Date: 20141029

Docket: T-1393-13

Citation: 2014 FC 1026

Ottawa, Ontario, October 29, 2014

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SAFWAN ALBATAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] Mr. Safwan Albatal (the "Applicant") seeks judicial review, pursuant to Section 41 of the Access to Information Act, R.S.C. 1985, c. A-1 (the "Act") of a decision made by the Minister of Citizenship and Immigration Canada (the "Minister" or the "Respondent"). In that decision,

made on April 26, 2013, the Respondent disclosed certain information in response to an Access to Information request submitted by the Applicant.

II. BACKGROUND

[2] The following details are taken from the affidavits of the parties filed in this application as well as from the exhibits to those affidavits. The Applicant is an IT engineer living in Ottawa. He was born in Syria in 1971. While living in Germany, he submitted an application for immigration to Canada. He was assisted by a Canadian Immigration Consultant. In the course of his application, the Applicant authorized the German government to disclose information to the Canadian immigration authorities.

[3] As part of the process in his application for permanent residence, the Applicant was asked to attend an interview at the Canadian Embassy in Berlin. He attended the interview on March 1, 2004. The interview was conducted by a man dressed in civilian clothes; a man wearing a uniform was also present. According to the Applicant, the questions focussed on the Syrian intelligence services and the involvement, if any, that he had with them.

[4] The Applicant deposed that his Immigration Consultant told him that the interview had been conducted as a security interview and not as a "typical" immigration interview. According to the Consultant, the uniformed man was a security officer. The Applicant now believes that false information identifying him with Syrian intelligence was forwarded to the Canadian authorities during the processing of his application for permanent residence. He believes that the provision of such information is the reason why he was subjected to a security interview.

[5] The Applicant's application for permanent residence was accepted and he landed in Canada in April 2005.

[6] On December 10, 2012, the Applicant submitted his access request to the Respondent, requesting specific information about his immigration file.

[7] On December 14, 2012, the Applicant submitted a second access request. He asked that this request supersede his first request. The second request contained a list or revised questions similar to those set out in the first request.

[8] On January 11, 2013, the Respondent advised the Applicant by letter that an extra 30 days were required to comply with his request for information. This delay was authorized by paragraph 9(1)(a) of the Act.

[9] The Applicant submitted a complaint to the Officer of the Information Commissioner (the "OIC") about the delay in the release of the requested information, by letter dated February 11, 2013.

[10] Under cover of a letter dated February 19, 2013, the Respondent released information in response to the Applicant's access request. However, certain portions of the requested information were withheld or redacted by the Respondent pursuant to subsection 15(1) of the Act, which gives government institutions the discretion to refuse to disclose any records which

could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or states allied with Canada, or the detection or suppression of subversive activities.

[11] Subsequently, the Applicant made another complaint to the OIC challenging the Respondent's decision to withhold information. This complaint was registered on March 13, 2013 by the OIC.

[12] On March 21, 2013, the OIC provided its response to the Applicant's first complaint about delay. The OIC determined that the Respondent's request for an extension of time was unsupported. It found that the Applicant's complaint about delay was well-founded. However, since the information requested was ultimately released, the complaint was recorded as resolved without recommendations from the OIC to the head of the Respondent department.

[13] By letter dated February 19, 2013, the Respondent advised the Applicant that the requested documents were being disclosed in their entirety and sent the Applicant supplementary information. This disclosure purported to contain all the records in the Respondent's possession concerning the Applicant's immigration file.

[14] This letter was mistakenly dated February 19, 2013. According to a letter dated July 17, 2013, the letter should have been dated April 26, 2013.

[15] In the letter of July 17, 2013, the OIC released the results of its investigation of the Applicant's second complaint about the Respondent's application of section 15(1) of the Act as a

basis for refusing to disclose the requested information. It found the complaint to be well-founded but since the Respondent had withdrawn his reliance on subsection 15(1) of the Act, the OIC determined that the complaint was concluded and it was not necessary to make recommendations.

[16] The decision of April 26, 2013 consists of a letter, forwarding further information to the Applicant. The letter advised that the records being forwarded are all the records in the possession of the Respondent relating to the Applicant. There were no more redactions and no information was withheld.

III. SUBMISSIONS

A. *The Applicant's Submissions*

[17] The Applicant's argues that the disclosed records are not responsive to his request. He submits that there are many empty fields and he cannot tell if his file had truly been wholly disclosed.

[18] The Applicant argues that he is entitled to ask for information even if it does not directly relate to him. He claims that he is entitled to know the names and employers of the persons who attended his immigration interview.

[19] To the extent that the Respondent said that some records had been destroyed and were not available for disclosure, the Applicant submits that the Respondent could get copies of the

documents. He argues that the disclosed records show that the Respondent had received information about the Applicant from other organizations, that is, the ones referred to as "HQOTT" and "FRG-NRT", as well as the German government. None of that information was disclosed to the Applicant.

[20] As well, the Applicant complains that documents disclosed by the Respondent contain numerous coded abbreviations that are not explained. He argues that he cannot understand the disclosed information without knowing the meaning of those abbreviations and accordingly, the Respondent has effectively refused access to information.

B. *The Respondent's Submissions*

[21] The Respondent submits that he has now disclosed all the information requested by the Applicant. Although he had initially refused to disclose some information, that refusal was abandoned during the investigation by the OIC.

[22] The Respondent argues that the records requested by the Applicant have been disclosed. He submits that the Applicant's submissions, about incomplete disclosure, are based on speculation.

[23] Further, to the extent that the Applicant is seeking records from provincial governments, those requests are beyond the scope of the Act.

[24] The Respondent further submits that it he was only obliged to identify records subject to his control and to determine if those records should be disclosed. He is not obliged to inquire about the existence of records held by other government institutions, relying in this regard in *Leahy v. Canada (Minister of Citizenship and Immigration)* (2012), 47 Admin. L.R. (5th) 1.

IV. DISCUSSION AND DISPOSITION

[25] The sole issue to be addressed in this application for judicial review is whether the Respondent refused to provide the Applicant access to information pursuant to the Act.

[26] Subsection 4(1) of the Act authorizes a person to seek disclosure of any records in their possession of a government agency. If access is refused, the agency bears the burden of justifying that refusal, pursuant to section 48 of the Act.

[27] Subsection 4(1) and section 48 of the Act are relevant and provide as follows:

4. (1) Subject to this Act, but notwithstanding any other Act of Parliament, every person who is	4. (1) Sous réserve des autres dispositions de la présente loi mais nonobstant toute autre loi fédérale, ont droit à l'accès aux documents relevant d'une institution fédérale et peuvent se les faire communiquer sur demande :
(a) a Canadian citizen, or	a) les citoyens canadiens;
(b) a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act,	b) les résidents permanents au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés.
has a right to and shall, on request, be given access to any record under the control of a government institution.	

48. In any proceedings before the Court arising from an application under section 41 or 42, the burden of establishing that the head of a government institution is authorized to refuse to disclose a record requested under this Act or a part thereof shall be on the government institution concerned.	48. Dans les procédures découlant des recours prévus aux articles 41 ou 42, la charge d'établir le bien-fondé du refus de communication totale ou partielle d'un document incombe à l'institution fédérale concernée.

[28] In the present case, the Respondent initially refused to provide some information to the Applicant on the basis that disclosure was except pursuant to subsection 15(1) of the Act. However, subsequently, the Respondent withdrew his objection and disclosed all information in his possession about the Applicant's immigration application.

[29] It appears from the record that the Respondent has provided all information within his possession relating to this Applicant. The Respondent has no control over information in the possession and control of provincial authorities and should the Applicant wish to access said information, his remedy lies in making a request to such provincial authorities in conforming with the relevant provincial legislation.

[30] The Respondent has given a positive response to the Applicant. These suspicions on his part about the existence of other information is not a ground to order the Respondent to do anything more; see the decision in *Creighton v. Canada (Superintendent of Financial Institutions)*, [1990] F.C.J. No. 353. Destruction of material at the Canadian Embassy in Berlin, pursuant to a document retention policy, is not *per se*, improper.

[31] Pursuant to section 41 of the Act, an application for judicial review can only proceed when there has been a refusal to disclose information. Since the Respondent has now disclosed to the Applicant all the records in his control, there is no basis for the Applicant's application for judicial review. The fact that there initially was a refusal does not matter now, since the Respondent has disclosed all information within his control. The application is therefore moot, as there is no longer a live controversy between the parties, and any decision by the Court would have no practical effect; see the decision in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at paragraph 15.

[32] In the result, there is no refusal to disclose information and there is no basis to grant this application for judicial review. The application will be dismissed.

[33] In the exercise of my discretion, pursuant to the *Federal Courts Rules*, SOR/98-106, I make no order as to costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. In the exercise of my discretion, pursuant to the *Federal Courts Rules*, SOR/98-106, there is no order as to costs.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1393-13
STYLE OF CAUSE:	SAFWAN ALBATAL v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	APRIL 28, 2014
JUDGMENT AND REASONS:	HENEGHAN J.
DATED:	OCTOBER 29, 2014

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