Federal Court  Cour fédérale

Date: 20250529

Docket: T-776-23

Citation: 2025 FC 973

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 November 24, 2021, decision of the Canadian Security Intelligence Service [CSIS] which neither confirmed nor denied the existence of the information that Mr. Carter requested from CSIS pursuant to subsection 16(2) of the *Privacy Act*, RSC 1985, c P-21 [the Act] in CSIS data bank PPU 045.

[2] Mr. Carter sought similar records from the Department of Justice. The Department of Justice's refusal to provide records based on their non-existence is the subject of Mr. Carter's

application for judicial review in T-2362-23, which was heard at the same court sitting as this Application. 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 makes several allegations in this Application for Judicial Review [the Application] (which are very similar to the allegations he makes in T-2362-23; the Court's judgment in T-2362-23 can be found at 2025 FC 974) including that he was surveilled, subjected to human rights abuses and that 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*] were infringed. He also alleges that he is prejudiced by "secret evidence" in this proceeding.

[4] As also noted in T-2362-23 (2025 FC 974), 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. 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.

[5] 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 this Application 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.

[6] Mr. Carter's allegations also reiterate the allegations he has advanced in other proceedings in other courts.

[7] Mr. Carter requests that the Court (1) conduct a private review of CSIS's national security claims and order the release of any information that no longer justifies secrecy; (2) evaluate whether CSIS's exemptions remain relevant and current; (3) eliminate the prejudicial impact of "secret evidence" on [his] right to a fair trial; (4) declare that section 51(3) of the Act has effectively made parts of the Act inoperable; and (5) that each side cover their own legal costs.

[8] The Respondent submits that the Court must dismiss the Application because it lacks jurisdiction. Mr. Carter failed to take the mandatory step or condition precedent of making a complaint about CSIS's refusal to provide the records at issue with the Office of the Privacy Commissioner as required by section 41 of the Act. The Respondent alternatively submits that if

the Court proceeds to determine the Application, it must be dismissed because CSIS's decision is reasonable.

[9] For the reasons elaborated on below, the Application must be dismissed. Although Mr. Carter assumes and asserts that he made a complaint to the Office of the Privacy Commissioner regarding CSIS's responses about all data banks searched, the record indicates otherwise. Mr. Carter did not make a complaint regarding CSIS's response about PPU 045, which is the only decision he seeks to challenge in this Application. Mr. Carter's complaint to the Privacy Commissioner identified only PPU 055.

[10] A complaint to, and response from, the Office of the Privacy Commissioner is a condition precedent to an application for judicial review. Mr. Carter's failure to make the complaint is fatal; the Court does not have the jurisdiction to determine this Application. Mr. Carter's assertion that the Office of the Privacy Commissioner investigated his complaint regarding PPU 045 and all the other data banks searched is not supported by the evidence on the record.

[11] In any event, even if the Court had jurisdiction, the Court would find that CSIS's response regarding its search of PPU 045 is reasonable. Despite Mr. Carter's strongly held belief that records exist about him and should be disclosed, CSIS responded to Mr. Carter in the same way that it would respond to anyone who requested records held in PPU 045. The jurisprudence has established that this response is reasonable.

[12] Mr. Carter is consumed by the notion that “secret evidence” has been filed with this Court that would confirm his belief that he has been targeted and surveilled. He assumes that this evidence, which is the confidential affidavit filed by the Respondent, includes the records or information he believes exist about him. The contents of the confidential affidavit cannot be disclosed to Mr. Carter or to anyone. Contrary to his assertion, he is not entitled to such disclosure.

[13] Mr. Carter’s assertion that the filing of the confidential affidavit contradicts CSIS’s response that it can neither confirm nor deny the existence of records about him in PPU 045 is without merit. The Court understands that CSIS’s response that it can neither confirm nor deny the existence of records is frustrating and fuels the suspicions of those who are concerned that records might exist. The affidavit is about the searches undertaken by CSIS and the results of the searches, which are not publicly shared. Mr. Carter should not assume that he has been subjected to a secret prosecution (which is a concept unknown to the Canadian justice system).

[14] As also noted in T-2362-23 (2025 FC 974), at the hearing of both applications, Mr. Carter expressed 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 decision.

I. Procedural History / Background

A. *Mr. Carter's request to CSIS for information*

[15] On November 4, 2021, Mr. Carter submitted a request to CSIS for information [the First Request] pursuant to the Act:

> 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 CSIS; 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 anticipated Public Prosecution Service of Canada (PPSC) documents containing an administrative decision which served to limit a liberty interest and curtail personal freedoms.
>
> Since I was excluded from a secret proceeding which took place a number of years ago affecting me and since this decision resulted in the suppression legitimate 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 from the longstanding course of targeted action taken against me. Since longstanding, sustained investigative inquiries has affected me in a significant way and since I have been thoroughly searched and since such course of action saw the degradation of protected Charter rights, I am seeking the opportunity for the courts to intervene and bring to an end the relentless persecution and vilification of me. In particular I am requesting access to the US Federal Bureau of Investigation (FBI) file and the UK's Mi5 file and supporting information documenting the case that was made against me.

