Federal Court  Cour fédérale

Date: 20250520

Docket: T-903-24

Citation: 2025 FC 914

Ottawa, Ontario, May 20, 2025

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

JORDAN ASH

Applicant

and

CANADA (MINISTER OF HEALTH)

Respondent

JUDGMENT AND REASONS

I. Overview

[1] After investigation, the Office of the Information Commissioner [OIC] concluded a complaint brought by the Applicant pursuant to paragraph 30(1)(a) of the *Access to Information Act*, RSC 1985, c A-1 [ATIA] asserting that Health Canada [HC] had failed to conduct a reasonable search for requested documents, was not well founded.

[2] Pursuant to subsection 41(1) of the ATIA, the Applicant, who is self-represented in this proceeding, has applied to the Court for review of the matter.

[3] As explained in the reasons that follow, I am satisfied that HC has complied with its obligations under the ATIA. Upon receipt of the request, HC advised the Applicant that the Public Health Agency of Canada [PHAC] might also possess records responsive to the request and suggested the Applicant also direct a request to that institution. HC then undertook a reasonable search of records it controlled and disclosed those responsive to the request. That the Applicant choose not to request records from PHAC, or that the Applicant holds the view that HC should possess the records in issue, does not alter HC's obligations under the ATIA. The Application is therefore dismissed.

II. Background

[4] In April 2023, the Applicant submitted the following access to information request to HC [the Request]:

> "Seeking all individual reports with an outcome of death (all ages, all provinces and territories), submitted by provincial health ministries, hospitals, product manufacturers or any other party, that are causally, indeterminately, inconsistently, unclassifiably [*sic*] or temporally associated with receipt of any COVID-19 vaccine. As of writing, there should be *at least* 427 such individual reports per Health Canada's public statistics available at https://health-infobase.canada.ca/covid-19/vaccine-safety/ under 'Deaths'. Dates: 1 Mar 2020 - present."

[5] HC acknowledged receipt of the Request in early May 2023. At that time, HC also advised the Applicant that PHAC was likely to have relevant documents and advised the Applicant to also submit a request to PHAC.

[6] HC provided a substantive response to the Applicant on November 14, 2023, in which it released 236 reports of adverse reactions resulting in death associated with COVID-19 vaccines. The November response followed a complaint from the Applicant to the OIC relating to the timeliness of HC's handling of the Request.

[7] On November 23, 2023, Mr. Ash initiated a further complaint with the OIC pursuant to paragraph 30(1)(a) of the ATIA [November 2023 Complaint]. Relying on publicly available statistics indicating the Federal Government was in receipt of 427 individual reports of deaths that might have a connection to the COVID-19 vaccine, the Applicant took the position that HC's response to the Request was incomplete.

[8] The November 2023 Complaint is not contained in the record before me. It is described by the OIC in the Notice of Intent to Investigate as an allegation that HC "did not conduct a reasonable search for records in response to the above noted access request(s)."

III. The Information Commissioner's Final Report

[9] On March 25, 2024, the OIC issued the Information Commissioner's [IC] final report [Final Report] in response to the November 2023 Complaint. The IC found that HC undertook a reasonable search of its records to respond to the Request. Specifically, the Final Report states

that “Health Canada demonstrated that the additional records sought by the complainant were under the control of the Public Health Agency of Canada and explained why Health Canada did not have control of those records.” The OIC concluded the complaint was “not well founded.”

IV. Legislative Framework

[10] Section 4 of the ATIA provides that Canadian citizens and permanent residents have “a right to and shall, on request, be given access to any record under the control of a government institution.” Section 2 of the ATIA defines a “government institution” as follows:

government institution means	**institution fédérale**
a) any department or ministry of state of the Government of Canada, or any body or office, listed in Schedule I, and	a) Tout ministère ou département d’État relevant du gouvernement du Canada, ou tout organisme, figurant à l’annexe I;
(b) any parent Crown corporation, and any wholly-owned subsidiary of such a corporation, within the meaning of section 83 of the *Financial Administration Act*; (*institution fédérale*)	b) toute société d’État mère ou filiale à cent pour cent d’une telle société, au sens de l’article 83 de la *Loi sur la gestion des finances publiques*. (*government institution*)

[11] The ATIA requires that the Information Commissioner receive complaints and, where appropriate, investigate and report on them. Where a complaint is well-founded, the IC has the authority to make any order considered appropriate in respect of an applicable record (ATIA sections 30 – 37).

