Federal Court  Cour fédérale

Date: 20160405

Docket: T-1359-14

Citation: 2016 FC 168

Ottawa, Ontario, April 5, 2016

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SUNCOR ENERGY INC.

Applicant

and

CANADA-NEWFOUNDLAND OFFSHORE PETROLEUM BOARD AND INFORMATION COMMISSIONER OF CANADA

Respondents

PUBLIC JUDGMENT AND REASONS
(Confidential Judgment and Reasons issued on February 9, 2016)

I. INTRODUCTION

[1] Suncor Energy Inc. (the "Applicant") seeks judicial review, pursuant to section 44 of the *Access to Information Act*, R.S.C. 1985, c. A-1 (the "Access Act") of a decision of the Canada-Newfoundland and Labrador Offshore Petroleum Board (the "Board"), dated May 15, 2014. In

that decision, the Board held that certain information was not protected against disclosure on the basis of privilege pursuant to subsection 119(2) of the *Canada-Newfoundland Atlantic Accord Implementation Act*, S.C. 1987, c. 3 (the "Accord Act"), was not personal information that was not in the public domain, and was not otherwise exempt from disclosure.

[2] By Order dated July 10, 2014, Mme. Prothonotary Tabib granted leave to add the Information Commissioner of Canada (the "Commissioner") as a party to this application.

[3] By Order dated August 11, 2014, Prothonotary Morneau issued a Confidentiality Order in respect of any documents submitted with this application that would render the judicial review moot if made public, and any other material that the Board would be authorized to refuse disclosure, if requested under the Access Act.

[4] The Applicant filed a Notice of Motion dated August 4, 2015 seeking leave to file a supplemental affidavit of Mr. Glen Burke, who is the Commercial and Business Development Director, East Coast Canada of the Applicant. The Applicant also sought leave to cross-examine Mr. Trevor Bennett, Information Resources Manager and Access to Information Coordinator for the Board.

[5] Further to a Direction issued August 7, 2015, the Motion was heard on August 13, 2015 prior to the hearing of the judicial review application. That motion was dismissed with costs in the cause, on the grounds that the tests of admissibility and relevance for the admission of the

supplemental affidavit were not met. As well, there were no special circumstances to justify the cross-examination of Trevor Bennett at such a late stage of the proceeding.

II. BACKGROUND

[6] The Applicant is a Canadian energy corporation, with its headquarters in Calgary, Alberta. It is engaged in oil exploration and drilling activities off the coast of Newfoundland and Labrador, among other places.

[7] The Board is a statutory body responsible for the monitoring of petroleum drilling and extraction off the coasts of Newfoundland and Labrador. It regulates the activities of operators in the oil and gas industry, including those of the Applicant.

[8] The Commissioner, pursuant to section 30 of the Access Act, is authorized to receive and investigate complaints made under the Access Act.

[9] By letter dated February 7, 2014, the Board was asked, pursuant to the Access Act, to disclose the following information:

> 1. Please provide the submitted application forms, correspondence, board response, work credit amounts granted and all associated items and attachments for each program number on the attached March 13, 2012 CNLOPB letter.
>
> 2. Provide all records of any viewing, disclosure, borrowing and copies being made of these same program numbers (attached) including but not limited to liability agreements, correspondence, transmittals, copy disposition forms, emails and invoices.

[10] By letter dated March 31, 2014, the Board advised the Applicant about the request, and forwarded the relevant documents for its review. These documents included a request, dated March 24, 2009, made by [REDACTED], an employee of the Applicant, for information concerning the procedures and costs associated with ordering certain geophysical and geological reports. The documents also included a list of the requested reports, pricing quotes for printing and binding of same, and an invoice from the Board for the retrieval and shipping of the reports. The names of [REDACTED], [REDACTED], [REDACTED] and [REDACTED], employees of the Applicant, appear in the documents.

[11] The Applicant replied by letter dated April 15, 2014 and took the position that it considered the documents in question to be information provided to the Board pursuant to Part III of the Accord Act and accordingly, privileged pursuant to subsection 119(2) of that statute and exempt from disclosure pursuant to subsection 24(1) of the Access Act.