[16] The analyst who processed the First Request interpreted it as a request for any personal information from CSIS's data bank, PPU 045.

[17] On November 24, 2021, CSIS responded to the First Request:

> Canadian Security Intelligence Service Investigational Records – CSIS PPU 045 - The Governor-in-Council has designated this information bank an exempt bank pursuant to section 18 of the Privacy Act. Further to subsection 16(2) of the Act, we neither confirm nor deny the existence of the requested information. If the type of information described in the bank did exist, it would qualify for exemption under section 21 (as it relates to the efforts of Canada towards detecting, preventing or suppressing subversive or hostile activities), or 22(1)(a) and/or (b) of the Act.

[18] On December 13, 2021, Mr. Carter submitted a second request [the Second Request] pursuant to the Act, seeking information in other data banks, which Mr. Carter characterises as a "follow on request":

> Further to CSIS' letter, dated November 24, 21 (file number: 1 16-2021-709) and as a follow-on to a person access request, I am seeking the following categories of personal information: 1. Personal information relating to a possible breach of information featured in the City of Calgary Retention and Disposal Schedule which relates to some sort of national security investigation being conducted on me. Any investigative or intelligence reports that CSIS may have authored or sponsored for this inquiry, I seek to access. 2. Personal information relating to all ongoing contacts, if any, that CSIS may have had with the City of Calgary concerning me, I am interested in accessing. 3. Personal information, if any, featured in databank, CSIS DDS 041. 4. Personal information, if any, featured in databank, CSIS PPU 015 5. Persona information, if any, featured in databank, CSIS PPU 070 6. Personal information, if any, featured in databank, CSIS PPU 050 7. Personal information, if any, featured in databank, CSIS DDS 052 8. Personal information, if any, featured in databank, SIS PPE 815 9. Personal information, if any, featured in databank, CSIS PPU 055 10. Personal information, if any, featured in databank, CSIS PPU 005 11. Personal information, if any, featured in CSIS PPU 906 I am seeking access to the aforementioned personal

> information for the sake of vindicating section 8 and 24 Charter rights.

[19] On January 12, 2022, CSIS responded to the Second Request, advising that no personal information was found in PPU 015, PPU 070, PPE 815, PPU 005 or PPU 906. CSIS responded that it could neither confirm or deny the existence of information in PPU 045 and PPU 050. CSIS responded that if personal information existed in these data banks, it could reasonably be expected to be exempted by one or more of sections 21 or paragraphs 22(1)(a) and/or (b) of the Act.

[20] With respect to PPU 055, CSIS initially responded that further time was needed to complete the search. On January 21, 2022, CSIS advised Mr. Carter that it had completed the search and that CSIS PPU 055 did not contain any of his personal information.

B. *Mr. Carter's complaint to the Office of the Privacy Commissioner*

[21] On March 7, 2022, Mr. Carter filed a complaint with the Office of the Privacy Commissioner. In the complaint form, Mr. Carter indicated that his complaint related to the response provided by CSIS on January 21, 2022. He did not identify a file number. Mr. Carter identified CSIS's response that PPU 055 was searched and that no personal information had been located "which I interpret as a refusal".

[22] On February 27, 2023, the Office of the Privacy Commissioner informed Mr. Carter that his complaint dated March 7, 2022, regarding CSIS's decision dated January 21, 2022 (which is

the decision about PPU 055) was “not well founded”. The Commissioner’s response focussed only on Mr. Carter’s complaint regarding CSIS PPU 055.

[23] On April 13, 2023, Mr. Carter filed a Notice of Application for Judicial Review of CSIS’s response to his First Request response dated November 4, 2021, with respect to PPU 045.

C. *The Respondent’s motion to file a confidential affidavit*

[24] On November 3, 2023, Justice Lafrenière granted the Respondent’s motion allowing the Attorney General of Canada to: (1) file public and confidential affidavits and make representations confidentially and on an *ex parte* basis to protect the identities of CSIS affiants; (2) extend the time to file evidence; and (3) amend the style of cause to substitute the Attorney General of Canada as the Respondent, rather than the Canadian Security Intelligence Service [CSIS].

D. *Mr. Carter’s motions and other requests*

[25] On January 31, 2024, Justice Roy dismissed Mr. Carter’s motion requesting that the Respondent amend its public affidavit to reflect additional searches conducted by CSIS (2024 FC 161). The Court found that Rule 397, relied on by Mr. Carter, did not apply and no other applicable legal provision was relied on or applied. The Court also explained that it lacked jurisdiction because Mr. Carter had not made a complaint to the Office of the Privacy Commissioner regarding the searches of the additional databanks. The Court noted that section 41 of the Act provides that a complaint to the Office of the Privacy Commissioner is a necessary

precondition to the Court's jurisdiction. The Court also noted that Mr. Carter's Notice of Application referred only to CSIS's November 24, 2021, decision relating to PPU 045, not the later decisions of January 12 or January 21, 2022, regarding the other data banks. Given that the additional searches noted by Mr. Carter stemmed from the January 12, 2022, decision, and no complaint about those searches was made, Justice Roy found that the Court could not order that any amendments be made to the Respondent's public affidavit. Justice Roy emphasized that jurisdictional limits and procedural rules must be respected.

[26] On April 2, 2024, the Federal Court of Appeal dismissed Mr. Carter's motion seeking an extension of time to appeal Justice Roy's Order (Docket #24-A-10). In considering the extension request, Justice LeBlanc applied the four-factor test established in *Canada (Attorney General) v Hennelly*, 167 FTR 158, 244 NR 399 and found that Mr. Carter's proposed appeal lacked merit. Justice LeBlanc found that Mr. Carter's intended appeal was also an improper collateral attack on the November 2023 Order of Justice Lafrenière, which Mr. Carter should have directly appealed or moved for reconsideration. Moreover, the Court lacked jurisdiction under section 41 of the Act to address records that were not the subject of a complaint to the Office of the Privacy Commissioner. Justice LeBlanc concluded that there was no basis and that it was not in the interests of justice to grant an extension.

[27] On May 30, 2024, the Federal Court of Appeal (per Justice LeBlanc) dismissed Mr. Carter's motion for reconsideration of the April 2, 2024, order. Mr. Carter argued that Justice LeBlanc failed to appreciate key issues, was misled by the Respondent, and that Mr. Carter was prevented from filing important evidence. Justice LeBlanc found that Mr. Carter

had not established the criteria for reconsideration pursuant to Rules 397(1)(b) or 399(2) of the *Federal Courts Rules*, SOR/98-106 [the Rules]. Justice LeBlanc found that Mr. Carter's complaints amounted to an improper attempt to re-argue his case, not to correct an error or oversight. In addition, any new evidence that Mr. Carter claimed to have been prevented from advancing could have been submitted earlier with due diligence and would not have changed the outcome.

[28] On June 12, 2024, Associate Judge Ring determined Mr. Carter's motion seeking to amend his Notice of Application in T-2362-23 and consolidate this Application with T-2362-23, and also seeking that the Court draw an adverse inference against the Respondent for failing to file an affidavit in this Application.

[29] Associate Judge Ring granted Mr. Carter's motion to amend his Notice of Application in T-2362-23 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.

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

[31] On September 16, 2024, this Court determined Mr. Carter's motion seeking an extension of time to serve and file his application record in T-2362-24 and to amend his previously served record to address procedural irregularities in order to comply with Rule 309 of the Rules. This Court noted that the timelines for the filing of that application record were somewhat confusing and that some irregularities in that record continued. The Respondent proposed that the correct version as set out in Annex A of the Respondent's motion record in T-2362-23 be accepted for filing. This Court agreed that the amended notice of application and the application record, as set out in the Respondent's motion record, should be accepted for filing. The Court emphasized the need to proceed expeditiously with the underlying judicial review application.

[32] On November 12, 2024, this Court dismissed Mr. Carter's motion seeking various forms of relief related to the confidential affidavit of the Respondent filed in this Application. Mr. Carter asked for accommodations concerning the confidentiality order, for the Court to disregard the "secret evidence," for help with his record, and for permission to make representations regarding section 38.06 of the *Canada Evidence Act*. This Court found, among other things, that Mr. Carter was seeking to pre-judge the issues on the Application. This Court emphasized that it would have full access to any confidential information and would fairly assess the reasonableness of the Privacy Commissioner's decision. This Court also clarified that Mr. Carter's requests to the Court to prepare his record and his reference to the *Canada Evidence Act* were misplaced, that Mr. Carter's ongoing motions were delaying the Application and that both applications should proceed without further unnecessary motions.

[33] On March 10, 2025, this Court granted Mr. Carter's informal motion for an adjournment of the hearing of both applications (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.

[34] On March 11, 2025, this Court refused Mr. Carter's request that the two 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.

[35] 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.

[36] 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 affidavits 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.

[37] On May 13, 2025, on the eve of the oral hearing, Mr. Carter attempted to file a 92-page document he characterised as a “compendium”. He attempted to file a similar document in T-2362-23. The Court directed that the documents would not be accepted for filing at that time and that their admissibility would be addressed at the oral hearing.

[38] At the 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 counsel for Mr. Carter may have been more persuasive in conveying to Mr. Carter that the Court must focus on the legal issues in the Application and apply the law to relevant evidence on the record.

[39] 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, the Respondent’s Record was filed in August 2024, which outlined the legal issues in this Application, and Mr. Carter filed his written submissions on September 16, 2024. By way of several Directions, this 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 this Court subsequently granted Mr. Carter’s request for an adjournment of a further month.

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

[40] The Court’s Amended Consolidated General Practice Guidelines dated December 20, 2023, 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.

[41] As noted above, Mr. Carter attempted to file a 92-page document, which he characterised as a compendium in this Application. Mr. Carter also attempted to file a similar document in T-2362-23. Both documents appeared to be cut and pasted from other sources, including articles, commentaries, other judgments and textbooks, without sufficient attribution or citation.

[42] 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.

[43] The document includes references to issues, concepts and principles that are not relevant to this Application, including to *Stinchcombe* disclosure obligations of the Crown in criminal proceedings, *O'Connor* applications (which refers to the process for obtaining third party records in a criminal proceeding), security certificates (which are governed by the *Immigration and Refugee Protection Act*, SC 2001, c 27), CSIS's mandate in intelligence gathering, the concept of "intelligence to evidence", *Canada Evidence Act* applications to prohibit the disclosure of sensitive or potentially injurious information in a proceeding (pursuant to section 38 of the

Canada Evidence Act), public interest immunity, *Charter* rights to make full answer and defence and to decisions of the German courts. The document also reiterates some of the allegations included in Mr. Carter's affidavit regarding tampering with his possessions and other incidents of harassment that he attributes to years of covert surveillance.

[44] Mr. Carter contends that the document should be admitted and considered 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.

[45] 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-2362-23, is about its content. The document does not relate with any specificity to Mr. Carter's submissions, the relevant legal issues, 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.

[46] The Court finds that the document fails to comply with the Practice Guidelines for a compendium. The document does not assist Mr. Carter or this Court in addressing the legal issues on this Application; in some places it recites the allegations that underly Mr. Carter's request for information, which are contextual and not supported by any evidence, and in other places it refers to legal concepts, not entirely accurate and/or misunderstood and not relevant to the issues.

[47] The Court notes that it was required to read the proposed compendiums in both this Application and T-2362-23, 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

[48] Mr. Carter's written submissions do not address the legal issues in this Application; first, whether the Court has jurisdiction and second, whether, if the Court had jurisdiction, the response of CSIS would be reasonable. As noted, Mr. Carter's many allegations are primarily related to his belief that records exist about him that might explain why he believes that he has been under surveillance.

[49] Mr. Carter asserts that he has been under continuous surveillance for many years by police, the City of Calgary "Corporate Security", and potentially private security firms, although he has not been charged with any offence. He submits that he has been subjected to "technological searches" and "technological imprisonment", for example sirens, drone surveillance, and CCTV coverage in public spaces including libraries, malls, and transit systems. He claims that he has been followed and assaulted on public transportation and been subjected to harassment and racial discrimination.

[50] Mr. Carter also believes he is on an international terrorism watchlist, which he asserts indicates that there is coordination between CSIS, the FBI, and the UK's MI5. Mr. Carter asserts

that the Calgary Corporate Security unit gathers a range of security information including about national security.

[51] Mr. Carter claims that CSIS continues to withhold personal information about him without justification and without any time limit for retention of information. He argues that this withheld information affects his ability to defend himself against secret allegations that have resulted in him being "blacklisted", monitored and surveilled for many years.

[52] Mr. Carter contends that CSIS is operating under an "implied certificate" pursuant to the *Canada Evidence Act* that bars the Office of the Privacy Commissioner and the courts from reviewing the information or ordering its disclosure to him. He argues that CSIS's refusal to sever, redact or summarize sensitive information for partial release to him contradicts the *Canada Evidence Act*, which requires a balancing of interests.

[53] Mr. Carter cites jurisprudence that is not relevant to the issues on this Application.

[54] In his oral submissions, Mr. Carter reiterated his claims of surveillance and how this has impacted his day-to-day enjoyment of life. Mr. Carter asserts that he is at the mercy of the Calgary Police who can search him by technological means, which violates his *Charter* rights.

[55] With respect to CSIS's response regarding PPU 045, Mr. Carter argues that CSIS's inability to either confirm or deny the existence of records is a "controversial" response and is used by CSIS to conceal state secrets. He argues that the Respondent's confidential affidavit

directly contradicts CSIS's response to neither confirm nor deny the existence of records, because if no records existed, there would be no "secret evidence". Mr. Carter contends that the "secret evidence" in the confidential affidavit includes the records he believes exist about allegations made about him.

[56] Mr. Carter further submits that a special advocate should be appointed to probe the "secret evidence" filed by the Respondent.

[57] In response to the Court's questions about the issues on this Application, in particular, whether the Court has jurisdiction, Mr. Carter contends that he did complain to the Office of the Privacy Commissioner about all the responses regarding all the data banks searched. He contends that the Office of the Privacy Commissioner conducted a thorough review. He argues that CSIS created confusion by providing three responses regarding various data banks. He disputes that he identified CSIS's January 21, 2022, response as the subject of his complaint to the Privacy Commissioner. He also disputes that the Office of the Privacy Commissioner's letter dated February 27, 2022, addresses only PPU 055, not PPU 045. However, Mr. Carter does not point to any document on the record that indicates that the Office of the Privacy Commissioner investigated any response other than that related to PPU 055.

[58] In response to the Court's questions about why CSIS would have any records of the City of Calgary Corporate Security unit or the Calgary Police Service or the other agencies Mr. Carter refers to, Mr. Carter asserted that "security" includes national security, which involves CSIS and that CSIS liaises with other agencies, including the UK's MI5 and the FBI.

[59] Mr. Carter also argues that he has been denied a fair hearing on this Application because he was not permitted to cross examine the "secret evidence". He submits that he does not know "the case he has to meet" and contends that the secret allegations about him are contained in the "secret evidence" filed in the Respondent's confidential affidavit. Mr. Carter also alleges that the Court has consistently sided with CSIS, ignored procedural errors and has denied him the benefit of the doubt as a self-represented litigant. As noted above, he asserts that this Court's questions to him were inappropriate and showed favour to the Respondent's position.

IV. The Respondent's Submissions

[60] The Respondent submits that Mr. Carter clearly failed to file a complaint with the Privacy Commissioner regarding CSIS's response about PPU 045 and as a result, this Court cannot judicially review that decision. The Respondent points to section 41 of the Act, which makes a complaint a statutory prerequisite to judicial review. The Respondent submits that this is fatal to Mr. Carter's Application.

[61] The Respondent submits that the Office of the Privacy Commissioner is not required to review more than that which is identified in a requester's complaint. The Respondent notes that Mr. Carter only made a complaint about CSIS's response about PPU 055.

[62] The Respondent notes that the law is clear that the independent review by the Office of the Privacy Commissioner is integral to the statutory scheme, as it ensures that courts benefit from the Commissioner's expertise before adjudicating exemption claims. This requirement also reflects the broader principle that alternative remedies must be exhausted before judicial review

is sought, absent exceptional circumstances (*Blank v Canada (Justice)*, 2016 FCA 189 at paras 31-32 [*Blank*]).

[63] The Respondent notes that Justice Roy's Order (2024 FC 161) clarified that CSIS's response regarding PPU 045 was not the subject of a complaint to the Office of the Privacy Commissioner and could not be judicially reviewed.

[64] The Respondent alternatively submits that even if the Court were to consider the Application on its merits (i.e., if the Court had jurisdiction, which the Respondent disputes), CSIS's decision regarding PPU 045 is reasonable. CSIS's refusal to confirm or deny the existence of records in PPU 045 is a response explicitly permitted under the Act. The Respondent explains that disclosing even the existence of records would undermine CSIS's ability to investigate and advise the government on national security threats.

[65] The Respondent disputes that its confidential affidavit contradicts CSIS's response noting that it is customary to file such an affidavit and that this does not suggest that any records do or do not exist.

[66] Contrary to Mr. Carter's claims about "secret evidence" that he cannot access, the Respondent notes that the jurisprudence supports the use of *ex parte* evidence in similar cases, and that *in camera* hearings, as suggested by Mr. Carter are not available. The Respondent points to *Chin v Canada (Attorney General)*, 2023 FCA 144, where the Court of Appeal noted that the court had "the secret evidence filed by CSIS concerning the PPU 045 search results" in making

the determination that CSIS's response was reasonable. The Respondent notes that this Court has the confidential affidavit which will be considered to determine whether CSIS's response is reasonable.

[67] The Respondent submits that Mr. Carter's unsupported claims, including allegations of surveillance by foreign intelligence agencies and references to unrelated foreign laws and human rights violations are based on his conspiratorial theories and are irrelevant to the issues on this Application.

V. The Issue and Standard of Review

[68] The primary issue is whether the Court has jurisdiction to determine this Application.

[69] The secondary or alternative issue, if the Court had jurisdiction, would be whether the response by CSIS with respect to PPU 045 is reasonable. CSIS's response stated, "[f]urther to subsection 16(2) of the Act, we neither confirm nor deny the existence of the requested information. If the type of information described in the bank did exist, it would qualify for exemption under section 21 (as it relates to the efforts of Canada towards detecting, preventing or suppressing subversive or hostile activities), or 22(1)(a) and/or (b) of the *Act*" [Emphasis added].

[70] The determination of the Court's jurisdiction is not subject to a standard of review *per se*. The Act governs.

[71] Section 41 of the Act states that an individual may apply to the Court for review of a refusal to grant access to personal information after they have made a complaint to the Office of the Privacy Commissioner and that complaint has been investigated:

Review by Federal Court where access refused	**Révision par la Cour fédérale dans les cas de refus de communication**
41 Any individual who has been refused access to personal information requested under subsection 12(1) may, if a complaint has been made to the Privacy Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Privacy Commissioner are reported to the complainant under subsection 35(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow.	**41** L'individu qui s'est vu refuser communication de renseignements personnels demandés en vertu du paragraphe 12(1) et qui a déposé ou fait déposer une plainte à ce sujet devant le Commissaire à la protection de la vie privée peut, dans un délai de quarante-cinq jours suivant le compte rendu du Commissaire prévu au paragraphe 35(2), exercer un recours en révision de la décision de refus devant la Cour. La Cour peut, avant ou après l'expiration du délai, le proroger ou en autoriser la prorogation.

[72] If a complaint is made about a refusal and the complaint is investigated by the Office of the Privacy Commissioner, judicial review of the refusal decision can be pursued. In such cases, the law is well-established that judicial review pursuant to section 41 of the Act is a two-step process; first, the Court determines whether the requested information, whether real or hypothetical, is subject to the exemptions relied on; and second, the Court determines 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 [*Chin*]).

[73] Decisions to neither confirm nor deny the existence of a record are also reviewed on the reasonableness standard (*Martinez v Canada (Communications Security Establishment)*, 2018 FC 1179 at para 14 [*Martinez*]; *Westerhaug v Canadian Security Intelligence Service*, 2009 FC 321 at para 17 [*Westerhaug*]). As noted in *Martinez* at para 13, a decision not to release information that falls within a claimed exemption is heavily fact-based, and the Court therefore owes deference to a government institution's exercise of discretion.

