

Federal Court



Cour fédérale

Date: 20250414

Docket: T-1362-23

Citation: 2025 FC 688

Ottawa, Ontario, April 14, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

MICHAEL PATRIKEEV

Applicant

and

PARKS CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Michael Patrikeev, made two requests for information under the *Privacy Act*, RSC 1985, c P-21 [the Act] seeking information about himself from his former supervisor and another manager at Parks Canada [sometimes referred to below simply as “Parks”]. He received records in response to both requests, but some of the information was redacted (blacked

out). Parks Canada invoked exemptions from disclosure under the Act that prevented disclosure of personal information of other individuals and solicitor-client privilege.

[2] The Applicant complained to the Office of the Privacy Commissioner (OPC). During the course of the Commissioner's investigation more information was provided to him, but some of the redactions were not removed. The Applicant is not satisfied with the disclosure he has received, and he seeks judicial review of the decision by Parks to maintain some of the redactions.

[3] Under the Act, the Court is required to conduct an independent review to determine whether the information that has not been released fits within the exemptions that are claimed by Parks Canada, and if so, to then determine whether the decision to maintain the redactions is reasonable. The ultimate question in this case is whether to order the release of further information to the Applicant.

[4] For the reasons that follow, I find that the information that has been withheld from disclosure falls within the claimed exemptions as the personal information of other individuals and solicitor-client and litigation privilege. Parks Canada acted reasonably in not disclosing this information. Based on these findings, the application for judicial review will be dismissed.

[5] One final preliminary remark. I have reviewed all of the confidential information that was filed and have written the reasons in a manner that avoids the need to redact any information. Canvassing the confidential information in a detailed manner is not necessary and I have

therefore avoided doing so. I can assure the Applicant, however, that I have carefully reviewed all of the confidential information.

II. Background

[6] The Applicant was an employee of Parks Canada from May 2008 until July 2022. For a period of time, the Applicant worked at Bruce Peninsula Provincial Park. In 2014 he submitted a grievance alleging harassment in the workplace by his managers at that location. His allegations were investigated, and some of his claims were upheld. Because of this, the Applicant requested a transfer out of that workplace, and in 2015, Parks Canada decided to assign him to the National Capital Region. His last position with Parks was as an Ecosystem Scientist in the Protected Areas Establishment and Conservation Directorate in Parks Canada headquarters.

[7] From March 2020 until July 2021, the Applicant's manager was Ms. Alana Plummer. After Ms. Plummer left her position, the Applicant reported to an acting manager. However, Ms. Tamaini Snaith, Executive Director, Conservation at Parks advised the Applicant that she would conduct his Performance Assessment, and she managed the process that resulted in the termination of his employment.

[8] The final portion of the Applicant's employment with Parks Canada was somewhat tumultuous, as he disputed negative comments on a performance appraisal and filed a number of complaints and requests for information. The Applicant had previously filed other requests for information in relation to his previous position. Certain of these matters are discussed in more detail below.

[9] On June 29, 2022, Parks Canada informed the Applicant that his employment was terminated, effective immediately and without cause.

[10] In June 2022, the Applicant filed two requests for information under the Act. The first one, labelled P-2022-00004 (“the 004 request”), stated:

I would like to request electronic copies of all e-mails, texts, other digital records, letters, other documents and hand-written notes **about me written and received by Ms. Tamaini Snaith** (Executive Director, Conservation) of Parks Canada, in both English and French. I am requesting emails texts, digital records, letters, other documents and notes **which contain my name** “Michael Patrikeev” on the **subject line** or **in the body** of such digital and printed records; the records I am interested in my contain only my first name “Michael” in the context of **Protected Areas Establishment and Conservation Directorate**.
Timeframe: 1-September-2018 through 30-June-2022.

Although I am interested in all emails, text, digital records, letters, and notes mentioned above, I am particularly interested in email and other exchanges between **Ms. Snaith and Alana Plummer, Sebastien Renard, and Human Resources**.

I do not require copies of e-mails, letters and notes **which were sent to me, i.e., addressed to me**, carbon-copied (cc.) or blind carbon copies (bcc.) or mailed to my home or business address. I also **do not require attachments of org charts and PowerPoint presentation**, unless my name is included in those org charts or presentations.

I am interested only in electronic copies and do not require hard copies.

[11] The second request, labelled P-2002-00005 (“the 005 request”) is worded similarly to the first one, but relates to his former manager:

I would like to request electronic copies of all e-mails, texts, other digital records, letters, other documents and hand-written notes about me **written and received by Ms. Alana Plummer** of Parks Canada (Gatineau, Quebec), in both English and French. I am

requesting emails texts, digital records, other documents and notes which contain my name “**Michael Patrikeev**” on the subject line or in the body of such digital and printed records; the records I am interested in my contain only my first name “**Michael**” in the context of the Protected Areas Establishment and Conservation Directorate and Ecological Monitoring. Timeframe: from 1-November-2019 through 30-June-2022. Although I am interested in all e-mails and other exchanges about me between **Ms. Plummer and Tamaini Snaith, Stephen McCanny, Sebastien Renard, and Human Resources**. I do not require copies of e-mails, letters and notes which were already sent to me, i.e., addressed to me, carbon-copied (cc.) or blind carbon copies (bcc.) or mailed to my home or business address. I also do not require attachments of org charts and PowerPoint presentation, unless my name is included in those org charts or presentations.