[12] The Applicant also advised that if the documents were not exempt, certain portions should be redacted because they constitute personal information; financial, commercial, scientific, or technical information; and information, the disclosure of which could reasonably be expected to interfere with contractual or other negotiations pursuant to subsection 19(1) and paragraphs 20(1)(b) and 20(1)(d), respectively, of the Access Act.

[13] The Board responded to the Applicant in an email dated April 28, 2014 and said that certain names would not be redacted, including the name of [REDACTED], on the basis that her status as an employee of Suncor is publicly available on her LinkedIn accounts. The Board also

advised that without evidence of specific injury arising from the disclosure of the program names and numbers, there was no reason not to release the requested information.

[14] Finally, the Board said that the estimates of the shipping charges would not be withheld because they were estimates only, made in accordance with the standard charges posted on the Board's website. The Board also said there was no justification to withhold the number of reports requested or the reports and pricing as presented on the Board's website.

[15] The Applicant responded to the Board by email dated May 6, 2014. It said that although the affiliation of [REDACTED] with Suncor was publicly available, the fact that she had corresponded with the Board was not.

[16] The Board replied to the Applicant on the same day, advising that [REDACTED] was not the main contact for the request and was copied on most of the correspondence. It further advised that following consultation with legal counsel, it was satisfied that there was no valid reason for withholding her name, however, phone numbers and email addresses would be redacted.

[17] By letter dated May 15, 2014, the Board advised the Applicant that where names of its employees can be confirmed via the internet, the names would not be withheld from the requestor. It enclosed the records that it intended to release and referred to section 44 of the Access Act, which provides for judicial review of its decision. It concluded by noting that if no application for judicial review was filed, the records would be disclosed on June 5, 2014.

[18] The Applicant commenced this application for judicial review on June 3, 2014. In support of this application, it filed the affidavit of Mr. Glen Burke; that affidavit was sworn on September 2, 2014.

[19] In response, the Board filed the affidavit of Mr. Trevor Bennett; that affidavit was sworn on September 23, 2014.

[20] No cross-examinations were conducted upon the affidavits filed.

III. ISSUES

[21] This application for judicial review raises the following issues:

1) What is the applicable standard of review?

2) Did the Board err in determining that the records should be disclosed?

IV. RELEVANT LEGISLATION

[22] The following provisions of the Access Act are relevant to this proceeding:

19 (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Act that contains personal information as defined in section 3 of the *Privacy Act*.	19 (1) Sous réserve du paragraphe (2), le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant les renseignements personnels visés à l'article 3 de la *Loi sur la protection des renseignements personnels*.

(2) The head of a government institution may disclose any record requested under this Act that contains personal information if

(2) Le responsable d'une institution fédérale peut donner communication de documents contenant des renseignements personnels dans les cas où :

(a) the individual to whom it relates consents to the disclosure;

a) l'individu qu'ils concernent y consent;

(b) the information is publicly available; or

b) le public y a accès;

(c) the disclosure is in accordance with section 8 of the *Privacy Act*.

c) la communication est conforme à l'article 8 de la *Loi sur la protection des renseignements personnels*.

20 (1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Act that contains

20 (1) Le responsable d'une institution fédérale est tenu, sous réserve des autres dispositions du présent article, de refuser la communication de documents contenant:

…

…

(b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;

b) des renseignements financiers, commerciaux, scientifiques ou techniques fournis à une institution fédérale par un tiers, qui sont de nature confidentielle et qui sont traités comme tels de façon constante par ce tiers;

…

…

(d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

d) des renseignements dont la divulgation risquerait vraisemblablement d'entraver des négociations menées par un tiers en vue de contrats ou à d'autres fins.

24. (1) The head of a government institution shall refuse to disclose any record

24. (1) Le responsable d'une institution fédérale est tenu de refuser la communication de

requested under this Act that contains information the disclosure of which is restricted by or pursuant to any provision set out in Schedule II.	documents contenant des renseignements dont la communication est restreinte en vertu d'une disposition figurant à l'annexe II.

