Federal Court  Cour fédérale

Date: 20250529

Docket: T-2362-23

Citation: 2025 FC 974

Ottawa, Ontario, May 29, 2025

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

GLEN CARTER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Glen Carter [Mr. Carter], seeks judicial review of the January 14, 2022, decision of the Department of Justice Canada, in which the Department of Justice advised Mr. Carter that it did not possess the information or records that Mr. Carter requested pursuant to section 41 of the *Privacy Act*, RSC 1985, c P-21 [the Act].

[2] Mr. Carter's request for information from the Department of Justice is very similar to the requests for information he made to the Canadian Security Intelligence Service [CSIS]. The

decision of CSIS is the subject of Mr. Carter's Application for Judicial Review in T-776-23 (2025 FC 973). Although the decision maker differs, as do the legal issues on judicial review, there is considerable overlap and repetition in Mr. Carter's submissions. The Court's judgment in both applications repeats some of the same background, but each judgment is distinct.

[3] Mr. Carter's requests for personal information stem from his several allegations of abusive conduct by the City of Calgary's Corporate Security unit, Calgary Police Service, the "corporate media", United Kingdom [UK] national security agencies, the Federal Bureau of Investigation [FBI] and CSIS, as well as this Court (which relates to his related Application for Judicial Review in T-776-23). It appears that the origin of Mr. Carter's concerns relates to some incident and the records that may have been generated about that incident by the Calgary Police Service and other municipal organisations dating back many years. Mr. Carter believes that the same records or information were shared with the other agencies he notes in his request. Mr. Carter also asserts that the Department of Justice possesses or is responsible for the records of Alberta Justice, CSIS, the Public Prosecution Service of Canada [PPSC] and others.

[4] Among other things, Mr. Carter asserts that there is an "implied" *Canada Evidence Act*, RSC, 1985, c C-5 certificate prohibiting disclosure of the information he believes exists. Mr. Carter also asserts in both applications that "secret evidence" has been withheld from him. This refers to the confidential affidavit filed by the Respondent in T-776-23 in accordance with the Order of Justice Lafrenière dated November 3, 2023. Mr. Carter assumes that this affidavit includes the records he has been seeking all along regarding the various allegations he believes have been made against him.

[5] Although the only issue on judicial review focuses on the Department of Justice's response to Mr. Carter's request for records indicating that it does not hold the records he seeks, Mr. Carter seeks a range of relief including: "an Order of *certiorari* directing the rectification, blocking or destruction of personal data about the Applicant, once access to the secret evidence on file for T-772-23 has been granted"; "[f]or this Court to direct the Rt. Hon Minister to seek a review at the Federal Court of Appeal for the security certificate pled in the application"; and, other relief the Court deems to be "just and appropriate in view of the pressing circumstances" and costs.

[6] At the hearing of both applications, Mr. Carter noted his dissatisfaction and alleged unfairness. He commented that the Court's questions to him were challenging, inappropriate and demonstrated that the Court favours the position of the Respondent. The Court acknowledges that it posed several questions to Mr. Carter in an attempt to focus his arguments on the legal issues before the Court, albeit without much success. The Court also acknowledges that it demonstrated its irritation with Mr. Carter's responses. The Court notes that the hearing of both applications provided Mr. Carter approximately 4 hours to make his submissions. The Court conveyed to Mr. Carter that the Court would consider—and the Court has considered—all the written and oral submissions made by Mr. Carter and by the Respondent that were properly filed on their respective records, and that the Court would apply the law to the relevant evidence on the record. Mr. Carter will unfortunately not be satisfied with the Court's decisions.

[7] For the reasons elaborated below, the Application for Judicial Review must be dismissed. The Department of Justice's response that it does not hold the records that Mr. Carter seeks is

justified; it is both a reasonable and correct response. Mr. Carter disputes that the Department of Justice conducted a complete search for the records. He fails to acknowledge the actual wording of the Department of Justice's response to him and the response to the Office of the Privacy Commissioner, the latter of which clearly stated that the search was not completed (i.e. conducted), because the Department of Justice does not have the type of records requested. The Court must rely on the evidence on the record and not on Mr. Carter's recollection of the response provided to him or his interpretation that "no search… was completed" means that it was not finished or not thorough.

[8] Mr. Carter has not provided any evidence to show that the records he believes to exist would fall within the responsibility of the federal Department of Justice to maintain. The *Department of Justice Act*, RSC, 1985, c J-2 and publicly available open-source information about the mandate of the Minister of Justice and the Department of Justice and about the constitutional division of powers should further convince Mr. Carter that his request for records—if such records ever existed—was misdirected.

[9] Although Mr. Carter disputes that there is any obligation on him to provide some evidence to establish that the Department of Justice would hold the records he requested, suggests that the Department of Justice should have provided an index of the data banks it maintains to assist him, and argues that it is impossible for him to know what records the Department of Justice maintains, his theories do not reflect the law and do not relieve him of his evidentiary burden or permit him to rely on his speculation that records might exist and might be held by the Department of Justice. Mr. Carter's theory about why the Department of Justice

should have the records he believes exist, and that the Department of Justice had an obligation to seek further clarification from him reflect only his own view about the way things should be, not the way they are.