[12] Parks Canada assembled records responsive to the Applicant’s two requests, and in early August 2022, it disclosed 166 pages in response to the 004 request, and 20 pages in response to the 005 request. Parks Canada redacted certain information, claiming exemptions under s. 26 (personal information about another person) and s. 27 (solicitor-client privilege and litigation privilege) of the Act.

[13] The Applicant filed a complaint about inadequate disclosure with the OPC, alleging that some information about him was inappropriately withheld, and that other information was missing. During the course of the OPC’s investigation into the Applicant’s complaint, Parks discovered that certain attachments to emails included in the disclosure to the Applicant had mistakenly not been included in the original disclosure packages and it provided these to the Applicant. The OPC ultimately closed its investigation on May 15, 2023, noting that Parks had failed to provide certain documents in its original disclosure and thus it violated the Applicant’s rights under the Act. However, the OPC found that Parks had taken appropriate action to correct this issue. The OPC also found that Parks had conducted an appropriate search for records, and

that the exemptions had been applied correctly. The ultimate finding of the OPC was that the Applicant's complaint was "well-founded but resolved."

[14] The Applicant seeks judicial review of the OPC decision.

[15] The Applicant describes his "main motivation" for this application in the following way in his Memorandum of Fact and Law:

11. The Applicant's main motivation for this application to the Federal Court is Respondent's failure to disclose all records sought by him under the Privacy Act, most particularly records of "a series of documents that record a number of instances of poor behaviour" and "rude", "disrespectful" behaviour allegedly provided by Ms. Plummer to Ms. Snaith (Exhibit F of the Affidavit of Michael Patrikeev, Page A0062283_23-000120).

III. Issues

[16] The Applicant raises three issues. He argues that Parks Canada did not engage in an adequate search for records, and he challenges its claims for exemptions under ss. 26 and 27 of the Act.

[17] The Applicant also raised a question about the application of the exemption under s. 25, but that provision was never applied in this case and therefore it is not necessary to say more on that question.

IV. Legal Framework

[18] The *Privacy Act* enshrines a legal framework that seeks to ensure government institutions protect the privacy of individuals and to provide individuals with a right of access to personal information under the control of a government institution (s. 2).

[19] Section 3 of the Act defines personal information as “information about an identifiable individual that is recorded in any form” and goes on to provide a non-exhaustive list of examples. Information about an identifiable individual includes situations where there is a serious possibility that the individual can be identified when taking account of the circumstances of the totality of the information that is available (*Gordon v Canada (Health)*, 2008 FC 258 at para 34 [*Gordon*]). This test requires more than speculation or a “mere possibility” that the individual can be identified by piecing together all of the available information, but does not need to reach the level of “more likely than not.” *Canada (Information Commissioner) v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1279 at para 53.

[20] Section 41 of the Act provides that any individual who has been refused access to personal information can apply to this Court for review of the refusal, but this can only be done after the person files a complaint with the OPC and receives the results of the OPC investigation.

[21] Judicial review under the Act proceeds in two stages. First, the Court must determine whether the information that has not been disclosed falls within the exemption claimed by the government institution. In accordance with s. 47 of the Act, Parks Canada bears the burden of

establishing that it is authorized to refuse disclosure. If the information properly falls within the exemption, then the Court is required to determine whether the government institution's exercise of discretion not to release the information was reasonable: *Kandasamy v Canada (Public Safety)*, 2022 FC 1100 at para 18, aff'd 2024 FCA 181; *Chin v Canada (Attorney General)*, 2022 FC 464 at paras 14–17 [*Chin FC*]; aff'd 2023 FCA 144 [*Chin FCA*].

[22] At the hearing, the Respondent submitted that the first stage of the process should proceed as a *de novo* review, consistent with the approach in prior case-law, while acknowledging that decisions such as *Chin FC* at para 17 had found that the *Vavilov* standard of reasonableness applied to both stages of the test. This was confirmed in *Chin FCA* at para 7.

[23] For the purposes of this decision, nothing turns on this question. If we accept that reasonableness applies to the first stage of the inquiry, this is certainly a situation where the Supreme Court's statement that this is a "robust" form of review must apply. Under s. 41 of the Act, the Court is not reviewing the assessment of the independent OPC, which brings experience and expertise to the interpretation and application of the Act. Instead, the Court is assessing whether the government institution was justified in refusing disclosure. While a Department may gain some experience in applying the Act, the interests of the institution in keeping records confidential cannot be ignored: see *Dagg v Canada (Minister of Finance)*, [1997] 2 SCR 403 at para 107; *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, 2003 SCC 8 at para 19.

[24] One of the main purposes of the Act is to ensure that individuals have access to personal information held by government institutions. Parliament's long-standing view has been that this purpose is best served by having an independent review by the OPC, supported by its investigative powers. If the individual is not satisfied with the result of that process, they can seek a fresh examination by this Court. That examination must be done in a robust and probing manner, to ensure that the exemptions claimed by the government institution apply, and that its reasons for not exercising its discretion to disclose some or all of the information were reasonable.