[12] Subsection 41(1) further provides that where a complaint has been submitted to the IC and a report responding to the complaint has been received, the complainant may apply to the Court for review:

41 (1) A person who makes a complaint described in any of paragraphs 30(1)(a) to (e) and who receives a report under subsection 37(2) in respect of the complaint may, within 30 business days after the day on which the head of the government institution receives the report, apply to the Court for a review of the matter that is the subject of the complaint.	41 (1) Le plaignant dont la plainte est visée à l'un des alinéas 30(1)a) à e) et qui reçoit le compte rendu en application du paragraphe 37(2) peut, dans les trente jours ouvrables suivant la réception par le responsable de l'institution fédérale du compte rendu, exercer devant la Cour un recours en révision des questions qui font l'objet de sa plainte.

[13] Sections 49 – 50.2 set out the remedies available to the Court where an Application is brought pursuant to section 41.

V. The Health Portfolio

A. *General*

[14] The Health Portfolio is described at Exhibit "A" to the May 27, 2024, Affidavit of Carrie-Ann Wilson [Wilson Affidavit] where it is stated that the Minister of Health is "responsible for maintaining and improving the health of Canadians"; Health Canada, the Public Health Agency of Canada, the Canadian Institutes of Health Research, the Patented Medicine Prices Review Board, and the Canadian Food Inspection Agency all support the Minister in fulfilling that role.

B. *The treatment of ATIA requests within the Health Portfolio*

[15] Each of the five institutions within the Health Portfolio are separately identified in Schedule I of the ATIA and therefore individually fall within the meaning of "government institution" as that term is used in the ATIA. In addition, pursuant to section 95 of the ATIA, the powers, duties, and functions of the Minister under the ATIA, as they relate to HC and PHAC, have been separately delegated to HC officials and PHAC officials (Wilson Affidavit, Exhibits "C" and "D").

[16] The Respondent acknowledges that HC and PHAC have entered into a shared services agreement that covers many internal services, including access to information and privacy [ATIP] services. However, the processing and treatment of ATIP requests submitted to HC and PHAC remain separate and independent. Access to information requests received by those government institutions within the Health Portfolio are limited to a review of those records under the control of the specific government institution (Wilson Affidavit, paras 12-13).

C. *HC and PHAC roles in monitoring adverse events following immunization*

[17] In fulfilling their respective mandates, both HC and PHAC monitor Adverse Events Following Immunization [AEFI]. Each operates unique programs to monitor the quality, safety, and effectiveness of vaccines.

[18] HC's vaccine monitoring program is the Canada Vigilance Program [CVP], and it receives AEFI reports from manufacturers, Canadian hospitals (with some non-specified

exceptions), healthcare professionals, and consumers as required by the *Food and Drugs Act*, RSC 1985, c F-27 and the *Food and Drugs Regulations*, CRC, c 870. HC will also review Periodic Safety Update Reports/Periodic Benefit-Risk Evaluation Reports, Risk Management Plans, and other safety assessments submitted by manufacturers (Wilson Affidavit, paras 8-10).

[19] The PHAC's vaccine monitoring program is the Canadian Adverse Events Following Immunization Surveillance System [CAEFISS]. CAEFISS receives AEFI reports from other federal institutions, as well as provincial and territorial governments; this reporting is generally provided on a voluntary basis. AEFI reports submitted to PHAC are not accessible to HC, and PHAC does not share AEFI reporting with HC (Wilson Affidavit, paras 9-11).

VI. Issues

[20] As I understand the Applicant's position, he does not argue that HC failed to undertake a reasonable search for relevant records under its control, or that HC improperly failed to disclose records within its control. Instead, the Applicant argues that HC failed to conduct a reasonable search because it did not include records HC should possess and control to fulfill its mandate of monitoring vaccine safety and protecting the public. However, those records are under the control of a separate government institution, namely, PHAC.