[10] The bottom line is that an assertion that records might be held by a government institution is simply not enough to require that institution to search aimlessly for records that it knows it does not hold.

[11] The Respondent submits that Mr. Carter's applications in this Court appear to be yet another attempt to pursue his unsuccessful litigation against the Calgary Police Service and other provincial organizations that have already been determined in the Court of King's Bench of Alberta and constitute a collateral attack on those decisions. The Court need not comment on this submission, despite that Mr. Carter's own submissions acknowledge that he has pursued over 86 access to information requests and reviews of refusals and other litigation, without success. In this Application, the Court has focussed on the issue before it regarding the Department of Justice's response to Mr. Carter's request for information pursuant to the Act.

I. Background

A. *Mr. Carter's Request for Information and the Response of the Department of Justice*

[12] On December 1, 2021, Mr. Carter submitted a *Privacy Act* request for information to the Department of Justice, which stated:

> A file that may be reasonably expected to contain documents engaging national security privilege which includes files with

classified information (generally Secret or above) or documents from CS1S; and files with information from foreign law enforcement partners (the US' FBI, the UK's Mi5, Met Police and Serious Organised Crime Agency, that is). In essence, I am seeking access to suspected Public Prosecution Service of Canada (PPSC) documents or prosecution records featured at the City of Calgary Retention and Disposal Schedule containing a suspected administrative decision affecting me.

Since I was excluded from a secret proceeding which is believed to have taken place in 1994 or thereabouts and since this decision is believed to have resulted in the limitation of a liberty interest and a curtailment of my personal rights and freedoms, I seek access to same for the sake of vindicating section 8 and 24 Charter rights, and for the sake of obtaining judicial relief for the suspected prosecution raised against me. Since under the auspices of an investigation I was racially abused, persecuted, mentally tormented, terrorized, harassed and villifed, I am seek access to materials needed to obtain judicial relief from the longstanding withholding of my rights. In addition to the the personal information that I am seeking to access, I am also interested in accessing any s.38 Canada Evidence Act certificate of the Attorney General directly affecting my procedural rights in a significant way.

Any national security certificate imported from the United Kingdom that served to affect my substantive rights in a significant way and a possible National Security Letter from the Federal Bureau of Investigation demanding the production of certain documents and materials relating to me, I would also interested in inspecting. Further, I am seeking to inspect the fruits of the longstanding investigation of me under a Stinchcombe standard of disclosure, so that I can clear my name and ask a judge to conduct a mandatory review this long inquiry for lawfulness. In essence, I am seeking to access the full contents of a public prosecution file that the City of Calgary was able to import in its Retention and Disposal Schedule.

Since I was not provided with any opportunity over a period of over twenty years to learn of the case that was secretly made against me, I am seeking access to documents and materials that will assist me in obtaining judicial relief for the longstanding state interference with protected rights.

[*sic* throughout] [Emphasis added.]

[13] On January 14, 2022, the ATIP Coordinator at the Department of Justice responded advising that "the Department of Justice would not have records in response to your request…You may wish to submit your request to Public Prosecution Service of Canada…".

[14] On January 26, 2022, Mr. Carter submitted an identical request for information to the PPSC. On February 22, 2022, the PPSC responded that it did not have records relevant to the request.

B. *The Office of the Privacy Commissioner's decision that Mr. Carter's complaint is not well-founded*

[15] On January 17, 2022, Mr. Carter filed a complaint with the Office of the Privacy Commissioner with respect to the response of the Department of Justice.

[16] On March 7, 2022, Mr. Carter filed a complaint with the Office of the Privacy Commissioner with respect to the response from PPSC.

[17] On March 27, 2023, in response to the request of the investigator at the Office of the Privacy Commissioner, the Acting Director for the Department of Justice Access to Information and Privacy Office [Acting Director] advised that it does not control or possess, and is not responsible for the type of records sought by Mr. Carter:

> No search for the records was completed. This is because the nature of the records sought (PSPC/Calgary prosecution files) are not held by Justice Canada. Justice Canada is neither in control of, nor responsible for the processing of prosecution records belonging to the Public Prosecution Service of Canada (PPSC) and/or the City of Calgary. Therefore we were unable to provide access under

> 12(1)(b) of the Privacy Act. In our response to the requester we did suggest that the requester redirect his request to the appropriate institution.

[18] The affidavit of the Acting Director confirms that the response noted above was provided to the Office of the Privacy Commissioner.

[19] On June 23, 2023, the Office of the Privacy Commissioner notified the Department of Justice of their investigation; there was no breach of the Act and Mr. Carter's complaint was not well-founded. The Privacy Commissioner found that there was no reason to doubt the veracity of the Department of Justice's response or the thoroughness of its searches for information.

[20] On August 21, 2023, the Privacy Commissioner notified Mr. Carter that his complaint against the Department of Justice was not well-founded and conveyed the same information—that there was no reason to doubt the veracity of the Department of Justice's response or the thoroughness of its searches for information.

[21] On August 22, 2023, the Privacy Commissioner notified Mr. Carter that his related complaint against the PPSC was not well-founded.