[25] Turning to the case before me, I begin by observing that the Act contains an undeniably expansive definition of "personal information" and the Applicant's requests undoubtedly concerns information that falls within the scope of that term. One of the main purposes of the Act is to ensure that individuals have access to information about them that is held by a government institution.

[26] In order to give effect to that purpose, a government institution must undertake a reasonable search for records in response to a request under the Act, and disclose any information that falls within the scope of the request. Access to personal information is, however, subject to several exemptions and exceptions. Two exemptions are relevant in this case: s. 26 (personal information about another individual) and s. 27 (solicitor-client privilege and litigation privilege).

V. Analysis

A. *Did Parks Canada undertake a reasonable search for relevant records?*

[27] The Applicant argues that Parks Canada failed to conduct an adequate search for the records that responded to his two requests. He bases this claim on two lines of argument. First, the Applicant points out that Parks only disclosed some records to him long after his original request, when they were pressed to do so by the OPC investigator. He says this establishes that the original search was inadequate. In addition, the Applicant relies on his experience in making other requests for information from Parks Canada. He claims that Parks is “notorious” for failing to conduct appropriate searches to respond to requests under the *Privacy Act*, as well as requests made under the *Access to Information Act*, RSC 1985, c A-1 [ATIA].

(1) Legal Framework

[28] Section 12 of the Act enshrines an individual’s right to request and to receive access to personal information held by a government institution. Once a request is submitted in writing, the government institution has an obligation to conduct a search for records, and to disclose any records it finds to the requester, subject to the exemptions set out in the Act. If the individual is not satisfied with the disclosure, they can file a complaint with the OPC, which can investigate to determine whether an appropriate search for responsive records was conducted and whether the government institution was justified to refuse disclosure based on one or more of the exemptions. The OPC’s investigation report is provided both to the individual and the government institution.

If the requester is not satisfied with the outcome of the process, they can seek judicial review in this Court.

[29] This case followed the process outlined above. The Applicant exercised his right to request personal information from Parks. The record shows that an official in the Parks Canada Access to Information and Privacy [ATIP] unit sent a copy of the Applicant's requests to the appropriate officials so that they could search for the records. Documents were found and disclosed, subject to exemptions. The Applicant was not satisfied with the disclosure, and he filed a complaint with the OPC. The OPC investigator concluded that Parks had conducted an appropriate search for records and that information was properly redacted from the records that were disclosed. The OPC concluded that the Applicant's complaint was well-founded because some of the records had not been disclosed in the original package. In the end, however, the OPC decided that no further action was required on the Applicant's complaint, and it closed its file. The Applicant was not satisfied with this result, and he sought judicial review.

[30] The Court's role in examining the adequacy of a government institution's search for records is quite limited. As stated in *Blank v Canada (Minister of Justice)*, 2016 FCA 189 at para 36:

Unless Parliament changes the law, it is not for the Court to order and supervise the gathering of the records in the possession of the head of a government institution or to review the manner in which government institutions respond to access requests, except perhaps in the most egregious circumstances of bad faith.

(2) The Applicant's claims

[31] The Applicant relies on the following examples of the inadequacy of records searches undertaken by Parks Canada.

[32] First, between May and December 2017, the Applicant submitted three requests under the ATIA, seeking access to information written about him by certain Parks Canada managers. He received a response to these requests, but some of the information was redacted. The Applicant filed complaints with the OPC because he felt the responses were incomplete and that the redactions were inappropriate. During the course of the investigation, further information was disclosed to the Applicant. Following its investigation, the OPC informed the Applicant that his complaints were well-founded but the Chief Executive Officer of Parks Canada had advised that the OPC recommendations would not be implemented. The Applicant then launched an application for judicial review of the refusal by Parks Canada (Court File Number: T-676-22). That litigation was eventually settled, and the Applicant received further information.

[33] Second, the Applicant points out that Parks Canada only disclosed further information to him in response to the requests underlying this application when they were prodded to do so by the OPC investigator. He says this is another example that demonstrates the lack of care and attention that characterizes Parks Canada's response to requests under the Act.

[34] Finally, the Applicant relies on the further information he provided in his supplemental affidavit. Prior to the hearing of this matter, the Applicant brought a motion for leave to file a

further affidavit, because he had received further information that he claimed supported his allegation that all relevant records had not been disclosed. Shortly before his termination by Parks Canada, the Applicant had filed a complaint of workplace harassment (referred to as a Notice of Occurrence) under the *Work Place Harassment and Violence Prevention Regulations*, SOR/2020-130 [the *Work Place Harassment Regulations*]. He received the final Investigation Report into that complaint in September 2023, and claimed that it demonstrated that Parks Canada's response to the requests underlying the present proceeding was inadequate.

[35] On this point, the Applicant cites the statement by the Investigator that a former manager had obtained information about his previous harassment complaints relating to his employment at the Bruce Peninsula Provincial Park. He says that this is his personal information and any information that the manager gathered about this prior incident should have been disclosed to him. The Applicant claims that this is further proof that Parks did not conduct an adequate search for records.

