarding Sergei Severinov special costs or, in the alternative, ordinary costs; and
>
> (e) such further and other relief as this Court may permit.

[6] On January 14, 2024, Mr. Severinov filed his Applicant Record. He included, *inter alia*, a one-page Memorandum of Fact and Law (Applicant Record at 31).

[7] Mr. Severinov acknowledged, in his Memorandum of Fact and Law, that on December 22, 2023, the RCMP sent him an email referring to a "package in relation to your request under the *Privacy Act*" with attachments (Applicant Record at 31, para 7). During the hearing of this application, Mr. Severinov confirmed having received an email that referred to files and attachments.

[8] On February 5, 2023, the Respondent, the Attorney General of Canada [AGC] filed his Respondent's Record, which, following Mr. Severinov's objection, was ordered to remain on the Court file by Madam Associate Judge Kathleen Ring on March 28, 2024.

[9] In her Order dated March 28, 2024, Associate Judge Ring noted, *inter alia*, Mr. Severinov's argument that the affidavit of Ms. Ho-Li Chen dated February 7, 2024, contained in the Respondent's Record, is invalid and does not properly form part of the Respondents' Record. Mr. Severinov argued that said affidavit was not served on the Applicant by November 27, 2023, as required by Rule 307 of the *Federal Courts Rules*, SOR/98-106 [the Rules], and was thus invalid. Associate Judge Ring determined that the admissibility of this

affidavit was to be properly determined by the Judge who was to hear the application on its merits. The parties addressed the validity of the affidavit at the hearing of this application, and I reserved my decision on the issue, which you can find below.

[10] In regards to Mr. Severinov's application, in brief and for the reasons that follow, it will be dismissed. I am satisfied that Mr. Severinov has received a response to his request for records, i.e., a disclosure, from the RCMP. Considering that the jurisdiction of the Court is limited to ordering the disclosure of information that has been requested (*Galipeau v Canada (Attorney General*), 2003 FCA 223 [*Galipeau*]) and that the information has here been disclosed, there consequently remains no live controversy between the parties and the application is therefore moot. I am satisfied nothing justifies the Court to exercise its discretion to consider the issue despite its mootness.

[11] The issues raised by Mr. Severinov that pertain to the substance of the disclosure, rather than the fact that a disclosure was made, cannot be entertained in this application as the conditions set out in section 41 of the *Privacy Act* are not met.

[12] Finally, the style of cause will be amended to show the Attorney General of Canada as the proper Respondent in accordance with Rule 303 of the Rules.

II. Issues

[13] Given the circumstances and the arguments of the parties, the Court must first determine if the affidavit contained in the Respondent's Record is admissible. The Court must subsequently

determine if the application is moot or not, and if so, if it should exercise its discretion to entertain it nonetheless.

III. Admissibility of the Affidavit

[14] At the hearing, and per Associate Judge Ring's Order of March 28, 2024, Mr. Severinov argued that Ms. Chen's affidavit, filed as part of the Respondent Record and introducing, *inter alia*, the letter dated December 20, 2023 from the RCMP to Mr. Severinov, is invalid because it has not been served within the delay provided in rule 307 of the Rules.

[15] The AGC responded that it was left to the Court's discretion to accept, or not, the affidavit. The AGC stressed that the affidavit has been in the possession of the Applicant for a long time before the hearing. He added that the Applicant's argument relating to the fact that he could not respond to the affidavit because of its late filing is not how the Court proceeds, that Rule 312 of the Rules allows a person to make a motion to add affidavits or new evidence, and that Mr. Severinov did not file such a motion. The AGC also argued that it would not be useful for the Court to disallow the affidavit as it is in the best interest of time; the affidavit goes hand in hand with the Respondent Record and what it sets out. The affidavit introduces the letter that was provided to the Applicant, who has admitted to receiving this letter at the hearing, although he indicated he could not open the attachments.

[16] Given the circumstances of this case, I find nothing turns on the content of the affidavit or the exhibits it introduces, and I will thus assume, without deciding, that it is not admissible.

IV. Mootness

A. *Parties' Position*

[17] In his Memorandum of Fact and Law, Mr. Severinov briefly outlines facts and issues, but provides no details and no argumentative submissions. At paragraph 7 of said Memorandum, he writes: "On December 22, 2023 RCMP sent me an email referring to a 'package in relation to your request under the Privacy Act' with attachments, which I have not been able to open and decrypt." (Applicant Record at 31).

[18] In regards to the mootness argument raised by the AGC, Mr. Severinov responded, at the hearing, that the application was not moot because no disclosure was made. He argues that there was no disclosure since he could not open the attachments.

[19] The AGC submits, essentially, that the application is moot and lacks merit as Mr. Severinov was provided disclosure in December 2023 (Respondent Record at 7, para 20). The Respondent asserts that Mr. Severinov's complaint and the Privacy Commissioner's investigation report related strictly to the timeliness of the RCMP's disclosure and that any issues that related to the substance of the disclosure cannot be entertained by the Court at this stage.

B. *The Court's Jurisdiction Under Section 41 of the* Privacy Act

[20] Section 41 of the *Privacy Act* provides that 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 and the results of its investigation were received, apply to this Court for a

review of the refusal. The Federal Court of Appeal has confirmed that in order to apply to this Court pursuant to section 41 of the *Privacy Act*, the applicant must have: (i) been refused access to a requested record; (ii) complained to the Privacy Commissioner; and (iii) received a report from the Privacy Commissioner (*Statham v Canadian Broadcasting Corporation*, 2010 FCA 315 at para 64).