VI. The Application is Dismissed

[74] The Application for Judicial Review of CSIS's response regarding PPU 045 must be dismissed. The Court does not have jurisdiction to determine this Application in the absence of a complaint to and investigation and report by the Privacy Commissioner.

[75] In addition, and alternatively, if the Court had jurisdiction, the Court would dismiss the Application based on finding that CSIS's response regarding PPU 045 is entirely reasonable.

A. *No jurisdiction*

[76] There is only one decision at issue in this judicial review, which is CSIS's response dated November 24, 2021, regarding PPU 045. However, Mr. Carter did not make a complaint to the Office of the Privacy Commissioner regarding PPU 045; Mr. Carter's complaint to and investigation by the Office of the Privacy Commissioner was only with respect to CSIS's response regarding PPU 055.

[77] The law is clear that an application for judicial review of a decision refusing to provide information pursuant to the Act cannot proceed without first making a complaint to the Office of the Privacy Commissioner; otherwise, the Court must find the application to be premature (*Cumming v Canada (Royal Mounted Police)*, 2020 FC 271 at para 33 [*Cumming*] citing *HJ Heinz Co of Canada Ltd v Canada (Attorney General)*, 2006 SCC 13 at para 79). In *Cumming*, Justice Gleeson noted at para 31:

> …The Privacy Commissioner's authority under the *Privacy Act* is limited to making recommendations to responding government institutions. Section 41 provides a mechanism whereby an applicant may enforce those recommendations by seeking a disclosure order from the Federal Court. The relief the Court may grant is limited by the terms and context of the Privacy Commissioner's recommendation. To hold otherwise would be to usurp the Privacy Commissioner's role in the complaint scheme and deny the Court the benefit of its expertise in applications…

(See also *Khoury v Canada (Employment and Social Development)*, 2022 FC 101 at paras 29-34; *Sahota v Canada (Attorney General)*, 2024 FC 1493 at para 11; *Izz v Canada (Attorney General)*, 2024 FC 566 at para 32).

[78] The Federal Court of Appeal has also clearly established that "one of the preconditions for commencing an application before the Federal Court under section 41 of the Act is that the applicant…must have received a report from the Privacy Commissioner concerning his request" (*Canada (Public Safety and Emergency Preparedness) v Gregory*, 2021 FCA 33 at para 8 [*Gregory*]). In *Gregory*, at para 12, the Federal Court of Appeal cited *Blank* regarding the rationale for this requirement, noting that although *Blank* dealt with the provisions in the *Access to Information and Privacy Act*, RSC 1985, c A-1, the same principles apply to the *Privacy Act*.

The Court of Appeal emphasized the importance of the prior consideration by the Office of the Privacy Commissioner.

[79] In *Blank* the Federal Court of Appeal explained at paras 30-31:

> [30] The case law has made it abundantly clear that a complaint to and a report from the Commissioner is a prerequisite before the Federal Court can rule upon the application of any exemption or exclusion claimed under the Act: see *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, [1999] F.C.J. No. 522, 240 N.R. 244, at para. 27; *Statham v. Canadian Broadcasting Corp.*, 2010 FCA 315, [2012] 2 F.C.R. 421, at para. 55. As stated by my colleague Justice Stratas in *Whitty v. Canada (Attorney General)*, 2014 FCA 30, 460 N.R. 372, at para. 8, this requirement is a statutory expression of the common law doctrine that all adequate and alternative remedies must be pursued before resorting to an application for judicial review, barring exceptional circumstances.
>
> [31] […] The independent review of complaints by the Commissioner is a cornerstone of the statutory scheme put in place by Parliament, and the Federal Court is entitled to the considerable expertise and knowledge of that officer of Parliament before reviewing the government's assertions of exemptions and redactions of documents. I agree with the Judge, therefore, that the appellant could not unilaterally ignore this requirement and come directly to the Court.

[80] In *Blank* at para 32, the Court of Appeal added that "Section 41 of the Act makes it clear that the Federal Court may only review a refusal to access personal information after the matter has been investigated by the Privacy Commissioner" [Emphasis added].

[81] Contrary to Mr. Carter's assertion that he did submit a complaint to the Office of the Privacy Commissioner about CSIS's response regarding PPU 045 and other searches conducted by CSIS, the record clearly shows that his complaint was only about PPU 055 and that the

Commissioner's response was only about PPU 055. However, Mr. Carter's Notice of Application for Judicial Review clearly states that it is in relation to CSIS's response dated November 24, 2021, which is about PPU 045.

[82] The public affidavit of Ken describes the process undertaken by the Access to Information and Privacy Analyst at CSIS in responding to Mr. Carter's request for personal information and describes the nature of the information banks that Mr. Carter sought to access. The affidavit of Ken also attests that Mr. Carter's complaint to the Office of the Privacy Commissioner, and the Office of the Privacy Commissioner's response only addressed PPU 055. Ken attests, "I am informed by the Privacy Commissioner that the scope of his Report exclusively concerned review of the Third Decision, regarding CSIS PPU 055" [Emphasis in original].

[83] Mr. Carter did not cross examine Ken and suggested that to do so would have been pointless.

[84] In Mr. Carter's own written submissions, he states at para 84:

> Section 41 of the Privacy Act necessitates the need for the Court to review the Privacy Commissioner's record of finding, without hindrance, in a meaningful, constructive, productive manner not given to the dictates of the day. This record relates to the investigation the Commissioner conducted for PPU 050 (*sic*), not PPU 045. However, due to the aforementioned technicality that CSIS was able to capitalize on at this Court and even at the Appellate Court level as well, this federal agency was able to irresponsibly invoke section 51(3) of the *Privacy Act* for want of a finding of fact.

[85] Leaving aside Mr. Carter's baseless allegations about CSIS relying on a technicality, which appears to be a reference to Justice Roy's Order (2024 FC 161) and the Federal Court of Appeal's decision (per Justice Le Blanc) that dismissed Mr. Carter's appeal of Justice Roy's Order, these decisions clearly alerted him to the fact that his complaint to CSIS was only about PPU 055 not PPU 045. Mr. Carter also appears to acknowledge that the record before this Court only addresses the decision with respect to PPU 055 (although he mistakenly refers to PPU 050).

[86] In addition, at paragraph 108 of his written submission, Mr. Carter acknowledges, "Privacy Commissioner issued a Record of Findings for the responses CSIS issued by specifically investigating CSIS PPU 050 (*sic*) not CSIS PPU 045".

[87] Mr. Carter's assertion in his oral submissions that his complaint to the Office of the Privacy Commissioner referred to all the decisions regarding all the searches conducted by CSIS, and that the Office of the Privacy Commissioner investigated his complaints with respect to all the searches, may be based on a faulty memory. The record before the Court governs and clearly establishes that Mr. Carter's complaint to the Office of the Privacy Commissioner identified PPU 055, not PPU 045 and that the Commissioner's response was exclusively about PPU 055.

[88] Mr. Carter seeks to blame CSIS for confusion by issuing three separate responses. However, CSIS is not to blame. Mr. Carter responded to several questions in his complaint form, which identified the decision dated January 21, 2022 (regarding PPU 055) as the subject of the complaint. In his complaint form, he responded to the question, "[i]f you sent multiple requests please list each one", but he listed only one decision. In response to the question, "[w]hat date

did you receive a final response from the institution?" he stated "January 21, 2022". Mr. Carter also indicated "[f]or the other data bases that I was expecting CSIS to search, there is no forthcoming response has been issued" (*sic*).

[89] The Office of the Privacy Commissioner cannot be faulted for focussing on the decision identified by Mr. Carter. Nor can CSIS be blamed for creating confusion by responding in three separate letters to Mr. Carter's requests for information, all of which had separate file numbers.

[90] Mr. Carter appears to have overlooked or ignored that both Justice Roy and the Federal Court of Appeal previously explained the flaw in his Application. Justice Roy explained that the data bank at issue in this Application is PPU 045 and that no complaint or investigation about this data bank occurred. The Federal Court of Appeal, per Justice LeBlanc, dismissed Mr. Carter's appeal, unequivocally stating, "the remedy sought in the Interlocutory Motion is in relation to decisions which have not been made the subject of a complaint to the Privacy Commissioner; In light of section 41 of the Act, this, <u>in and of itself, is fatal</u> to the appeal Mr. Carter wishes to undertake" [Emphasis added]. Contrary to Mr. Carter's view that the Court and CSIS relied on a "technicality", this is the law.

[91] The failure to complain to the Office of the Privacy Commissioner regarding CSIS's search of PPU 045 remains fatal to this Application.

B. *Alternatively, CSIS's response is reasonable*

[92] Mr. Carter should also accept that if the Court had jurisdiction to determine this Application, the Court would find that CSIS's decision with respect to PPU 045 is reasonable. Contrary to his view, there is nothing unusual, controversial or contradictory in CSIS's response.

[93] CSIS responded that it could neither confirm nor deny the existence of the information requested by Mr. Carter pursuant to subsection 16(2) of the Act and that if the information requested by Mr. Carter existed, it would be exempt from disclosure pursuant to section 21 or paragraphs 22(1)(a) and/or (b) of the Act.

[94] Section 16 of the Act states:

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.

[Emphasis added.]

[95] The reasonableness of a government institution's response to neither confirm nor deny the existence of personal information that could reveal whether a person is or has been the subject of an investigation pursuant to subsection 16(2) of the Act has been repeatedly confirmed in the jurisprudence (see for example *Ruby v Canada (Solicitor General)*, [2000] 3 FC 589, 2000 CanLII 17145 (FCA) [*Ruby*] at paras 65–66; *Braunschweig v Canada (Public Safety)*, 2014 FC 218 at paras 45, 48; *Llewellyn v Canadian Security Intelligence Service*, 2014 FC 432 at paras 35–36; *Westerhaug* at paras 17–18; *Martinez* at paras 30–31; *Russell v Canada (Attorney General)*, 2019 FC 1137 at para 26 ; *VB v Canada (Attorney General)*, 2018 FC 394 [*VB*] at para 39; *Chin* at paras 21–22).

[96] In *Ruby* at paras 65–67, the Federal Court of Appeal found that the general or blanket policy of a government institution to neither confirm nor deny the existence of information in accordance with subsection 16(2) is reasonable and explained the underlying rationale.

[97] In *Chin*, Justice Fothergill considered the reasonableness of the same type of response received by Mr. Carter, reviewed the statutory provisions and the extensive jurisprudence, explaining at paras 19–23:

> [19] Pursuant to s 18(2) of the *Privacy Act*, the head of a government institution may refuse to disclose any personal information requested under s 12(1) that is contained in an exempt bank. CSIS PPU 045 is an exempt bank that consists predominantly of sensitive national security information of the kind described in s 21 and ss 22(1)(a) and (b) of the *Privacy Act*.
>
> [20] The Respondent filed both a public and a secret affidavit in this proceeding. The affidavits explain the manner in which the CSIS Access to Information and Privacy [ATIP] Section processed Ms. Chin's request. The secret affidavit apprised the Court of the results of the search of CSIS PPU 045.
>
> [21] Subsection 16(2) of the *Privacy Act* permits a government institution not to confirm whether personal information exists within an exempt information bank. The Deputy Chief of the ATIP Section explained in her public affidavit that the response to a request seeking personal information from CSIS PPU 045 must be the same regardless of whether or not any personal information actually exists. Responding in any other manner would jeopardize CSIS' ability to carry out its mandate of investigating and advising the government on threats to the security of Canada.
>
> [22] The Federal Court of Appeal has confirmed that CSIS may refuse access to records in accordance with a blanket policy of not disclosing the existence of requested records where "the mere revealing of the existence or non-existence of information is in itself an act of disclosure: a disclosure that the requesting individual is or is not the subject of an investigation" (*Ruby* at paras 65-66). Numerous decisions of this Court stand for the same proposition (see, e.g., *Russell* at para 26; *VB v Canada (Attorney General)*, 2018 FC 394 [*VB*] at para 43; *Braunschweig* at paras 45-46; *Llewellyn* at para 37).
>
> [23] As Justice Patrick Gleeson observed in *VB*, "[t]he response the applicant received to the request for investigative records was ... the response every Canadian or permanent resident would receive" (*VB* at para 48).

[98] The Court acknowledges that CSIS's non-committal, yet reasonable, response may only further fuel Mr. Carter's suspicions. The impact of the same response has been noted in other cases, including in *VB* at para 47, where Justice Gleeson noted that a response by CSIS to neither confirm nor deny the existence of records is typical, although frustrating, but that unwarranted inferences should not be drawn:

> [47] The PIB reference in the CSIS response is not a confirmation that records of the nature sought are held by CSIS. Instead the CSIS response in neither confirming nor denying the existence of the records opens the door to two equally possible scenarios: (1) the records exist but are not being disclosed on the basis that they are exempt from disclosure pursuant to sections 15 and 16 of the ATIA; or (2) no records exist. The absence of certainty this circumstance creates may understandably cause frustration to a requester but this situation is not unique to the applicant. As was noted by Justice Russel Zinn in *Westerhaug:*
>
> > [18] The Federal Court of Appeal in *Ruby* held that adopting a policy of non-disclosure was reasonable given the nature of the information bank in question, because merely revealing whether or not the institution had information on an individual would disclose to him whether or not he was a subject of investigation. I agree. If it is in the national interest not to provide information to persons who are the subject of an investigation, then it follows that it is also in the national interest not to advise them that they are or are not the target of an investigation. It is one of the unfortunate consequences of adopting such a blanket policy that persons who are not the subject of an investigation and who have nothing to fear from the government institution will never know that they are not the subject of an investigation. Nonetheless, and as was noted by Justice Kelen, this policy applies to every citizen of the country, and even judges of this Court would receive the same response as was given to Mr. Westerhaug and would not have any right to anything further.
>
> [Emphasis added.]

[99] To summarise, in the event that the Court had jurisdiction to determine this Application regarding CSIS's response about PPU 045, the Court would dismiss the Application. CSIS's response is entirely reasonable. As noted above, anyone requesting personal information that may be held in PPU 045 would receive the same response. Moreover, Mr. Carter has advanced no logical reason to assume that records that he believes exist, which might emanate from incidents in Calgary which he attributes to the Calgary Police Service and or Calgary Corporate Security, would be held by CSIS.

VII. The Respondent is entitled to Costs

[100] 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.

[101] Mr. Carter opposes the Respondent's request for costs arguing that he has been required to pay costs in previous motions and further cost awards are unfair. The Court disagrees. The Respondent is entitled to costs. The Respondent's request for $500 in costs is modest and reasonable. However, given that the Court has also awarded costs in the related Application in T-2362-23, heard at the same sitting, the Court awards the lesser lump sum amount of $200.

JUDGMENT in T-776-23

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.

2. The Applicant shall pay the Respondent $200 in costs.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-776-23
STYLE OF CAUSE:	GLEN CARTER v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	APRIL 15, 2025
REASONS FOR JUDGMENT AND JUDGMENT:	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