(3) Discussion

[36] I am not persuaded that Parks failed to conduct an appropriate search for records in response to the Applicant's requests. It is true that Parks discovered additional documents that had not been disclosed, but I do not agree with the Applicant's argument that this demonstrates that the search was inadequate.

[37] In March 2023, the OPC investigator handling the Applicant's complaint sent an email to Parks Canada, asking about certain attachments to emails that did not appear to be included in

the disclosure package. The missing information was listed as attachments in an email that was disclosed, and the investigator asked for information about where they could be located in the disclosure.

[38] In response, the Parks Canada official stated the following:

After reviewing all our files, we were able to find the attachments you are seeking. It seems that there was a glitch when combining the documents to PDF and importing them in our Redaction system. We will add an additional step in our internal process to ensure that all pages that are combined to PDF are included in the request in Redaction.

You will find attached a copy of the missing attachments.

[39] While Parks acknowledged an error in the process, I can find no basis to conclude that the failure to include these documents in the original disclosure demonstrates that Parks conducted an inadequate search. In fact, the email response from Parks proves that these documents were, in fact, discovered during the original search, but through inadvertence and a computer system glitch, they were not included in the disclosure sent to the Applicant.

[40] In submissions on this point, Parks noted that the initial disclosures were done in accordance with the Applicant's requests. He specifically excluded documents that he had previously received, and Parks claims that the additional information that was provided to the Applicant were merely copies of documents he had already received. While that is a relevant consideration, I do not find it determinative of this question.

[41] I observe that the OPC investigator concluded that Parks had conducted a reasonable search for records that responded to the Applicant's two requests. That finding deserves deference from the Court, in view of the OPC's expertise in the administration of the Act and its experience in examining the adequacy of a government institution's search for records (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 93).

[42] As for the Applicant's contention that Parks Canada is notorious for failing to conduct adequate searches for records, I am not persuaded that the evidence supports such a claim. The Applicant relies on his experience in seeking records from Parks under the ATIA as proof that it regularly fails to conduct reasonable searches for records. He points out that the information he received in response to his ATIA request and the Investigation Report into his harassment complaint demonstrates that other records should exist regarding his manager's access to previous grievances he had filed. I disagree. The Applicant's argument about the habitual inadequacy of Parks Canada's response to privacy and access requests rests on little more than suspicion, and that is not sufficient to demonstrate that the search for records was inadequate: *Olumide v Canada (Attorney General)*, 2016 FC 934 at para 18; *Tomar v Canada (Parks)*, 2018 FC 224 at para 45.

[43] With regard to the Applicant's claim that the Investigation Report into his harassment complaint demonstrates that the search done by Parks in the present case was inadequate, I am not persuaded that it proves his argument on this point. The Applicant argues that any information about his previous grievances obtained by his former manager was his personal information and it should have been disclosed in response to his requests under the Act.

However, other records that were disclosed reveal that this information was gathered through phone calls and there are no written records of these exchanges. The Act does not require Parks to create documents that do not exist, and there is no evidence that the former manager recorded the specifics of her conversations. Instead, the information was summarized in email exchanges and reflected in a draft Performance Assessment that was provided to the Applicant. I am unable to conclude that this example proves the Applicant's claim that Parks habitually fails to conduct adequate searches for records in response to ATIP requests.

[44] For these reasons, I am not persuaded that Parks Canada conducted an inadequate search for records in response to the Applicant's requests. Although its original disclosure fell short by not including all of the records that had been gathered, Parks acknowledged its error and provided the missing documents to the Applicant. There is no basis to find that other documents that the Applicant claims should have been disclosed in response to his requests actually exist.

B. *The refusal to disclose personal information about other individuals*

[45] The Applicant argues that Parks has withheld too much information under s. 26 of the Act.

(1) Legal Framework

[46] Section 26 provides:

26. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) about an

26. Le responsable d'une institution fédérale peut refuser la communication des renseignements personnels demandés en vertu du paragraphe 12(1)

individual other than the individual who made the request, and shall refuse to disclose such information where the disclosure is prohibited under section 8.

qui portent sur un autre individu que celui qui fait la demande et il est tenu de refuser cette communication dans les cas où elle est interdite en vertu de l'article 8.

[47] Elements of the definition of “personal information” set out in s. 3 of the Act are also relevant to this question:

Definitions

3. In this Act,

[...]

“personal information” means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

[...]

(e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,

[...]

(g) the views or opinions of another individual about the individual,

[...]

(h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph

Définitions

3. Les définitions qui suivent s'appliquent à la présente loi.

[...]

« renseignements personnels » Les renseignements, quels que soient leur forme et leur support, concernant un individu identifiable, notamment :

[...]

e) ses opinions ou ses idées personnelles, à l'exclusion de celles qui portent sur un autre individu ou sur une proposition de subvention, de récompense ou de prix à octroyer à un autre individu par une institution fédérale, ou subdivision de celle-ci visée par règlement;

[...]

g) les idées ou opinions d'autrui sur lui;

[...]

h) les idées ou opinions d'un autre individu qui portent sur une proposition de subvention, de récompense ou de prix à lui octroyer par une institution, ou subdivision de celle-ci, visée à l'alinéa e),

(e), but excluding the name of the other individual where it appears with the views or opinions of the other individual and,

[...]

à l'exclusion du nom de cet autre individu si ce nom est mentionné avec les idées ou opinions;

[...]

(2) The Applicant's claim

[48] The Applicant explains this aspect of his claim in his Memorandum of Fact and Law:

13. I argue that if the Respondent has records of my alleged "instances of poor behaviour", "rude" and "disrespectful" behaviour (such as implied in Exhibit I and F of the Respondent's public affidavit), such records would constitute my personal information even if such records are claims of defamatory nature made by other individuals. If such records do not exist, then Ms. Snaith made her allegations in bad faith.

[49] The Applicant relies on the terms of the Act itself, noting that the definition of "personal information" includes "the views or opinions of another individual about [the requester]" (para (g) of the definition of "personal information" in s. 3 of the Act). The Applicant also cites *Canada (Information Commissioner) v Canada (Minister of Citizenship and Immigration)* (C.A.), 2002 FCA 270 [Pirie] in support of his claim that opinions that others expressed about him should have been disclosed to him because they are his personal information.

[50] In assessing this aspect of the Applicant's claim, it is important to return to the motivation he stated for bringing this application. As discussed previously, the Applicant was terminated without cause by Parks Canada and he believes there must be documents that set out the basis for his termination. He points to negative comments that were made by Ms. Snaith in a

draft of his Performance Assessment, which referred to instances of his poor, rude and disrespectful behaviour. The Applicant wants access to records that provide examples to justify these comments about him.

[51] Parks Canada has refused to disclose certain information based on s. 26 of the Act, which provides that a government institution may “refuse to disclose any personal information requested under subsection 12(1) about an individual other than the individual who made the request...” In a confidential affidavit filed in the course of this proceeding, the Manager of the Parks Canada ATIP office indicated that certain of the redactions were no longer being contested, and attached versions of these records with these redactions lifted. However, Parks maintains its refusal to disclose some of the information under s. 26.

[52] It is inevitable that records that pertain to an identifiable individual will often contain personal information about others, and s. 26 ensures that a requester does not gain access to the personal information of others. This includes a person’s opinions about themselves (para (e) of the definition of “personal information” in s. 3 of the Act). However, this does not protect a person’s opinion about another individual (para (g) of the definition of “personal information” in the Act).

[53] The Applicant submits that Parks cannot refuse to disclose opinions about him that were expressed by others, and he believes that certain of the redacted portions of the records that were disclosed to him were wrongly withheld.

(3) Discussion

[54] I have reviewed each of the records over which Parks asserts a claim under s. 26. Certain of these redactions refer solely to the personal information about other individuals, and I am satisfied that Parks has met its onus to establish that this information falls within s. 26. Other information, however, is not so clear-cut.

[55] In the disclosure packages he received, the Applicant found certain negative comments about his performance as an employee, including allegations of improper behaviour and disrespect towards other employees. Some of these comments are contained in information generated by Ms. Snaith, some refers to information received from his former manager, Ms. Plummer, and some refers to other employees of Parks Canada. The Applicant argues that any statements made about him by any of these individuals is his personal information and should have been disclosed to him. He relies on the Federal Court of Appeal decision in *Pirie* in support of this argument.

[56] In *Pirie*, allegations of discrimination and harassment in a regional office of the Department of Citizenship and Immigration prompted management to launch an investigation that was conducted by an independent consultant. Employees who participated in the investigation were promised that their interviews would be confidential; no such undertaking was made for managers who were interviewed. Following the investigation, the manager of the office where the allegations arose, Mr. Pirie, was relieved of his duties. He sought access to the notes of the interviews by filing a request under the ATIA. When Mr. Pirie was denied access to the

notes, he complained to the Office of the Information Commissioner, and further disclosures were made. However, the names of the individuals who were interviewed and information about their positions were not disclosed. In addition, views and opinions about Mr. Pirie were severed from the records when their disclosure would indirectly disclose the identity of the person who expressed them. The Department claimed that this was “personal information” as defined in the Act, and thus exempt from disclosure.

[57] Mr. Pirie launched an application in this Court, challenging the refusal to disclose this information. His claim was dismissed at first instance except the Court found that the identities of the managers who had been interviewed should be disclosed. The Information Commissioner appealed to the Federal Court of Appeal.

[58] The Court of Appeal found that the information in question was personal to both Mr. Pirie and to the individuals who were interviewed. Views expressed by employees and managers about Mr. Pirie were his personal information under the definition in paragraph 3(e) of the Act, and this information should have been disclosed to him, even where it could indirectly identify the individual who expressed the view (*Pirie* at para 23). The Court of Appeal also found that the names of the individuals who had expressed the opinions should have been disclosed, because “the name and identity of interviewees are as much the personal information of Mr. Pirie, pursuant to paragraph 3(g), as is the substance of the opinions or views expressed.” (para 25). This information was both the personal information of the individual who was interviewed and also the personal information of Mr. Pirie.

[59] In assessing whose interests should prevail, the Court of Appeal endorsed a balancing exercise, which it described in the following manner:

[29]The balancing exercise has to take into consideration, in my view, the private interests of both Mr. Pirie and the interviewees, as well as the public interest in disclosure and in non-disclosure, respectively.