[21] Section 48 of the *Privacy Act*, which applies here, states that where the head of a government institution refuses to disclose personal information requested under subsection 12(1) of the *Privacy Act*, the Court shall, if it determines that the head of the institution is not authorized under this *Privacy Act* to refuse to disclose the personal information, order the head of the institution to disclose the personal information.

[22] The Court's jurisdiction under section 41 of the *Privacy Act* has been interpreted narrowly; it is limited to ordering the disclosure of information that has been requested. In *Galipeau*, the Federal Court of Appeal stated that:

> [5] In any event, the power to intervene that is given to the Court in section 48 of the Act is in sequence with the remedy provided in section 41. It is limited to ordering disclosure of information that has been requested.

[23] The Court has made it clear that, once the requested information has been provided, "there is no other remedy for the Court to provide" (*Frezza v Canada (National Defence)*, 2014 FC 32 at paras 56 -57 [*Frezza*]; *Cumming v Canada (Royal Mounted Police)*, 2020 FC 271 at para 25 [*Cumming*]; *Sandiford v Canada (Attorney General)*, 2023 FC 171 [*Sandiford*]).

[24] The Court has also confirmed that declarations and damages cannot be awarded (*Lavigne v Canada (Canadian Human Rights Commission)*, 2011 FC 290 at paras 13-14; *Frezza* at para 58).

[25] The Supreme Court of Canada established a two-part analysis for mootness: (1) whether "the required tangible and concrete dispute has disappeared and the issues have become academic"; and (2) if the first question is answered affirmatively, whether the court should exercise its discretion to hear the case in any event (*Borowski v Canada (AG)*, [1989] 1 SCR 342 at 353 [*Borowski*]; *Ruston v Canada (AG)*, 2020 FC 1020 at para 9).

[26] As mentioned above, when considering an application under section 41 of the *Privacy Act*, the Court's authority is limited to making a disclosure order.

[27] In his Notice of Application, Mr. Severinov stated he was seeking the disclosure of the information he requested. In his Memorandum of Fact and Law, Mr. Severinov mentioned that he was unable to open and decrypt the attachments provided by the RCMP.

[28] During the hearing of the application, Mr. Severinov sought to introduce new evidence in order to show the Respondent's unethical and unlawful behaviour in his application and to demonstrate that he could not open or decrypt the files he received from the RCMP back in December 2023. The Respondent objected to Mr. Severinov's attempt to introduce new evidence at the hearing of the application, essentially relying on rules 301 and 312 of the Rules. I sustained the Respondent's objection and did not allow new evidence to be introduced.

C. *The Application is Moot*

[29] As previously mentioned, I am satisfied Mr. Severinov's request for records has been answered and that he received disclosure. Mr. Severinov acknowledged having received the letter from the RCMP and the attachments in December 2023, both in his Memorandum of Fact and Law and during the hearing of this application. There is therefore no live controversy between the parties (*Cumming* at para 20) (Respondent Record at 6, para 17).

[30] The case here is one described by the Supreme Court of Canada in *Borowski* as "subsequent to the initiation of the action or proceeding, events [occurred] which [affected] the relationship of the parties so that no present live controversy exists which affects the rights of the parties" (*Borowski* at 353). The case was not moot when the application was initiated, but has become so.

[31] As to the second step of the mootness analysis, whether the Court should exercise its discretion to hear the matter despite its mootness, three factors are relevant: (1) the presence of an adversarial relationship between the parties; (2) the concern for judicial economy; and (3) the need for the Court to be sensitive to its role as the adjudicative branch in our political framework (*Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62 at para 18; *Democracy Watch v Canada (Attorney General)*, 2018 FCA 195 at para 13 citing *Borowski* at 358-363).

[32] Finally, I note the Privacy Commissioner's investigation report, which Mr. Severinov indicates having received on September 8, 2023, states that the complaint type is "Time Limit" (Applicant Record at 29). Per section 41 of the *Privacy Act*, the Court cannot entertain issues that

relate to the substance of the information or its sufficiency. As Mr. Justice Patrick Gleeson outlined at paragraph 33 of his decision in *Cumming*, since Mr. Severinov has not submitted a complaint regarding the adequacy of the information provided and in the absence of an investigation by the Privacy Commissioner, it is premature for Mr. Severinov to seek relief from the Court in respect of these issues and to argue that the disclosure is not satisfying.

[33] As in *Cumming* and *Sandiford*, there is nothing here to indicate that the Court should exercise its discretion to hear the matter despite its mootness. The jurisprudence shows that the Court's authority, when considering this application, is limited to making a disclosure order. In this case, disclosure has occurred and the Court is not in a position to grant additional relief.

V. Conclusion

[34] The application will be dismissed and costs will be awarded in favour of the Respondent.

JUDGMENT in T-2039-23

THIS COURT'S JUDGMENT is that:

1. The Applicant's application is dismissed.
2. Costs in the amount of $500 are awarded in favour of the Respondent.
3. The style of cause is amended to show the Attorney General of Canada as the proper Respondent in accordance with Rule 303 of the *Federal Courts Rules*, SOR/98-106.

"Martine St-Louis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2039-23
STYLE OF CAUSE:	SERGEI SEVERINOV v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	MAY 23, 2024
JUDGMENT AND REASONS:	ST-LOUIS J.
DATED:	MAY 29, 2024

APPEARANCES:

Mr. Sergei Severinov	FOR THE APPLICANT (SELF-REPRESENTED)
Nicole Langrana	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT