

Court file: T-1453-14

FEDERAL COURT

BETWEEN:

THE INFORMATION COMMISSIONER OF CANADA

Applicant

- and -

TORONTO PORT AUTHORITY

Respondent



NOTICE OF APPLICATION

Application under paragraph 42(1)(a) of the *Access to Information Act*, R.S.C. 1985, c. A-1

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard in Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice

of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Dated this 20th day of June 2014.

Issued by:

(Registry Officer)

ANIL KAMAL
REGISTRY OFFICER
AGENT DU GREFFE

Address of Federal Court
local office: Thomas D'Arcy McGee Building
90 Sparks Street
Ottawa, Ontario
K1A 0H8

TO: Mr. Geoffrey A. Wilson
President and Chief Executive Officer
Toronto Port Authority
60 Harbour Street
Toronto, Ontario M5J 1B7

NOTICE TO THE COMPLAINANT
(Subsection 42(2) of the *Access to Information Act*)

AND TO: Mr. Steven Rennie
The Canadian Press
165 Sparks Street, Suite 800
Ottawa, Ontario K1P 5B9

Take notice that the Information Commissioner of Canada (the "ICC") has made an Application for Review to the Court pursuant to s. 42(1)(a) of the *Access to Information Act* (the "Act"). You have the right to apply independently to the Federal Court for judicial review of the decision by the Toronto Port Authority to refuse to disclose records requested by you pursuant to section 41 of the Act.

Subsection 42(2) of the Act also gives you the right to appear as a party to the Information Commissioner's Application for Review. If you wish to appear as a party to the Information Commissioner's Application for Review, you must prepare a Notice of Appearance as a Party and serve it on the applicant's solicitor and on the respondent within 10 days from the date you were served with this Application for Review.

APPLICATION

This is an application for judicial review, pursuant to paragraph 42(1)(a) of the *Access to Information Act*, R.S.C. 1985, c. A-1 (the "Act"), in respect of the Toronto Port Authority's refusal to disclose records requested under the Act.

On June 17, 2009, the Toronto Port Authority ("the TPA") received an access request submitted by Mr. Steven Rennie under the Act.

On September 10, 2009, the TPA responded to this request and indicated that it would not provide any of the records requested. The TPA claimed that these records contained commercial and financial information the release of which would prejudice the competitive position of the TPA.

On September 24, 2009, the ICC received a complaint concerning the TPA's response, including its decision to withhold the requested records in their entirety. The TPA was subsequently advised of the ICC's intention to investigate this matter and an investigation was undertaken.

During the ICC's investigation it became clear that only one record was at issue. The TPA eventually agreed to release parts of the record in question. However, despite the ICC's recommendation to release the record in its entirety, the TPA refused to do so.

On May 12, 2014, the ICC reported to Mr. Rennie that the investigation was complete and that it had determined that his complaint was well-founded.

This application is made with the consent of the complainant, following his receipt of the ICC's report of the results of the investigation concerning TPA's refusal to disclose records requested under the Act (ICC's file 3209-00600; TPA's file 2009-022).

The applicant makes application for:

1. An order directing the Respondent to disclose to the record currently withheld by the TPA, based on the purported application of paragraphs, 18(a), 18(b), 20(1)(b) and 20(1)(d) of the ATIA;
2. Such further and other orders as Counsel may request and the Court may deem just or appropriate.

The grounds for the application are:

1. The Respondent has the burden of establishing in fact and in law that the information in dispute qualifies for exemption from disclosure under paragraphs

18(a), 18(b), 20(1)(b) and 20(1)(d) of the Act.

2. In the present instance, the Respondent has not satisfied this burden and has erred in relying on paragraphs 18(a), 18(b), 20(1)(b) and 20(1)(d) of the Act to refuse to disclose the record requested under the Act.
3. Such other grounds as counsel for the Applicant may advise and the Court permits.

The statutory provisions and regulations relied on include:

6. The *Access to Information Act* generally and in particular: ss. 2(1), 3(1), 4(1), 4(2.1), 18(a), 18(b), 20(1)(b), 20(1)(d), 30, 37, 42(1)(a), 42(2), 48 and 49 of the Act;
7. Rule 300(b) of the *Federal Courts Rules*, SOR/98-106; and
8. Such other statutory provisions and regulations as counsel for the applicant may advise and the Court may permit.

This application will be supported by the following material:

9. The affidavit of an investigator or other employee of the Office of the Information Commissioner, to be sworn at a later date, to which will be appended as exhibits those documents relevant to the subject matter of the application ;
10. Upon leave being granted by the Court to file confidential material, the confidential affidavit of an investigator or other employee of the Office of the Information Commissioner, to be sworn at a later date, to which will be appended confidential exhibits relevant to the subject matter of the application; and
11. Such further and other material as the Applicant may advise and the Court permits.

The Applicant's address is 30 Victoria St., 7th floor, Gatineau, Québec, K1A 1H3, and the name and business address of the applicant's solicitor is:

Carolina Mingarelli
Counsel, Legal Services
Office of the Information Commissioner of Canada
30 Victoria St., 7th floor
Gatineau, Québec, K1A 1H3

Telephone: (819) 994-2289
Fax: (819) 994-0311

DATED at Gatineau, this 20th day of June, 2014.



Carolina Mingarelli
Solicitor for the Information
Commissioner of Canada

Court File

FEDERAL COURT

B E T W E E N :

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Solicitor for the Information Commissioner of
Canada

I HEREBY CERTIFY that the above document is a true copy of
the original filed in the Court.

JE CERTIFIE que le document ci-dessus est une copie conforme
à l'original déposé au dossier de la Cour Supérieure.

Filing date
Date de dépôt

JUN 20 2014

JUN 20 2014
Dated
Fait le

ANIL KAMAL
REGISTRY OFFICER
AGENT DU GREFFE