[21] In effect, the Applicant takes the position that because HC is not in possession of all AEFI reports it is implicitly violating its duty. The Applicant describes that duty as being to "[protect] human life from potentially dangerous pharmaceutical products (by regulating them)."

[22] The Applicant seeks the extraordinary remedies of:

A. A writ of *mandamus*, requiring HC to obtain the missing records from PHAC and to then produce them to the Applicant.

B. A declaration to the effect that government institutions, when responding to an access request, are required to obtain documents that under law should be in the possession of the government institution.

[23] The Respondent submits this Application raises two issues:

A. Does HC have control over the records in issue?

B. If so, is the Applicant entitled to extraordinary relief under section 18 of the *Federal Courts Act*, RSC 1985, c F-7 [FCA]?

[24] I have framed the issues as follows:

A. What is the nature and scope of an application brought pursuant to subsection 41(1) of the ATIA?

B. Has HC complied with its obligations under the ATIA?

VII. Standard of Review

[25] An application pursuant to subsection 41(1) of the ATIA is to be heard and determined as a new proceeding (section 44.1). In conducting a *de novo* review "the Court 'steps into the shoes' of the initial decision-maker and determines the matter on its own" (*Suncor Energy Inc v*

Canada-Newfoundland and Labrador Offshore Petroleum Board, 2021 FC 138 at para 64; see also *Vavilov v Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65 at para 17). The Court treats the application as a new proceeding where the parties may present new evidence and arguments (*Matas v Canada (Global Affairs)*, 2024 FC 88 at para 12). In this instance, HC has the burden of establishing that it has complied with its obligations under the ATIA (s 48(1)).

VIII. Preliminary matter

[26] Immediately prior to the hearing of this matter, the Applicant served and filed an "Applicant's Book of Authorities." The "authorities" book is in fact a book of documents consisting of two Parliamentary documents – written replies to questions on the Order Paper – and a package of documents released by HC in response to an unrelated 2022 access to information request.

[27] The Respondent objects to the filing of this collection of documents. Citing the volume of the material involved (in excess of 450 pages), the last-minute filing, and noting the absence of an affidavit addressing the relevance of the material, the Respondent argues that the Court should not consider the documents and that to do so would be unfair.

[28] The Applicant acknowledges that the filing occurred at the last-minute and that some prejudice may result. He reports that the material only recently came to his attention, but failed to provide any details as to precisely when he became aware of the material. He indicates that certain statements made within the documents affirm his view of the HC mandate.

[29] The late filing of a book of documents – supported by only general oral submissions as to relevance – is unfair to the Respondent and undermines the Court's ability to perform its role. On this basis alone, I have determined the Applicant's "Book of Authorities" will not be considered. In addition, and as discussed below, I have determined that the issue of mandate is one that is not properly before the Court on this Application. The documents are also of limited relevance.

[30] The contents of the Applicant's late filed "Book of Authorities" have not been reviewed or considered.

IX. Analysis

A. *What is the nature and scope of an application brought pursuant to s. 41(1) of the ATIA?*

[31] In *Blank v Canada (Justice)*, 2016 FCA 189, the Federal Court of Appeal describes the Court's review authority under section 41 of the ATIA as being "narrowly circumscribed" and, with the possible exception of egregious circumstances of bad faith, confined to the power to order access to records when denied in a manner contrary to the Act:

> [36] Once again, the primary oversight role under the Act remains with the Commissioner. The Federal Court's role is narrowly circumscribed; section 41, when read in conjunction with sections 48 to 49, confines its reviewing authority to the power to order access to a specific record when access has been denied contrary to the Act. 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. On the basis of the confidential record that is before me, I have been unable to find evidence that would lead me to believe, on reasonable grounds, that there has been any attempt to tamper with the integrity of the records. Accordingly,

> the Judge did not err in concluding that he lacked jurisdiction to order a further search of the records. [Emphasis added.]

[32] In this proceeding, the Applicant invites the Court to consider, and potentially define, the nature and scope of the HC mandate. The Applicant then requests that the Court compel HC to produce records in response to the Request – records that the Applicant acknowledges are not within the possession or control of HC – on the basis that HC's mandate requires those records to be within the possession and control of HC.

[33] In much the same way that it is not for the Court, except possibly in the most egregious circumstances of bad faith, to order and supervise the gathering of the records by a government institution, it is not the Court's role, except perhaps if presented compelling evidence of bad faith, to determine the mandate of individual government institutions or declare what records a specific government institution should control or possess to fulfill that mandate when considering an Application under section 41 of the ATIA.

[34] In this instance, nothing suggests HC has acted in bad faith. Instead, the record discloses that HC advised the Applicant of the possible existence of additional records responsive to the Request, advised the Applicant which government institution had control over those additional records should they exist, and suggested that a separate request be made to that government institution.

[35] I acknowledge the Applicant's *bona fide* concerns with what he perceives as non-centralized AEFI reporting within the Health Portfolio. I also note that, based on the very limited

evidentiary record before me, the Applicant's mandate position appears to be reflective of the Applicant's interpretation of generalized statements relating to the primary objective of Canadian health care policy (see *Canada Health Act*, RSC 1985, c C-6, s 3) and his personal views or impressions as to how information is received, used, and shared by those government institutions within the Health Portfolio. However, as noted above, these are not matters for the Court to consider and determine on this Application.

[36] Furthermore, the extraordinary remedies identified in subsection 18(1) of the FCA are not available to the Applicant in this proceeding; subsection 18(2) of the FCA is clear in this respect. The extraordinary remedies, which include a writ of *mandamus* and a grant of declaratory relief, may only be obtained on an application for judicial review brought under section 18.1 of the FCA. As noted above, this Application has been brought under subsection 41(1) of the ATIA, not section 18.1 of the FCA.

[37] Nor could the Application be brought under section 18.1 of the FCA. This is because section 18.5 precludes judicial review by this Court where there exists a statutory right of appeal to the Court. The jurisprudence interpreting section 18.5 acknowledges the section is not limited to judicial appeals but extends to and includes any available and meaningful remedy allowing a decision to be challenged (*Canadian National Railway Company v Scott*, 2018 FCA 148 at para 45).

[38] This Application, under section 41 of the ATIA, provides the Applicant with an available and meaningful remedy. Judicial review and, by extension, the extraordinary remedies are therefore unavailable to the Applicant in this matter.

[39] The Court's authority on this Application is confined to determining whether access to records responsive to the Request has been denied by HC contrary to the ATIA and, if so, to order access to those records.

B. *Has HC complied with its obligations under the ATIA?*

[40] The Applicant does not argue that HC failed to identify records within its possession and control, or that it improperly refused to disclose responsive records within its control. During oral submissions, the Applicant confirmed that he does not take the position that HC undertook an unreasonable search of the records or that HC improperly failed to release records that it controlled.

[41] The Applicant's submissions do suggest that the Applicant is of the view that HC was required to obtain and release responsive records in the possession or control of a separate government institution – i.e., PHAC. I disagree.

[42] HC and PHAC are distinct government institutions and officials within those respective institutions have been separately delegated authority under the ATIA. As this Court has previously noted, "separate government institutions, each individually enumerated in Schedule I, [cannot] simply be treated as one amalgamated government institution just because they are

placed under the same Minister as part of a portfolio" (*Yeager v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 330 at para 54). The Federal Court of Appeal has held this finding to be consistent with the teachings of Supreme Court of Canada in *Canada (Information Commissioner) v Canada (Minister of National Defence)*, 2011 SCC 25 (*Yeager v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 98 at para 15).

[43] The ATIA does not require HC to seek out records it does not control. In responding to the Request, HC undertook a reasonable search of those records within its control and disclosed responsive records identified during that search. HC further notified the Applicant that a separate government institution might also possess records relevant to the Request.

[44] In the circumstances, I am satisfied that HC has complied with its obligations under the ATIA.

X. Conclusion

[45] The Application is dismissed.

[46] The Respondent has not sought costs, and none are awarded.

JUDGMENT IN T-903-24

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. No award of costs.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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