[22] On November 8, 2023, Mr. Carter filed his Notice of Application for Judicial Review with respect to the decision of the Department of Justice.

C. *Mr. Carter's motions, informal motions and the Court's Directions*

[23] On June 12, 2024, Associate Judge Ring determined Mr. Carter's motion seeking to amend his Notice of Application, consolidate this Application with his application for judicial review in T-776-23, and seeking an order for the Court to draw an adverse inference against the Respondent for failing to file an affidavit.

[24] Associate Judge Ring granted Mr. Carter's motion to amend his Notice of Application to correct a mistaken date, on consent of the Respondent. Associate Judge Ring dismissed the motion for consolidation, noting that although the applications were similar, the decision makers differed as did the grounds for the decisions. Associate Judge Ring ordered that the two applications be heard at the same court sitting by the same judge.

[25] Associate Judge Ring dismissed Mr. Carter's motion seeking that an adverse inference be drawn, noting among other reasons that questions regarding the admissibility, weight of evidence, or any inferences to be drawn are matters reserved for the Judge determining the merits of the Application, not for determination on an interlocutory motion.

[26] On July 2, 2024, Mr. Carter filed an amended Notice of Application.

[27] On September 16, 2024, this Court determined Mr. Carter's motion seeking an extension of time to serve and file his Application Record and to amend his previously served Record to address procedural irregularities in order to comply with Rule 309 of the *Federal Courts Rules*,

SOR/98-106 [Rules]. This Court noted that the timelines for the filing of the Application Record were somewhat confusing and that some irregularities in that record continued. The Respondent consented to the late filing of the Application Record and proposed that the proper version as set out in Annex A of the Respondent's Motion Record be accepted for filing. This Court found that the Amended Notice of Application and the Application Record, as set out in the Respondent's Motion Record, should be accepted for filing, along with the Applicant's affidavit sworn November 8, 2023, and his Memorandum of Argument dated August 11, 2024.

[28] On March 10, 2025, this Court granted Mr. Carter's informal motion for an adjournment of the hearing of the Applications for Judicial Review in T-776-23 and T-2362-23, originally scheduled for April 15, 2025, again noting the need for both applications to be determined expeditiously and that no further adjournments would be granted.

[29] On March 11, 2023, this Court refused Mr. Carter's request that both applications (T-776-23 and T-2362-23) be heard on different dates, noting that this was not feasible or practical and would be contrary to the Order of Associate Judge Ring. This Court reiterated that both applications would proceed on May 14, 2025.

[30] On April 7, 2025, in response to Mr. Carter's request for an outline of the hearing and the duration of each, this Court directed that Mr. Carter bears the burden of establishing his allegations, the Respondent would then respond, Mr. Carter would have an opportunity to reply, and that the time scheduled for the hearing would be allocated fairly with a short break between the hearing of T-776-23 and T-2362-23.

[31] On April 17, 2025, in response to Mr. Carter's request to file an additional affidavit to describe challenges he had faced in preparing for the hearing, this Court directed that no further affidavit would be accepted and that "Applications for Judicial Review challenge specific decisions and additional information unrelated to those decisions is not relevant". However, this Court agreed that Mr. Carter could make brief oral submissions regarding the challenges he had faced in preparing for the hearing, not to exceed five minutes.

[32] On May 13, 2025, on the eve of the oral hearing, Mr. Carter attempted to file a document he characterised as a "compendium". He attempted to file a similar "compendium" in T-776-23. The Court directed that the document not be accepted for filing at that time and that the issue of its admissibility would be addressed at the oral hearing.

[33] At the oral hearing, Mr. Carter noted that he faced challenges in preparing, including his inability to retain counsel, who first expressed interest, yet later refused to assist him without explanation. This is unfortunate because independent legal representation may have been more persuasive in advising Mr. Carter that the Court must focus on the legal issues in the Application and apply the law to relevant evidence on the record.

[34] Mr. Carter also noted challenges that he faced in preparing due to insufficient time. However, this concern overlooks that Mr. Carter filed his Notice of Application in 2023, and subsequently filed several motions (some of which were filed in the related T-776-23), the Respondent's Record was filed in August 2024, which outlined the legal issues in this Application, and the Respondent assisted in ensuring that Mr. Carter's Record met the

requirements of the Rules so that it could be filed and the next steps taken. Mr. Carter filed his written submissions on September 16, 2024. By way of several Directions, the Court noted the need to determine the Applications expeditiously once all the documents were filed; the original hearing date of April 15, 2025, was set down in December 2024 and the Court subsequently granted Mr. Carter's request for an adjournment of a further month.

II. Preliminary Issue: Should the Compendium be accepted for filing?

[35] The Court's Consolidated General Practice Guidelines permit that a Compendium be filed in an application but set out the scope of a compendium and the requirement that it be provided at least three days before the hearing. Paragraph 70, states:

> For the hearing on the merits of an application (in both T-files and IMM files), parties are encouraged in appropriate cases (such as where the record is large) to prepare a short compendium containing key excerpts from their record on which they intend to rely at the hearing. When a compendium is prepared, a copy shall be provided to both the Court (submitted electronically via the E-filing portal) and opposing counsel no later than three (3) business days before the hearing. For actions, the topic of a compendium should be discussed at the pre-trial conference.