[30]The private interest of the interviewees is in hiding the fact that they participated in the inquiry and keeping confidential conversations they had with an investigator. (I note, however, that the managers who were interviewed were not given any promise of confidentiality and cannot allege that private interest.) Preserving their anonymity would ensure that their working or personal relationship with Mr. Pirie is not jeopardized and, more importantly, would protect them from any possible legal action that Mr. Pirie could bring on the basis of the views expressed.

[31]This private interest is minimal. The fact that the interviewees participated in the inquiry has, in itself, little significance and, to the extent that they can justify the views they expressed, they should not fear the consequences of the disclosure, although, obviously, there may be some. To the extent that they cannot justify their views, they might have reason to fear. The fear, however, is caused not by the disclosure but by the fact that the views were expressed in the first place and that, perhaps, they were not justifiable.

[32]The public interest in the non-disclosure which is alleged by the Minister is that of the chilling effect the disclosure might have on future investigations, coupled with the fact that promises of confidentiality made by (or on behalf of) a government institution will not be given effect. I have dealt with this argument in paragraphs 10 and 11 of these reasons and readily rejected it.

[33]The private interest of Mr. Pirie, on the other hand, is significant. Implicit, if not explicit in the report and in the action taken by the Department as a result of the publication of the report, is the fact that he bears some responsibility for the problems which were found to exist at the Centre. Surely, he must be given the opportunity to know what was said, and by whom, against him, if only to exercise his right under subsection 12(2) of the *Privacy Act* to clear his name in the Department's archives.

[34]The public interest in the disclosure is to ensure fairness in the conduct of administrative inquiries. Whatever the rules of

procedural propriety applicable in a given case, fairness will generally require that witnesses not be given a blank cheque and that persons against whom unfavourable views are expressed be given the opportunity to be informed of such views, to challenge their accuracy and to correct them if need be.

[60] The Applicant submits that this is directly applicable to his situation, and that applying the reasoning of the Court of Appeal should result in the full disclosure of any views or opinions that were expressed about him. He argues that any claim by Parks Canada that disclosure may hamper future investigative processes should be rejected, as was done in *Pirie* (at para 12) and in many other cases: *Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 at para 58, citing *Canada (Information Commissioner) v Canada (Chairperson, Immigration and Refugee Board)*, 1997 CanLII 5922 at para 43.

[61] Parks Canada argues that the exempted information in this case is different than that which was ordered disclosed in *Pirie*. It acknowledges that information disclosed to the Applicant refers to concerns about his performance and behaviour towards other employees, but says that the material which has been redacted does not contain expressions of views or opinions about the Applicant. Rather, some of the withheld information relates to the feelings and viewpoints of other employees about their own situations. According to Parks, this is personal information about these other employees. Parks says this information falls within the category of personal information under paragraph 3(e) of the Act. Since none of the redacted information refers to the views or opinions of these individuals about the Applicant, Parks submits that *Pirie* has no application to this case.

[62] I disagree that *Pirie* has no application, insofar as it describes core guiding principles that apply to the assessment of information that may pertain to more than one individual. *Pirie* requires me to consider both the Applicant's private interests in gaining access to his personal information, and to the public interest in disclosure. The Court of Appeal in *Pirie* explains the underlying rationale for this in the following passage:

[36] This conclusion is consistent with the comments made by Privacy Commissioner Grace in his testimony before the Standing Committee on Public Accounts, on December 12, 1989, that one of the rights conferred by the *Privacy Act* (Minutes of Proceedings and Evidence on the Standing Committee on Public Accounts, Issue No. 20 (12/12/89), at p. 10):

. . .is to know what accusations against us are recorded in government files and who has made them. Whether such accusations are true and well intentioned, as some may be, or false and malicious, as other may be, it is fundamental to our notion of justice that accusations not be secret nor accusers faceless.

[63] However, I agree with the Respondent that the balancing of the interests as explained in *Pirie* may have to be re-considered in light of the specific confidentiality provisions in the *Work Place Harassment Regulations*. Section 30(2) provides that an investigator's report about a Notice of Occurrence "must not reveal, directly or indirectly, the identity of persons who are involved in an occurrence or the resolution process for an occurrence under these Regulations." This is a clear statutory confidentiality provision, which stands in contrast to the contractual undertakings that were made in *Pirie*.

[64] The Applicant submits that the *Pirie* decision applies to his situation: he has been dismissed based on accusations of misconduct, and he wants to know who said what about him. He says that usually before an employee is terminated, the employer imposes progressive

discipline, but that was not done in his case. The Applicant argues that he has never received an explanation for the termination of his employment and he believes that the redacted information must contain information to back up the negative comments that were made about him. If not, he says those comments were defamatory.

[65] It is not my role to consider whether Parks Canada was justified in terminating the Applicant's employment, nor to consider whether there was any justification for any negative comments that may have been made about him. My role is simply to determine whether the information that has been withheld falls within the scope of s. 26, and if so, whether Parks acted reasonably in withholding it.

[66] Having reviewed the information that Parks claims falls under s. 26, I am satisfied that it is personal information of the individuals and does not contain information expressing views or opinions about Mr. Patrikeev or his job performance. Much of the information relates to human resource matters relating to other individuals. While some of the information contains expressions of opinion, these do not refer to these individual's views of Mr. Patrikeev. Instead, some of these references express the views and feelings of the individuals themselves. To the extent the records refer to the Applicant's human resource matters or opinions about his job performance and treatment of other employees, that information has been disclosed to the Applicant. As noted above, Parks Canada has lifted certain redactions, and this has been made available to the Applicant. There is no other personal information about the Applicant in any of the redacted portions of the records.

[67] In light of my finding on this question, I would simply confirm that Parks Canada acted reasonably in not disclosing this information to the Applicant. Under the Act, it is required to protect the personal information of other people, and it did so in an appropriate manner in this case.

C. *The claims of solicitor-client privilege*

[68] The Applicant submits that Parks Canada cannot rely on solicitor-client privilege to refuse to disclose personal information. He accepts that direct communication between Parks Canada officials seeking legal advice from Department of Justice lawyers would be protected. The Applicant argues, however, that some of the redactions are found in exchanges between Parks Canada managers, on which legal counsel is copied. He says that these records should not be redacted.

(1) Legal Framework

[69] Section 27 of the Act provides:

27. The head of a government institution may refuse to disclose any personal information requested under subsection 12(1) that is subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege.

Le responsable d'une institution fédérale peut refuser la communication des renseignements personnels demandés en vertu du paragraphe 12(1) qui sont protégés par le secret professionnel de l'avocat ou du notaire ou par le privilège relatif au litige.

[70] This provision embodies the protection of solicitor-client privilege and litigation privilege that is now recognized as a fundamental principle of the Canadian legal system: *Blank v Canada*

(*Minister of Justice*), 2006 SCC 39 at para 26 [*Blank SCC*]; *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44 at para 10.

[71] Solicitor-client privilege attaches to “(i) a communication between a solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties” (*Solosky v The Queen*, 1979 CanLII 9 (SCC) at 837).

[72] The broad scope of solicitor-client privilege was defined in *Samson Indian Nation and Band v Canada (C.A.)*, 1995 CanLII 3602 (FCA) at page 769: “ ... it is not necessary that the communication specifically request or offer advice, as long as it can be placed within the continuum of communication in which the solicitor tenders advice; it is not confined to telling the client the law and it includes advice as to what should be done in the relevant legal context.”

[73] Litigation privilege attaches to communications that are necessary to allow a lawyer to prepare their position on any active or contemplated litigation: *Blank SCC* at para 28. It is wider than solicitor-client privilege insofar as it can include communications with third parties: *Blank SCC* at para 27. The underlying idea is that “parties to litigation... must be left to prepare their contending positions in private, without adversarial interference and without fear of premature disclosure” (*Blank SCC* at para 27). The privilege extends to discussions between the parties regarding potential settlement of the litigation.

(2) The Applicant's claims

[74] The Applicant submits that Parks Canada cannot rely on solicitor-client privilege to refuse to disclose personal information about him. He sets out the core of his argument on this point in the following way in his Memorandum of Fact and Law:

40. I argue that communications between Parks Canada managers and solicitors, advocates and notaries were based on documents illustrating instances of “rude”, “disrespectful” and “poor behaviour” attributed to me, or communications related to my application for a review by the Federal Court (T-676-22) for obtaining documents of injurious nature about me, or my harassment and discrimination complaint against Ms. Snaith, or unsubstantiated statements made about me by her, Alana Plummer, or other managers and employees.

41. The evidence describing such behaviours and statements about me, as well as all other documentations related to me, are my personal information (see *Canada Information Commissioner v. Canada*, 2002 and *House of Commons. Standing Committee on Public Accounts*. 1989).

[75] During the hearing the Applicant accepted that solicitor-client privilege would apply to any discussions that related to legal advice about actions by Parks Canada in relation to him or his employment. However, he submitted that the privilege should not be applied to emails between Parks Canada officials where Department of Justice lawyers were simply copied, or to documents that relate to the decision to terminate his employment. The Applicant claims that this is personal information that should be disclosed to him.

(3) Discussion

[76] Under the Act, I am required to examine each claim of solicitor-client privilege to determine whether the information falls within the “continuum of communication” involved in

seeking, obtaining or acting on legal advice. It is well-recognized that there are limits on the extent to which a government institution can invoke solicitor-client privilege: for example, where a Department of Justice lawyer was providing policy guidance and not legal advice, the privilege will not apply. Similarly, policies developed by an institution after it had received legal advice would not, themselves, be subject to solicitor-client privilege (*Canada (Public Safety and Emergency Preparedness) v Canada (Information Commissioner)*, 2013 FCA 104).

[77] I have reviewed each of the documents for which Parks claims solicitor-client privilege. I note that Parks is no longer asserting some claims over portions of certain documents – for example, the subject line of emails where the same subject line appears elsewhere and is not redacted. These claims are no longer in dispute, and Parks has provided these documents to the Applicant with these redactions removed.

[78] In regard to the remaining claims under s. 27 of the Act, I am satisfied that all of the claims properly fall within the categories of solicitor-client and/or litigation privilege. Many of the records contain communications between Parks Canada officials and Attorney General of Canada counsel. These relate to legal advice that was sought, obtained and acted upon, or to litigation between the Applicant and Parks relating to a previous ATIA request. Mr. Patrikeev is correct that some of the documents are emails between Parks Canada staff, where the legal counsel is simply copied. Certain other documents are exchanges between Parks Canada officials and legal counsel is not copied. However, the substance of the redacted portions of all of these documents fall within the category of solicitor-client and/or litigation privilege.

[79] Having determined that the information that has been withheld falls within the exemption, I will address the question of whether Parks acted reasonably in not disclosing this information. In light of the virtually iron-clad protection that is provided to solicitor-client and litigation privileged material in Canadian law, I am satisfied that Parks Canada acted reasonably in invoking the exemption and refusing to disclose the information.

[80] Solicitor-client and litigation privilege protects important interests that underpin our legal system. As explained by Justice Fish in *Blank SCC* at para 26:

The solicitor-client privilege has been firmly entrenched for centuries. It recognizes that the justice system depends for its vitality on full, free and frank communication between those who need legal advice and those who are best able to provide it. Society has entrusted to lawyers the task of advancing their clients' cases with the skill and expertise available only to those who are trained in the law. They alone can discharge these duties effectively, but only if those who depend on them for counsel may consult with them in confidence. The resulting confidential relationship between solicitor and client is a necessary and essential condition of the effective administration of justice.

[81] This privilege applies when government lawyers (or outside counsel) give legal advice to government officials: *Pritchard v Ontario (Human Rights Commission)*, 2004 SCC 31 at paras 19–21[*Pritchard*]. There is no doubt that the documents in this case concern government lawyers giving legal advice to government officials in response to requests for legal advice or to previous litigation between the Applicant and Parks Canada.

[82] In these circumstances, there is no overriding public interest that overrides the protection of solicitor-client privilege. The Applicant is undoubtedly correct when he says that the Act seeks to protect a public interest in disclosure of personal information to the individual, so that

the person can know what information the government holds about them. That includes personal opinions someone expressed about the individual requester. However, that public interest is not sufficient, in itself, to override the protection of solicitor-client and litigation privilege.

[83] I agree with the Applicant's argument that a decision-maker cannot try to escape disclosure merely by including legal counsel in exchanges of information that do not relate to legal advice or litigation. As confirmed by Justice Phelan in *Lafond v Ledoux*, 2008 FC 1369 at para 16: "the cloak of solicitor-client privilege is not an invitation to play 'hide the pea' with the documents at issue."

[84] That said, however, the case-law has repeatedly confirmed the very strong protection that is accorded to information that is covered by solicitor-client and litigation privilege. In *Pritchard* at para 18, the Supreme Court of Canada held that solicitor-client privilege is "nearly absolute" and that it "must be as close to absolute as possible to ensure public confidence and retain relevance" (citing *Lavallee, Rackel & Heintz v Canada (Attorney General)*; *White, Ottenheimer & Baker v Canada (Attorney General)*; *R. v Fink*, 2002 SCC 61 at para 26). The point was expressed in the following way in *Canada (Office of the Information Commissioner) v. Canada (Prime Minister)*, 2019 FCA 95 at para 50:

The Supreme Court has often reiterated the critical importance of the solicitor-client privilege to the proper functioning of our legal system, and has gone as far as stating that it should only be set aside in the "most unusual circumstances" ([*Pritchard*] at para. 17; see also *Alberta (Information and Privacy Commissioner) v. University of Calgary*), 2016 SCC 53, [2016] 2 S.C.R. 555 at para. 34). That being said, a party asserting that a document is privileged bears the onus of establishing the privilege; this onus requires more than a bald assertion of privilege and will only be met if there is sufficient evidence to show that each of the three criteria of the

Solosky test are met (see *Canada (Attorney General) v. Williamson*, 2003 FCA 361 at paras. 11-13).

[85] For the reasons set out above I am satisfied that Parks Canada acted reasonably in refusing to disclose the information.

VI. Conclusion

[86] For the reasons set out above, I am not persuaded by the Applicant's challenge to the redactions Parks Canada applied under ss. 26 and 27 of the Act. I am also not persuaded that Parks Canada failed to conduct an adequate search for relevant records in response to the Applicant's requests. The application will therefore be dismissed.

[87] Parks Canada did not seek its costs, and therefore none will be awarded.

[88] Finally, while I can understand why the Applicant wants to obtain more information about why Parks Canada terminated his employment, the withheld material at issue in this proceeding did not pertain to any such information. It is not the Court's role on this application to assess whatever justification Parks may have for its decision to terminate the Applicant's employment, and so I make no comment on that point.

[89] In closing, I want to acknowledge the time and effort the Applicant devoted to preparing his oral and written submissions. I also acknowledge the assistance the Court received from the written and oral submissions of the Respondent.

JUDGMENT in T-1362-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.
3. No costs will be awarded.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1362-23

STYLE OF CAUSE: MICHAEL PATRIKEEV v PARKS CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JUNE 11, 2024

JUDGMENT AND REASONS: PENTNEY J.

DATED: APRIL 14, 2025

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