[23] Section 22 and subsection 119(2) of the Accord Act are relevant and provide as follows:

22. The Board shall establish, maintain and operate a facility in the Province for the storage and curatorship of all geophysical records and geological and hydrocarbon samples relating to the offshore area.	22. L'Office établit et gère un centre, dans la province, où sont conservés les données géologiques et géophysiques et les échantillons d'hydrocarbures extracôtiers.
119. (2) Subject to section 18 and this section, information or documentation provided for the purposes of this Part or Part III or any regulation made under either Part, whether or not such information or documentation is required to be provided under either Part or any regulation made thereunder, is privileged and shall not knowingly be disclosed without the consent in writing of the person who provided it except for the purposes of the administration or enforcement of either Part or for the purposes of legal proceedings relating to such administration or enforcement.	(2) Sous réserve de l'article 18 et des autres dispositions du présent article, les renseignements fournis pour l'application de la présente partie, de la partie III ou de leurs règlements, sont, que leur fourniture soit obligatoire ou non, protégés et ne peuvent, sciemment, être communiqués sans le consentement écrit de la personne qui les a fournis, si ce n'est pour l'application de ces lois ou dans le cadre de procédures judiciaires relatives intentées à cet égard.

V. SUBMISSIONS

A. *The Applicant's Submissions*

[24] The Applicant argues that subsection 119(2) of the Accord Act grants a privilege against disclosure to information provided to the Board pursuant to Parts II or III of that legislation. It submits that the records in question contain information, specifically geological and geophysical reports, that it needs to conduct its operations.

[25] Further, pursuant to subsection 119(3) of the Accord Act, information that is requested in connection with legal proceeding shall not be disclosed for such purposes. It suggests that the information was requested in connection with ongoing litigation in which the Applicant is involved.

[26] The Applicant notes that pursuant to section 4 of the Accord Act, that statute takes precedence over any other Act of Parliament, including the Access Act.

[27] The Applicant alleges several errors on the part of the Board in its determination that the records should be disclosed. It challenges the Board's finding that the personal information is publicly available and subject to disclosure; that certain information should not be redacted pursuant to paragraphs 20(1)(b) and 20(1)(d) of the Access Act.

[28] The Applicant submits that the requested records contain personal information, including the names, positions and/or contact information for several of its current or former employees. It says that this information is not exempt under paragraph 19(2)(b) and must be redacted.

[29] While [REDACTED], [REDACTED] and [REDACTED] names and positions are available on LinkedIn, nothing in their public profiles relates to the email correspondence included in the records. As well, the request does not ask for information about any individual.

[30] The fact that the individuals have profiles on the internet does not mean that they have waived their right to privacy, particularly when the publicly available information does not relate to particular jobs or job duties. According to the Applicant, if the names were redacted, nothing in the redacted material would limit the value of the disclosure to the requestor.

[31] As well, the Applicant submits there are personal safety considerations arising in connection with the request. It argues that where personal information is at issue, the right to privacy is paramount over the right to access, relying on the decision in *H.J. Heinz Co. of Canada Ltd. v. Canada (Attorney General)*, [2006] 1 S.C.R. 441 at paragraphs 26 and 29. The Applicant is engaged in continuing litigation over seismic information that may be related to the request. It submits that disclosure of the employees' personal information may expose them to harassment.

[32] The Applicant next challenges the Board's finding that certain information should not be redacted pursuant to paragraph 20(1)(b) of the Access Act. It acknowledges that this provision of the Access Act sets out four requirements: first, that the information be financial, commercial, scientific or technical; second, that it be confidential; third, that it is supplied to the Board by a third party; and fourth, that it is treated confidentially by that third party. It refers to the decision in *Air Atonabee Ltd. v. Canada (Minister of Transport)* (1989), 27 F.T.R. 194.