[36] As noted above, Mr. Carter attempted to file a 90-page document, which he characterised as a compendium in this Application. Mr. Carter also attempted to file a similar document as a compendium in T-776-23. Both documents appeared to be cut and pasted from other sources, including articles, commentaries, other judgments and textbooks, without sufficient attribution or citation.

[37] The document does not include page numbers or headings to relate the content to the relevant issues. The font changes throughout. It is not apparent where the information originates, although Mr. Carter advised that it was not generated by Artificial Intelligence.

[38] The document sought to be submitted in this Application is similar to the document sought to be submitted in T-776-23, which includes references to issues, concepts and principles that are not relevant to that application. The document in this Application does reiterate some of the allegations and arguments on Mr. Carter's Application Record, including about the origin of his complaints against the City of Calgary and the Calgary Police Service. However, it also includes many references to irrelevant matters and inapplicable legal concepts and provisions including section 38 of the *Canada Evidence Act*, (applications to prohibit the disclosure of sensitive or potentially injurious information in a proceeding pursuant to section 38) intelligence as evidence, types of evidence in criminal matters, the open court principle, "suspect profiles" that the Calgary Police Service creates in response to incoming intelligence about a person of interest, and that the Court should quash the security certificate he suspects exists about him. Mr. Carter also alleges, among other things, that foreign agencies hold records about him, that the Royal Bank has withheld records from him and that a Charter of Digital Rights should be pursued. The document does not address the issue of the Department of Justice's response that it did not have any records sought and would not have records of the type sought.

[39] Mr. Carter contends that the document should be admitted and considered by the Court because it bolsters his arguments without raising new arguments. Mr. Carter contends that he prepared the document for the oral hearing but was denied the opportunity to refer to its contents.

[40] Although the document was not filed three days before the hearing and is not short, contrary to the Practice Guidelines, the Court's key concern, as it is with respect to the similar document filed in T-776-23, is about its content. The document does not relate with any specificity to Mr. Carter's submissions, the relevant legal issues regarding the Department of Justice's response, or to the evidence on the record nor does it excerpt or point the Court to documents that were properly filed and are on the record of the Court, as a proper compendium would do.

[41] The Court finds that the document fails to comply with the Practice Guidelines for a Compendium. The Court further finds that the document does not assist Mr. Carter or this Court in addressing the legal issues on this Application. The document recites the allegations that underly Mr. Carter's request for information, which are contextual and not supported by any evidence, and the references to legal concepts are not applicable and not entirely accurate and/or misunderstood.

[42] The Court notes that it was required to read the proposed compendiums in both this Application and in T-776-23 for the purpose of determining their admissibility. Therefore, in this context, the documents, which Mr. Carter made efforts to prepare, have not been ignored by the Court, but they are clearly not admissible.

III. The Applicant's Submissions

[43] Mr. Carter alleges that he has been subjected to years of surveillance, primarily from the Calgary Police Service (if the Court properly understands the context) arising from allegations of

"breaches of security" that were not disclosed to him. He asserts that he was subjected to covert surveillance, searches, racial abuse, harassment, and restrictions on his liberty dating back to the early 1990s and alludes to "secret proceedings" and the involvement of foreign security agencies. He asserts that the City of Calgary "Corporate Security" denied him access to records he sought about alleged "breaches of security". He equates "breaches of security" to national security.

[44] Mr. Carter submits that this surveillance amounts to "artificial detention" and "technological imprisonment" resulting in the deprivation of his liberty in violation of his rights under the *Canadian Charter of Rights and Freedoms,* Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

[45] Mr. Carter claims that other agencies, including CSIS, given their responsibility for national security investigations, would hold the same records about him or would have shared their records with the City of Calgary and with the Department of Justice.

[46] Mr. Carter challenges the Department of Justice's refusal to disclose personal information allegedly related to secret investigations and decisions affecting his rights over decades. He alleges that his *Charter* rights, in particular sections 7, 8, and 24, were violated. Mr. Carter submits that without the information he seeks from various sources, he will never be able to vindicate himself and that his *Charter* rights will continue to be infringed.

[47] As noted above, Mr. Carter also requested the same or similar records that he believes exist from CSIS. CSIS's decision is the subject of Mr. Carter's Application for Judicial Review in T-776-23.

[48] Mr. Carter also asserts that there is an "implied" certificate issued by the Attorney General of Canada pursuant to section 38.13 of the *Canada Evidence Act*, RSC, 1985, c C-5 to shield government misconduct. In response to the Court's questions regarding why the *Canada Evidence Act* would apply, Mr. Carter offered the theory that the *Canada Evidence Act* is embedded in the application of the *Privacy Act* and that records cannot be withheld pursuant to the *Privacy Act* without conducting the balancing of interests of public disclosure versus the protection of injurious information, as would be required pursuant to section 38.06 of the *Canada Evidence Act*.

[49] In his written submissions, Mr. Carter does not address the fundamental issue in this judicial review, which focuses on the Department of Justice's response that it does not possess the records he seeks.

[50] In his oral submissions, Mr. Carter notes that the Department of Justice advised him that he should pursue his request with PPSC, and he did so. He argues that the response from PPSC referring him back to the Department of Justice means that the Department of Justice must have the records he wants. He contends that data from the Calgary Police Service is sent to Calgary's Corporate Security unit, which then uses it for continuous covert surveillance. As noted, he

contends that this information is shared with many other agencies, including the Department of Justice.

[51] Mr. Carter's theory is that the Department of Justice would possess records regarding the Calgary Police Service and also any CSIS records, including because the Minister of Justice is responsible for a range of justice and prosecutorial issues and is also responsible for seeking information from the UK's MI5 pursuant to the Mutual Legal Assistance Treaty.

[52] Mr. Carter interprets the Department of Justice's response to the Office of the Privacy Commissioner that states "No search for the records was completed" [emphasis added] as meaning that the search was not "complete", i.e. not thorough. Mr. Carter does not acknowledge the wording of the response which explains why the search was not "completed".

[53] Mr. Carter contends that the Department of Justice advised him that it did not "complete" the search for the records he requested and, argues that the Court cannot determine whether the refusal to provide the records is reasonable. He also argues that because no statutory exemptions were cited as the reason for refusing to provide the records, the Court cannot determine if exemptions were properly applied. He submits that a response that no records exist creates a "grey area" preventing the Court from determining if the Department of Justice's refusal is reasonable.

[54] As noted above, Mr. Carter also disputes that he bears the burden of establishing that the records he seeks would be held by the Department of Justice or that he had any obligation to

identify where such records may be located, as required by subsection 12(1)(b) of the Act. He disputes the Respondent's argument that he bears the burden and suggests that the Respondent is evading its own responsibility. He submits that he cannot be expected to know what records the Department of Justice holds given that it does not provide an index of databases.

[55] Mr. Carter submits that his suspicion should be enough to compel the Department of Justice to search for records.

[56] The Court repeatedly questioned why the Department of Justice would be responsible for maintaining records regarding police investigations at the municipal level, records held by CSIS, prosecutions conducted by PPSC, an independent federal agency, or others. Mr. Carter responded that there is interconnectedness among federal and other agencies, and it was not possible for him to know what the Department of Justice is responsible for given the size of that Department.

[57] In response to the Court's questions about whether he considered the mandate of the Department of Justice, Mr. Carter acknowledged that he did not research the mandate. Instead, Mr. Carter argued that the Department of Justice failed in its duty to assist him in his request for information by not seeking clarification about what he really wanted in order to better identify the source of the records.

[58] Mr. Carter also argues that the Office of the Privacy Commissioner erred in finding that there was no reason to doubt the response of the Department of Justice.

[59] Mr. Carter cites jurisprudence relating the informational privacy, deprivation of liberty, disclosure obligations in criminal proceedings, and Canada's international human rights obligations.

[60] Mr. Carter further submits that the Respondent has opposed all his motions and that the Court has repeatedly sided with the Respondent, including by awarding the Respondent costs. Mr. Carter argues that this is unfair and that no costs should be awarded against him on this Application.

IV. The Respondent's Submissions

[61] The Respondent notes that this Application is only with respect to the decision of the Department of Justice, not that of PPSC.

[62] The Respondent notes that this Court has the jurisdiction to review refusals to provide information based on the non-existence of the records. In such cases, an applicant must provide admissible evidence to establish that the records sought exist and are being withheld; a mere suspicion by an applicant is not sufficient.

[63] The Respondent submits that Mr. Carter has not met this evidentiary burden to establish that records exist within the Department of Justice. The Respondent notes that the only evidence provided by Mr. Carter is his affidavit, which alleges assaults at Calgary transit stations and actions by Calgary Police Service and Calgary Public Library staff and which have no

connection to the federal Department of Justice. Mr. Carter's suspicion or belief that records exist, without any foundation for such a belief, is not sufficient.

[64] The Respondent points to paragraph 12(1)(b) of the Act, which requires the requester of information to "provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution". The Respondent notes that Mr. Carter's request for information did not provide any such indication.

[65] The Respondent also points to the evidence on the record of the Department of Justice's response to Mr. Carter and its response to the Office of the Privacy Commissioner indicating that the type of records sought were not held by the Department of Justice, with reference to paragraph 12(1)(b) of the Act.

[66] The Respondent submits that Mr. Carter's arguments stem from conspiratorial allegations of international spying, unsupported by any evidence. The Respondent adds that these arguments, which repeat those made in T-776-23 regarding CSIS, the City of Calgary, Calgary Police Service, "Corporate Security", the FBI and UK security agencies, are not relevant to whether the Department of Justice possesses any records.

[67] The Respondent notes that the *Canada Evidence Act* is not applicable, there is no "implied certificate", and that the Department of Justice is clearly not responsible for the records of CSIS or the PPSC, nor for the records of the Alberta government or Calgary Police Service.

[68] The Respondent also notes that the jurisprudence relied on by Mr. Carter is irrelevant to the issue on judicial review.