[33] Concerning the first requirement, the Applicant submits that the records include technical information including names and report numbers of geophysical reports; costs associated with ordering reports; procedure for ordering reports; program numbers of the requested reports; a Board disclosure agreement including a schedule of materials outlining the specific reports requested by the Applicant in 2009; internal email correspondence and cost estimates exchanged between the Board and its employees; and an internal email correspondence confirming that the Applicant intended to request seismic reports.

[34] The Applicant argues that the second element is met, that the requested information is confidential because it is not publicly available and was communicated with an expectation that it would not be disclosed. It submits that the information must be kept confidential in order to protect the integrity of its operations and to avoid disclosure to competitors.

[35] As for the third requirement, the Applicant submits that whether the information was supplied to the Board by a third party is a question of fact, relying on the decision in *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23. In the present case, the Applicant, a third party, supplied information to the Board.

[36] Finally, the Applicant treated the correspondence as confidential. It notes that all of its employees have a confidentiality disclosure included in their email correspondence, accordingly the documents are exempt from disclosure.

[37] The third issue raised by the Applicant is that the Board erred in concluding that certain information should not be redacted, pursuant to paragraph 20(1)(d) of the Access Act. Here, it argues that it is required to show that there is some interference with contractual negotiations, not merely an increase in competition, relying on the decision in *Oceans Ltd. v. Canada-Newfoundland & Labrador Offshore Petroleum Board* (2009), 356 F.T.R. 106. It submits that the records contain information that would be advantageous to its competitors and disadvantageous to the Applicant, in future negotiations, including possible settlement negotiations relative to the continuing seismic litigation.

[38] The Applicant, referring to the decision in *Timiskaming Indian Band v. Canada (Minister of Indian and Northern Affairs)* (1997), 132 F.T.R. 106, says that it does not know who is requesting the disclosure. It argues that if the disclosure is made to a party to the seismic litigation, its ability to litigate and enter into meaningful settlement negotiations would be seriously obstructed.

B. *The Board's Submissions*

[39] The Board argues that the Applicant's reliance upon subsection 119(2) of the Accord Act and subsection 24(1) of the Access Act requires it to prove that the information was provided to the Board for the purposes of Parts II or III of the Accord Act.

[40] The Board is mandated by section 22 of the Accord Act to collect and store information relating to offshore areas. The geological and geophysical reports, which the Applicant requested

in 2009, were gathered pursuant to Part I of the Accord Act. As such, the documents at issue in this proceeding are not privileged pursuant to subsection 119(2) of the Accord Act.

[41] Furthermore, subsection 119(2) of the Accord Act only privileges information or documents provided to the Board. Although some correspondence originates from the Applicant, the information contained in the documents does not. The reports are available on the Board's website. The quote from a third party for reproduction costs is not information provided by the Applicant.

[42] The Board acknowledges that the requested documents contain personal information. It offered to redact any contact information relative to the named employees, as well as the names of employees whose connection with the Applicant is not in the public domain.

[43] The Board further submits that it reasonably exercised its discretion to disclose the names of those employees whose affiliation with the Applicant was publicly available.

[44] In response to the Applicant's argument that the release of employee names, pursuant to paragraph 19(2)(b) of the Access Act, may potentially expose those employees to harassment in connection with ongoing litigation, the Board advances two arguments. First, it submits that unrelated litigation is not an exception to release of information pursuant to the Access Act. Second, there is no evidentiary basis for the Applicant's statement that its employees may be harassed.

[45] In response to the Applicant's arguments concerning paragraph 20(1)(b) of the Access Act, the Board refers to the four elements discussed in the *Air Atonabee, supra*. It submits that the information must have inherent value**;** administrative information is not considered financial, commercial, scientific or technical as discussed in *Merck Frosst, supra* at paragraphs 139 – 141.

[46] The Board argues that the Applicant's evidence, as provided in the affidavit of Glen Burke, demonstrates that the alleged technical information is only a summary of the contents of emails. The affidavit does not show that the documents meet the ordinary meaning of technical.

[47] The Board further submits that the records do not meet the criteria of being objectively confidential, as discussed in the *Air Atonabee, supra*.

[48] As for the third criteria, that the information be provided to the Board by a third party, the Board argues that neither the requested reports nor the quotes for retrieval and reproduction were supplied by the Applicant. Accordingly, the Board contends that the Applicant has failed to meet this requirement.

[49] Finally, the Board submits that the Applicant failed to provide evidence to show that the requested information was consistently treated as confidential, as discussed in the decision in *Toronto Sun Wah Trading Inc. v. Canada (Attorney General)* (2007), 62 C.P.R. (4th) 337 at paragraph 25. It argues that the mere assertion that information is exempt pursuant to paragraph 20(1)(b) is insufficient to discharge the burden of showing that an exemption is available, relying on the decision in *Oceans Ltd., supra*.

[50] In response to the Applicant's submissions about paragraph 20(1)(d) of the Access Act, the Board argues that the Applicant has failed to establish a reasonable expectation of probable harm. Relying on the decision in *Saint John Shipbuilding Ltd. v. Canada (Minister of Supply and Services)*(1990), 67 D.L.R. (4th) 315 at paragraphs 5 and 22, the Board submits that speculation of harm is insufficient to justify an exemption pursuant to paragraph 20(1)(d). It notes that there is no evidence that the release of the documents would likely result in interference with any specific negotiation.

C. *The Commissioner's Submissions*

[51] The Commissioner adopts the arguments of the Board concerning subsection 119(2) of the Accord Act. It submits that, contrary to the position of the Applicant, the Accord Act does not take precedence over the Access Act. Rather, the Accord Act takes precedence only over an act of Parliament that applies to the offshore area; see paragraph 4(2)(b) of the Accord Act.

[52] As for the personal information in the requested records, the only information that is personal relates to the names of the Applicant's employees, their phone numbers and business titles. The affiliation of [REDACTED], [REDACTED] and [REDACTED] with the Applicant is publicized on their LinkedIn profiles. Unlike the facts in *Information Commissioner (Canada) v. Canada (Minister of Natural Resources)*(2014), 464 F.T.R. 308, the personal information at issue here was public when the request was made.

[53] Since it was public, the Commissioner argues that the Board reasonably exercised its discretion to disclose it pursuant to subsection 19(2) of the Access Act.

[54] The Commissioner submits that the principles underlying the Access Act required that information, that can be disclosed, should be disclosed to the greatest extent possible; see the decision in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, [2010] 1 S.C.R. 815 at paragraphs 66-67. If the Court finds the exercise of discretion to be unreasonable, then the names, business titles and phone numbers should be redacted, and the content of the documents and domain name in the email addresses should be released. Following redaction of the personal information, the documents will not reveal any information about any identifiable individual and cannot be withheld under subsection 19(1).

[55] Finally, although the Applicant argues that the personal information is not relevant to the request for information, the Commissioner says that the requestor's motives or relevance of the information in the record should not be considered. Relying on the decisions *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, [2003] 1 S.C.R. 66 at paragraphs 32-33 and *Toronto Sun Wah Trading Inc. v. Canada (Attorney General)*, *supra* at paragraph 41.

[56] In response to the Applicant's submissions concerning paragraph 20(10)(b) of the Access Act, the Commissioner argues that the Applicant has not shown, on a balance of probabilities, that disclosure would reveal technical information. It submits that the Applicant's arguments are vague and speculative statements, not grounded in evidence.

[57] As well, the Commissioner argues that the inclusion of a confidentiality disclosure at the end of an email is insufficient to justify the protection of information, relying on the decision in

Canadian Broadcasting Corp. v. National Capital Commission (1998), 147 F.T.R. 264 at paragraphs 30-31.

[58] The Commissioner submits that the Applicant has not met its onus, on a balance of probabilities, of showing that disclosure would affect contractual negotiations. Accordingly, the Applicant has failed to show a reviewable error by the Board in its decision not to redact certain information, pursuant to paragraph 20(1)(d) of the Access Act.

[59] The Commissioner argues that there is no evidence that the information in the documents is relevant to settlement negotiations. Further, he submits that the Applicant failed to prove that disclosure could reasonably be expected to interfere with such negotiations, relying on the decision in *Blood Band v. Canada (Minister of Indian Affairs and Northern Development)*, [2004] 2 F.C.R. 60 at paragraph 56.

VI. DISCUSSION AND DISPOSITION

A. *Standard of Review*

[60] The first issue to be addressed is the appropriate standard of review. Whether information is exempt from disclosure pursuant to section 19(1) of the Access Act, is reviewable on the standard of correctness; see the decision in *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police Commissioner), supra* at paragraph 19.

[61] Exemption from disclosure pursuant to section 20 of the Access Act is also reviewable on the standard of correctness; see the decision in *Canada Post Corp. v. Canada (Minister of Public Works and Government Services)*(2004) , 247 F.T.R. 110 at paragraphs 24 and 27.

[62] Decisions which are reviewable on a correctness standard are not entitled to deference. The Court performs its own analysis and decides whether it agrees with the decision maker. If the reviewing Court disagrees with the decision maker's conclusions, it will substitute its own view and provide the correct answer; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 50.

[63] The exercise of discretion pursuant to subsection 19(2) of the Access Act is reviewable on the standard of reasonableness; see the decision in *Information Commissioner (Canada) v. Canada (Minister of Natural Resources), supra*.

[64] Upon judicial review, the reasonableness standard requires that the reasons offered must be justifiable, transparent, intelligible and fall within a range of possible, acceptable outcomes; see *Dunsmuir, supra* at paragraph 47.

B. *Paramountcy of the Access Act*

[65] The next issue for consideration is the relevance of the Accord Act to this application. As outlined above, the Applicant asserts that this legislation takes priority over the Access Act and that it is entitled to resist disclosure of the requested information, on the basis of the privilege created by subsection 119(2).

[66] The Applicant's argument about paramountcy is novel but, in my opinion, ill founded. I agree with the submissions of the Respondents that in presenting this proposition, the Applicant is misreading section 4 of the Accord Act. That section provides as follows:

4. In case of any inconsistency or conflict between (a) this Act or any regulations made thereunder, and (b) any other Act of Parliament that applies to the offshore area or any regulations made under that Act, except the Labrador Inuit Land Claims Agreement Act, this Act and the regulations made thereunder take precedence.	4. Les dispositions de la présente loi et de ses textes d'application l'emportent sur les dispositions incompatibles de toute loi fédérale d'application extracôtière — sauf la *Loi sur l'Accord sur les revendications territoriales des Inuit du Labrador* — et de ses textes d'application.

[67] Section 4 of the Accord Act is subject to interpretation on the ordinary rules of statutory interpretation. According to the decision in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, the modern approach to statutory interpretation is to discern Parliament's intent by reading the words of the provisions at issue according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole.

[68] Applying these principles, section 4 of the Accord Act is to be read as meaning that this legislation takes precedence only over other legislation that applies to offshore areas of the province of Newfoundland and Labrador and regulation of those offshore areas, pertaining to the province of Newfoundland and Labrador.

C. *Section 119(2) of the Accord Act*

[69] Is the Applicant entitled to the benefit of subsection 119(2) of the Accord Act? That provision creates a privilege against the disclosure of information, in certain circumstances, specifically when a person seeks the disclosure of information that was provided to the Board for the purposes of Parts II and III of the Accord Act.

[70] According to the Supreme Court of Canada in *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403 at paragraph 51, access to information is the general rule under the Access Act. This presumption in favour of disclosure is, however, subject to specific, necessary exceptions; see subsection 2(1) of the Access Act.

[71] The prohibition against disclosure contained in subsection 24(1) of the Access Act is one such exception. That provision prohibits disclosure of information that is "restricted by or pursuant to any provision set out in Schedule II."

[72] Schedule II of the Access Act includes section 119 of the Accord Act.

[73] The privilege created by subsection 119(2) of the Accord Act is limited. The provision requires a factual determination: first, was the information or documentation provided for the purposes of Parts II or III of the Act and second, was disclosure of that information required for the purposes of administration and enforcement of those Parts.

[74] According to the decision in *Toronto Sun Wah Trading Inc. v. Canada (Attorney General)*, *supra* at paragraph 9, a party seeking the benefit of an exemption against disclosure carries the burden of showing its entitlement to such exemption.

[75] The Applicant asserts privilege, pursuant to subsection 119(2) of the Accord Act, in respect of geological and geophysical reports that the Board considers responsive to the request.

[76] It is unclear the degree to which the reports were based on information supplied by the Applicant pursuant of the Accord Act. As well, section 22 of the Accord Act imposes an obligation on the Board to maintain geophysical records and samples; it does not oblige the Applicant to provide that information.

[77] The records relate to the Applicant's 2009 request to the Board for information. According to the affidavit of Trevor Bennett filed in this application, that request was not made pursuant to pursuant to Parts II or III of the Accord Act.

[78] In light of the interpretation of subsection 119(2), following the applicable principles of statutory interpretation, it follows that the Applicant has not shown that it meets the statutory criteria for entitlement to the privilege provided by subsection 119(2). It is not entitled to claim privilege against the disclosure of the requested information.

D. *Section 19 of the Access Act*

[79] Next, did the Board reasonably exercise its discretion, pursuant to subsection 19(2) of the Access Act. The parties correctly acknowledge that the names, contact information and business titles of the Applicant's employees, at issue in this proceeding, constitute personal information within the meaning of the *Privacy Act*, R.S.C. 1985, c. P-21 (the "Privacy Act"). According to the decision in *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, *supra*, the definition of "personal information" is to be read broadly.

[80] The Board redacted most of the contact information of the Applicant's employees, that is [REDACTED], [REDACTED] and [REDACTED] as well as the name of [REDACTED]. However, in the records that the Board proposes to disclose, it did not redact the name of [REDACTED] from email correspondence dated March 27, 2009, April 3, 2009, April 6, 2009 and April 7, 2009; the telephone number of [REDACTED] from an email dated March 24, 2009; and a fax number for an employee of the Applicant from an email dated March 20, 2009.

[81] In my opinion, considering the definition of "personal information" and its protection pursuant to the Privacy Act, this further information should have been redacted and the Board's decision not to do so was an unreasonable exercise of its discretion.

[82] Subject to my comments in the preceding paragraph, in my view the Board reasonably exercised its discretion concerning the disclosure of the other information, pursuant to paragraph 19(2)(b). The Applicant has failed to show any reviewable error in the manner in which that discretion was exercised.

[83] The issue relative to paragraph 19(2)(b) is whether the Board reasonably exercised its discretion in determining that the personal information relating to the Applicant's employees could be disclosed, because it was in the public domain. In its decision, the Board said:

> In instances where Suncor Energy employees and their association with Suncor Energy can be confirmed via the internet these names and association with Suncor Energy will not be withheld in the response to the requestor.

[84] The Board's use of the words "via the internet", in my opinion, refers to the profiles of [REDACTED], [REDACTED] and [REDACTED] on LinkedIn.

[85] LinkedIn is a social media network targeting professionals and allows individuals to communicate through the internet. In my opinion, information that is posted on LinkedIn is clearly in the public domain. It follows that the Board's determination about the disclosure of this information was reasonable.

E. *Section 20 of the Access Act*

[86] The remaining issue concerns the manner in which the Board exercised its discretion pursuant to paragraphs 20(1)(b) and 20(1)(d).

[87] In respect of paragraph 20(1)(b), the Applicant carries the burden of showing that the information in question meets the four criteria identified in that provision. This requirement was identified by the Court in *Air Atonabee*, *supra*. The discharge of this burden requires evidence.

[88] The evidence submitted on behalf of the Applicant is contained in the affidavit, sworn on September 2, 2014, of Mr. Glen Burke. At paragraphs 25 to 30, inclusive, of his affidavit, he deposes that he has been advised and does believe that the documents proposed by the Board to be disclosed fall within the scope of paragraph 20(1)(b) of the Access Act. At paragraph 25, he identifies the following documents:

a) [REDACTED]
b) [REDACTED]
c) [REDACTED]
d) [REDACTED]
e) [REDACTED]
f) [REDACTED]
g) [REDACTED]
h) [REDACTED]
i) [REDACTED]

[89] Upon my review of the affidavit of Mr. Burke, I am not persuaded that he has provided a sufficient evidentiary foundation to challenge the Board's finding that the requested documents should not be exempted pursuant to paragraph 20(1)(b). Although the Applicant only asserts that the documents contain "technical" information, Mr. Burke does not say how those documents fall within the ordinary meaning of the word technical.

[90] The Applicant makes submissions about the nature of the requested information as "technical" but there is no clear and specific evidence in support of those submissions.

[91] Is the Applicant a third party? On the basis of the evidence I am satisfied that the Applicant is a "third party" within the meaning of paragraph 20(1)(b).

[92] On the basis of the evidence submitted, I am not satisfied that the information is confidential or that the information was treated consistently in a confidential manner by the Applicant.

[93] Considering the evidence submitted by the Applicant and the arguments made by the Respondents, I am not persuaded that the Applicant has shown an unreasonable exercise of discretion by the Board in refusing to exempt the requested documents pursuant to paragraph 20(1)(b).

[94] The remaining issue is whether the Board erred in concluding that certain information should not be redacted pursuant to paragraph 20(1)(d) of the Access Act.

[95] An exemption is available under this provision when an applicant can show that disclosure of information can reasonably be expected to interfere with contractual or other negotiations of a third-party.

[96] I have determined and accepted that the Applicant is a third party, for the purposes of the Access Act. However, in respect of paragraph 20(1)(d), I am again not satisfied that the Applicant has demonstrated an adequate and sufficient evidentiary foundation, for the exercise of discretion by the Board in its favour.

[97] As noted above, the Applicant argued that it did not know the identity of the requesting party and hinted that the requestor may be involved in litigation with the Applicant and the disclosure of the requested information may interfere with settlement negotiations.

[98] There is nothing in the evidence submitted by the Applicant to support this contention. There is nothing in the evidence submitted by the Applicant to show that the requested information, if disclosed, could "reasonably" interfere with contractual or other negotiations.

[99] In the circumstances, having regard to the evidence presented by the Applicant, I am satisfied that the Board reasonably exercised its discretion not to grant the Applicant an exemption pursuant to paragraph 20(1)(d).

[100] In the result, the application for judicial review is allowed in part. The Board shall redact the further personal information identified above, pertaining to the named employees of the Applicant.

[101] The Applicant has partially succeeded. The parties are at liberty to resolve the issue of costs. If they are unable to agree, brief submissions on costs may be filed within ten (10) days.

[102] The parties shall advise the Court within fourteen (14) days as to what redactions, if any, are required before Public Reasons are released.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed in part. The Board shall redact the further personal information identified above, pertaining to the named employees of the Applicant. The parties are at liberty to resolve the issue of costs. If they are unable to agree, brief submissions on costs may be filed within ten days. The parties shall advise the Court within fourteen (14) days as to what redactions, if any, are required before Public Reasons are released.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1359-14
STYLE OF CAUSE:	SUNCOR ENERGY INC. v. CANADA-NEWFOUNDLAND OFFSHORE PETROLEUM BOARD AND INFORMATION COMMISSIONER OF CANADA
PLACE OF HEARING:	ST. JOHN'S, NEWFOUNDLAND AND LABRADOR
DATE OF HEARING:	AUGUST 13, 2015
PUBLIC JUDGMENT AND REASONS:	HENEGHAN J.
DATED:	APRIL 5, 2016

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Carolina Mingarelli	FOR THE RESPONDENT (INFORMATION COMMISSIONER OF CANADA)

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