[69] The Respondent characterises this Application as a collateral attack on the decisions of other courts that dealt with Mr. Carter's prior requests for Alberta Justice and Calgary Police Service records. The Respondent advises that Mr. Carter was declared a vexatious litigant by the Alberta courts for his repeated unsuccessful judicial reviews, which were themselves collateral attacks on Alberta's Office of the Information and Privacy Commissioner decisions. The Respondent adds that Mr. Carter has made very similar allegations of spying and abuse and has complained about bias by the Calgary Courts Centre.

V. Issue and Standard of Review

[70] This Application focuses only on the Department of Justice's refusal to provide the records sought by Mr. Carter because of the non-existence of the records. There is no dispute that where access to information is not provided because no relevant records exist, the decision constitutes a refusal to provide records, and the decision can be judicially reviewed. The issue is whether Mr. Carter has established that the records he requested exist within the Department of Justice and are being withheld from him.

[71] In *Constantinescu v Correctional Service of Canada*, 2021 FC 229 [*Constantinescu*] Justice Pamel examined the jurisprudence in the context of the identical provisions in the *Access to Information Act*, RSC 1985, c A-1 [ATIA]. Justice Pamel relied on *Canada (Information Commissioner) v Canada (Minister of Environment)*, [2000] FCJ No 480, 2000 CanLII 15247

(FCA) [*Ethyl Canada*] where the Federal Court of Appeal confirmed that a refusal based on non-existence of records can be judicially reviewed, noting at para 13:

> Indeed, the Minister refused to disclose the Discussion Papers on the ground that such documents did not exist and gave to Ethyl notice to that effect pursuant to paragraph 10(1)(*a*) of the Act. Under paragraph 42(1)(*a*) of the Act, the Commissioner may apply for judicial review of "any refusal" to disclose a record requested under the Act. Thus, the Court has jurisdiction to review a refusal to disclose based on the allegation of non-existence of documents. However, where documents are alleged by the head of an institution not to exist, the reviewing Court obviously cannot resort to its ordinary method of reviewing a refusal decision. Unlike the situation where an exemption from disclosure is claimed, it cannot review the withheld documents to establish whether these documents truly fall within the exempt category. In such a case, we believe it is proper for the applicant or the Commissioner to proceed to file ancillary documents that are relevant to the existence of the requested documents and that can assist the Court in its independent review function of the government's refusal to disclose. In our view, Parliament cannot have intended that the Court would have the relevant evidence to exercise its supervisory function only in the case of refusals based on statutory exemptions, but not in the case of refusals based on non-existence.

[72] Similarly in *Lambert v Canada (Canadian Heritage)*, 2022 FC 553 at paras 6–7 [*Lambert*], Justice McHaffie also relied on *Ethyl Canada* to conclude that a claim of non-existence of records constitutes a refusal and is reviewable on judicial review *(Lambert* at para 42).

[73] In different circumstances, where a government institution refuses to provide information based on the application of statutory exemptions and where following a determination of a complaint by the Office of the Privacy Commissioner the requester seeks judicial review, the law is well-established that judicial review is a two-step process. This two-step process requires that

the Court first determine whether the requested information is subject to the exemptions relied on, and second, determine whether the government institution reasonably exercised their discretion to withhold the disclosure of the information. Both steps are reviewed on the reasonableness standard (*Chin v Canada (Attorney General)*, 2022 FC 464 at paras 14–17).

[74] In the present case, the Department of Justice does not rely on any exemption in the Act to refuse to disclose records. Rather, the Department of Justice's refusal to provide the records is clearly because the Department of Justice does not have the information or records sought, even if such records exist at all. The Department of Justice's response is based on the non-existence of the requested record pursuant to paragraph 16(1)(a) of the Act (which is identical to paragraph 10(1)(a) of the ATIA, as considered in *Constantinescu* and in *Lambert*).

[75] The reasonableness standard of review, which is generally the standard of review unless one of the exceptions noted in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] applies, focuses on the refusal and the reason for the refusal. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at paras 85, 102, 105–07).

[76] As noted in *Constantinescu* at paras 70–71, where the refusal is based on nonexistence of records, the Court is called upon to make an independent assessment of the evidence to determine if the records would be held by the government institution. Justice Pamel found that the standard of review may be more akin to the correctness standard, given that the role of the

Court is to consider whether the records exist. In the present case, whether the standard of review is reasonableness or more akin to correctness, the outcome remains the same.

VI. Relevant Statutory Provisions

[77] Sections 12 and 13 of the Act address the right of access to information:

12 (1) Subject to this Act, every individual who is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act has a right to and shall, on request, be given access to	**12 (1)** Sous réserve des autres dispositions de la présente loi, tout citoyen canadien et tout résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés ont le droit de se faire communiquer sur demande :
(a) any personal information about the individual contained in a personal information bank; and	**a)** les renseignements personnels le concernant et versés dans un fichier de renseignements personnels;
(b) any other personal information about the individual under the control of a government institution with respect to which the individual is able to provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.	**b)** les autres renseignements personnels le concernant et relevant d'une institution fédérale, dans la mesure où il peut fournir sur leur localisation des indications suffisamment précises pour que l'institution fédérale puisse les retrouver sans problèmes sérieux.
(2) Every individual who is given access under paragraph (1)(a) to personal information that has been used, is being used or is available for use for an administrative purpose is entitled to	**(2)** Tout individu qui reçoit communication, en vertu de l'alinéa (1)a), de renseignements personnels qui ont été, sont ou peuvent être utilisés à des fins administratives, a le droit :

(a) request correction of the personal information where the individual believes there is an error or omission therein;

a) de demander la correction des renseignements personnels le concernant qui, selon lui, sont erronés ou incomplets;

(b) require that a notation be attached to the information reflecting any correction requested but not made; and

b) d'exiger, s'il y a lieu, qu'il soit fait mention des corrections qui ont été demandées mais non effectuées;

(c) require that any person or body to whom that information has been disclosed for use for an administrative purpose within two years prior to the time a correction is requested or a notation is required under this subsection in respect of that information

c) d'exiger :

(i) be notified of the correction or notation, and

(i) que toute personne ou tout organisme à qui ces renseignements ont été communiqués pour servir à des fins administratives dans les deux ans précédant la demande de correction ou de mention des corrections non effectuées soient avisés de la correction ou de la mention,

(ii) where the disclosure is to a government institution, the institution make the correction or notation on any copy of the information under its control.

(ii) que l'organisme, s'il s'agit d'une institution fédérale, effectue la correction ou porte la mention sur toute copie de document contenant les renseignements qui relèvent de lui.

(3) The Governor in Council may, by order, extend the right to be given access to personal information under subsection (1) to include

(3) Le gouverneur en conseil peut, par décret, étendre, conditionnellement ou non, le droit d'accès visé au paragraphe (1) à des individus

individuals not referred to in that subsection and may set such conditions as the Governor in Council deems appropriate.	autres que ceux qui y sont mentionnés.
13 (1) A request for access to personal information under paragraph 12(1)(a) shall be made in writing to the government institution that has control of the personal information bank that contains the information and shall identify the bank.	**13 (1)** La demande de communication des renseignements personnels visés à l'alinéa 12(1)a) se fait par écrit auprès de l'institution fédérale de qui relève le fichier de renseignements personnels où ils sont versés et doit comporter la désignation du fichier.
(2) A request for access to personal information under paragraph 12(1)(b) shall be made in writing to the government institution that has control of the information and shall provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.	**(2)** La demande de communication des renseignements personnels visés à l'alinéa 12(1)b) se fait par écrit auprès de l'institution fédérale de qui relèvent les renseignements; elle doit contenir sur leur localisation des indications suffisamment précises pour que l'institution puisse les retrouver sans problèmes sérieux.

[78] Subsection 16(1) of the Act addresses the refusal to provide access, setting out two grounds that may be given for such refusal:

16 (1) Where the head of a government institution refuses to give access to any personal information requested under subsection 12(1), the head of the institution shall state in the notice given under paragraph 14(a)	**16 (1)** En cas de refus de communication de renseignements personnels demandés en vertu du paragraphe 12(1), l'avis prévu à l'alinéa 14a) doit mentionner, d'une part, le droit de la personne qui a fait la demande de déposer une plainte auprès du Commissaire à la protection

	de la vie privée et, d'autre part :
(a) that the personal information does not exist, or	**a)** soit le fait que le dossier n'existe pas;
(b) the specific provision of this Act on which the refusal was based or the provision on which a refusal could reasonably be expected to be based if the information existed,	**b)** soit la disposition précise de la présente loi sur laquelle se fonde le refus ou sur laquelle il pourrait vraisemblablement se fonder si les renseignements existaient.
and shall state in the notice that the individual who made the request has a right to make a complaint to the Privacy Commissioner about the refusal.	
(2) The head of a government institution may but is not required to indicate under subsection (1) whether personal information exists.	**(2)** Le paragraphe (1) n'oblige pas le responsable de l'institution fédérale à faire état de l'existence des renseignements personnels demandés.

VII. The Application is Dismissed

[79] Contrary to Mr. Carter's submission that a refusal based on the non-existence of records creates a "grey area" for the Court on judicial review, the law is clear; there is no "grey area".

[80] Mr. Carter's misinterprets the Department of Justice's response to him and the response to the Office of the Privacy Commissioner and ignores the reason cited by the Department of Justice: no records exist. Mr. Carter's submission that the Office of the Privacy Commissioner erred in finding that there was no reason to doubt the veracity of the Department of Justice's

response is without merit and yet another example of his inability to accept an unfavourable response.

[81] Because the reason for the Department of Justice's refusal to provide the records requested by Mr. Carter is based on the non-existence of the records, the Court must independently determine whether the records exist and whether the Department of Justice is withholding them (*Constantinescu* at para 45; *Lambert* at paras 6–7).

[82] As noted above, an applicant must first provide admissible evidence to show that the records do exist and would be held by the government institution from which the records were requested (*Constantinescu* at paras 67–68; *Ethyl Canada* at para 14). Mere assertions, suspicions or theories that the institution might have records are not sufficient. A government institution cannot be required to conduct fruitless searches for records and to defend its response that no such records exist where there is nothing to suggest that they do exist.

[83] Mr. Carter has not provided any evidence to establish that the records he seeks exist or would be held by the Department of Justice. Mr. Carter has many suspicions and theories about why he believes the records exist and which appear to relate to matters dealt with by, or falling within the role of, the City of Calgary and the Calgary Police Service—none of which support his claim that such records exist within the federal Department of Justice.

[84] Mr. Carter's affidavit, filed in support of this Application, does not address the legal issues on this Application nor provide any evidence to support his view that the Department of

Justice would have records about him—even if such records exist elsewhere. His affidavit describes incidents beginning on August 13, 2018, alleging a racially motivated assault at the Crowfoot Bottle Depot, including the use of racial slurs and his attempt to obtain CCTV footage of this incident. He also recounts an incident on August 17, 2020, at a bus stop, and links these experiences to his broader claim of ongoing harassment and threats. Mr. Carter recounts incidents of harassment on Calgary's public transit system and in the public library and his complaints to local officials. Most of the events complained of occurred after the Privacy Commissioner's review of his complaint was completed. The affidavit does not refer to any actions by the Department of Justice. Nothing in Mr. Carter's affidavit or his submissions provides any evidence that the Department of Justice would hold the records he believes exist.

[85] Mr. Carter has failed to meet the evidentiary burden as required by the law. For this reason alone, the Court must find that the Application is dismissed. Mr. Carter's claims that he should not be subjected to this evidentiary burden because he cannot be expected to know what documents the Department holds and because the Department of Justice failed to assist him by providing him with a list of their data banks does not relieve him of his evidentiary burden.

[86] Although Mr. Carter appears to have done some research and has cited passages from jurisprudence—albeit unrelated to the issue on judicial review—it appears that he did not research the mandate of the Department of Justice or the Minister of Justice, nor has he grasped the division of responsibilities between the federal government and the provinces (and territories) and municipal levels of government. There is plenty of open-source information regarding the

mandate of the Department of Justice and its roles and responsibilities, including about the few data banks it maintains (none of which are relevant to Mr. Carter's request for information).

[87] In addition, Mr. Carter ignored the requirement in paragraph 12(1)(b) of the Act in making his far-reaching, but detailed, request for information. He instead places blame on the Department of Justice for not assisting him to narrow his request.

[88] More generally, it defies logic and common sense that the Department of Justice would have records relating to municipal matters, or records from PPSC, CSIS or foreign national security agencies.

[89] The Court has conducted its independent determination whether the records exist within the Department of Justice and concludes that the records sought are not held by the Department of Justice. The Department of Justice's response to Mr. Carter is justified; it is both reasonable and correct.

[90] The Court is not required to address Mr. Carter's many irrelevant arguments and unfounded assertions or to explain legal principles or statutory provisions that simply do not apply. The Court acknowledges that self-represented litigants may misunderstand legal concepts, but there is a limit to the Court's ability to provide explanations, particularly where the misunderstood legal concepts bear no relevance to the issues on the Application.

[91] Mr. Carter notes that he has made 86 complaints and review requests to Alberta's Office of the Information and Privacy Commissioner targeting the City of Calgary, Calgary Police Service, Alberta Justice and Solicitor General, the Royal Canadian Mounted Police and others. As noted by the Respondent, these requests have been unsuccessful.

[92] While Mr. Carter may continue to believe that every incident he experiences is because he is targeted by some unknown forces, this Court is not the forum to convince him otherwise. His repeated attempts in the Alberta courts and now in this Court have occupied a great deal of Mr. Carter's time, the Respondent's time and the resources of the courts. These repeated, fruitless and unfounded challenges are not helping to address whatever underlies Mr. Carter's beliefs and the impact they have on his day-to-day life.

VIII. Style of Cause

[93] The only Respondent to this Application is the Attorney General of Canada and the style of cause has been amended accordingly.

IX. The Respondent is entitled to Costs

[94] Rule 400 of the Rules provides that the Court has discretion to determine whether costs should be awarded and in what amount. The Court has considered the non-exhaustive list of factors in Rule 400(3) that guide the Court in making this determination. The result of the Application carries significant weight because, as a general rule, costs are awarded to the successful party, in this case, the Respondent.

[95] Mr. Carter opposes the Respondent's request for costs arguing this is unfair. The Court disagrees. The Respondent is entitled to costs. Although the Respondent requests $1000 in costs, which is likely only a fraction of the costs actually incurred, the Court awards a lesser lump sum of $500, as a nominal award to reflect the costs incurred to defend this Application.

JUDGMENT in T-2362-23

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.

2. The Applicant shall pay the Respondent $500 in costs.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2362-23
STYLE OF CAUSE:	GLEN CARTER v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 14, 2025
JUDGMENT AND REASONS:	KANE J.
DATED:	MAY 29, 2025

APPEARANCES:

Glen Carter	ON HIS OWN BEHALF
Daniel Vassberg	FOR THE RESPONDENT

SOLICITORS OF RECORD:

None	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT