Federal Court  Cour fédérale

Date: 20250929

Docket: T-1175-23

Citation: 2025 FC 1515

Ottawa, Ontario, September 29, 2025

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

CACHE COMPUTER CONSULTING CORP.

Applicant

and

MINISTER OF PUBLIC SERVICES AND PROCUREMENT

Respondent

JUDGMENT AND REASONS
(Public Version, Without Redactions, of Confidential Version Issued September 12, 2025)

I. Overview

[1] Through this judicial review, the Applicant Cache Computer Consulting Corp. seeks to prevent the Respondent Minister of Public Services and Procurement from disclosing the names of Cache's contracted consultants in response to a request under the *Access to Information Act*, RSC 1985, c A-1 [*ATIA*], which request concerns the disclosure of documents exchanged

between Public Services and Procurement Canada and Cache. See Annex "A" below for applicable legislative provisions.

[2] Cache asserts that the records the Minister proposes to disclose responsive to the request contain the names of consultants who comprise Cache's core roster. It states that the roster is its "secret recipe" that has contributed to its success in Government of Canada procurement processes involving SAP (i.e. Systems, Applications and Products in Data Processing) projects. Cache thus argues that the names of its contracted consultants should be withheld from disclosure pursuant to subsection 19(1), and paragraphs 20(1)(b), (c) and (d) of the *ATIA*. Further, says Cache, it only needs to establish one of the exemptions to succeed on this application.

[3] The Minister counters that Cache has not met its onus for proving its entitlement to any of the claimed exemptions from disclosure under the above *ATIA* provisions.

[4] Having reviewed the parties' written material and heard their oral arguments, I determine that the names of Cache's contracted consultants are exempt from disclosure as confidential commercial information and as information that reasonably could be expected to prejudice Cache's competitive position, further to paragraphs 20(1)(b) and (c) of the *ATIA*. For the more detailed reasons below, this application will be granted and the Minister will be ordered not to disclose the in-issue names of the consultants.

II. Background

[5] Cache provides professional services to Government of Canada departments and agencies related to Enterprise Resource Planning systems, such as SAP. Cache bids for contracts through various Requests for Proposal [RFPs] and then engages individual professional consultants who are part of its curated roster to support the contracts it is awarded.

[6] At the procurement stage, Cache submits a subset of its roster of consultants who are qualified to fulfill the needs of a particular project. Its submission includes the names, resumes, security clearance information, and technical qualifications for each consultant, as well as a point rating against the RFP requirements. Cache says it provides consultants with higher technical qualifications so that Cache has a better chance of securing contracts at a higher contract value.

[7] The access request under the *ATIA* prompted the Minister to send a third party consultation notice to Cache, pursuant to subsection 27(1); the notice enclosed the records the Minister believed were responsive to the request and, thus, were proposed for release. While the Minister accepted some of Cache's responding representations, the Minister determined that the identity of individuals who performed work under a federal contract cannot be protected, further to paragraph (k) of the definition of "personal information" in section 3 of the *Privacy Act*, RSC 1985, c P-21 [*Privacy Act*]. Although the Minister ultimately concluded that some of the requested records are partially exempt from disclosure under subsection 19(1) and paragraphs 20(1)(b) and (c) of the *ATIA*, the Minister determined the names of Cache's contracted consultants were not exempt and, thus, they would be released along with other information that

was not identified for redaction [Decision]. The release of the consultants' names, i.e. essentially Cache's entire roster of consultants, is the overarching issue on the application presently before the Court.

[8] Cache's uncontroverted evidence is that its consultant roster generally is not shared externally, including with project partners on RFPs, except in rare circumstances on limited bases, and that the roster, along with Cache's proprietary formula to determine its bid and per diem/hourly rates, are the three most valuable pieces of information for its business. Cache says that it has been subject to approximately seven access to information requests since 2018, and in all previous cases, the names of its consultants were redacted in the disclosed records.

[9] Further says Cache, its roster of consultants is an asset that has taken significant time and money to develop. According to Cache, the disclosure of the roster would affect its business viability through an increased risk of its consultants being poached by about five to ten competing firms who bid for similar RFPs. Cache provides an example of how it has curated high-scoring consultants who regularly achieve 100% on the technical point related requirements for various RFPs. Cache asserts that because it scores so highly on the technical evaluation in this way, it has "room to spare" and, therefore, it can increase the per diem or hourly rates it charges for its consultants while still remaining competitive in RFPs.

III. Issues and Review Standard

[10] The more granular issues that arise in this matter are set out below. They relate to the specific provisions of the *ATIA* which Cache believes should exempt its consultant roster from disclosure.

(1) Are the names of Cache's consultants exempt from disclosure under subsection 19(1) of the *ATIA* as personal information?

(2) Are the names of Cache's consultants exempt from disclosure under paragraph 20(1)(b) of the *ATIA* as confidential commercial information?

(3) Are the names of Cache's consultants exempt from disclosure under paragraph 20(1)(c) of the *ATIA* because of reasonably expected financial loss or prejudice to Cache's competitive position?

(4) Are the names of Cache's consultants exempt from disclosure under paragraph 20(1)(d) of the *ATIA* because of reasonably expected interference with Cache's contractual or other negotiations?

[11] Section 44.1 of the *ATIA* provides that applications under section 44, such as Cache's instant application for review of the mandatory exemptions contained in paragraphs 20(1)(b), (c), and (d), are "to be heard and determined as a new proceeding." The "new proceeding" before the Court entails a *de novo* or fresh review of the matter, with little to no deference owed to the Minister: *Concord Premium Meats Ltd v Canada (Food Inspection Agency)*, 2020 FC 1166 at para 43; *Perreault v Canada (Foreign Affairs)*, 2023 FC 1051 [*Perrault*] at para 27. It is not, as argued by Cache, a correctness review *per se*: *Perrault*, at para 31. I add that the standard of proof applicable to subsection 20(1) issues is a balance of probabilities: *HJ Heinz Co of Canada Ltd v Canada (Attorney General)*, 2003 FCT 250 [*HJ Heinz*] at para 31, citing *Northern Cruiser Co v Canada* (1995), 99 FTR 320n (FCA). I pause to note that *HJ Heinz* was upheld twice on

appeal, though without explicit reference to the appliable standard of proof: 2004 FCA 171, aff'd 2006 SCC 13.

[12] A different approach applies, however, to subsection 19(1) of the *ATIA*. A consideration of section 44, which refers to subsection 28(1) which in turn refers to subsection 27(1), reveals that the personal information exemption contemplated in subsection 19(1) is not covered by the requirement in section 44.1 for a new hearing.

[13] Although subsection 19(1) involves a mandatory exemption, the Minister nonetheless retains discretion to disclose personal information for any of the reasons described in subsection 19(2) of the *ATIA*. As stated by Justice Pamel, "a discretionary decision of the government institution, for example based on subsection 19(2) of the [ATIA], is not to be reviewed on a *de novo* standard of review[; rather,] the only standard that can be applied to the review is reasonableness": *Perreault*, above at paras 37 and 41. See also *Information Commissioner of Canada v Canada (Natural Resources)*, 2014 FC 917 at para 26, citing *Dagg v Canada (Minister of Finance)*, 1997 CanLII 358 (SCC) at paras 106-111, [1997] 2 SCR 403.

[14] The possible exercise of discretion is not engaged, however, where the information in issue is not personal information, as discussed next.

IV. Analysis

A. ATIA *Subsection 19(1) – Personal Information*

[15] I find Cache has not established, on a balance of probabilities, that the names of its contracted consultants are personal information. The issue turns, in my view, on the statutory meaning of the term "personal information."

[16] Cache maintains that the names of its contracted consultants are exempt from disclosure under subsection 19(1) of the *ATIA* because they are personal information and are not subject to disclosure pursuant to paragraph (k) of the definition of "personal information" in section 3 of the *Privacy Act*. According to Cache, it is always the entity that contracts with the Government of Canada, not its individual consultants. Cache provides services under its contracts with the Government of Canada. The consultants or their corporations are parties to contracts with Cache and perform services for Cache which pays the consultants, i.e. the consultants are not paid by the Government of Canada. Further says Cache, none of the *ATIA* subsection 19(2) exceptions to non-disclosure of personal information applies to the consultants' names.

[17] The Minister does not dispute the findings in *Perrault* to the effect that where the government institution has discretion, such as with subsection 19(2) of the *ATIA*, the reasonableness standard of review applies. That said, the Minister posits that section 19 of the *ATIA* does not apply here because the information in issue falls into the exception found in paragraph (k) of the definition of "personal information" in section 3 of the *Privacy Act*. I agree.

[18] The *Privacy Act* explicitly excludes from personal information under section 19 of the *ATIA* the name of an identifiable individual who is or was performing services under contract for a government institution that relates to the services performed. In my view, the phrase "under

contract for" in paragraph (k) of the definition of "personal information" in section 3 of the *Privacy Act* is an intentional choice of language by Parliament and does not mean or is not interchangeable with "under contract with." That Cache provides the services under contract with the Government of Canada does not change the fact that the services are performed by identifiable individuals, i.e. the consultants, under a contract for a government institution, i.e. the contract between Cache and the Government of Canada. In other words, I find the language of paragraph (k) of the definition of "personal information" in section 3 of the *Privacy Act* captures a broader range of contractual relationships than the direct contractual relationship advocated by Cache.

[19] This Court previously considered the issue of direct versus indirect contractual relationships in *Canada (Information Commissioner) v Canada (Secretary of State for External Affairs)*, 1989 CanLII 9478 (FC), [1990] 1 FC 395 [*External Affairs*]. Cache has not shown that this decision no longer is good law.

[20] In *External Affairs*, Justice Dubé, as he was then, undertook a textual interpretation of the English and French versions of paragraph (k) of the definition of "personal information" in section 3 of the *Privacy Act*, finding that the French version of the provision was narrower than the English. At the time, the French version referred to an individual "qui a conclu un contrat." The English version, however, referred then, and refers today, to an individual who was "performing services under contract."

[21] In considering the two versions of the provision, Justice Dubé held that there was nothing in the scheme of the *Privacy Act* that would provide more privacy to an individual who was hired by the government through a personnel agency rather than directly by the government. He concluded that the French text "qui a conclu un contrat de prestation de services" was merely a bad translation: *External Affairs*, above at p 400-402.

[22] Cache similarly seeks, in my view, to afford the names of its consultants more privacy than that to which a public servant would be entitled, simply because Cache is the contracting entity with the Government of Canada.

[23] I note in passing that the French version today of paragraph (k) of the definition of "personal information" in section 3 of the *Privacy Act* is at least as broad, if not arguably broader than the English version, commencing with "un individu qui, au titre d'un contrat, assure ou a assuré la prestation de services à une institution fédérale." In my view, the words "au titre d'un contrat" include but are not limited to a direct contractual relationship between the individual who performs the services and the federal institution. In the end, I am unpersuaded by Cache's submissions on this issue.

B. *ATIA Paragraph 20(1)(b) – Confidential Commercial Information*

[24] Despite the above determination that the names of its contracted consultants are not exempt personal information, I am satisfied Cache has shown they are nonetheless confidential commercial information that fall within the limited exception in paragraph 20(1)(b) to the general right of public access to records under government control described in paragraph 2(2)(a)

of the *ATIA*. The fact that some of the names have been and may be made available in a database such as the Government Electronic Directory Services, also known as GEDS, in itself does not result automatically in a loss of confidentiality, in particular their connection to Cache: *Janssen-Ortho Inc v Canada (Minister of Health)*, 2007 FCA 252 [*Janssen-Ortho*] at para 6.

[25] Cache argues that the in-issue information here meets the applicable four-part test in *Air Atonabee Ltd v Canada (Minister of Transport)*, 1989 CanLII 10334 (FC) [*Air Atonabee*] at 197, 27 CPR (3d) 180, thus warranting exemption from disclosure.

[26] Although relying on a different case (i.e. *HJ Heinz*, above at para 32), the Minister does not dispute the applicable test; instead, the Minister submits that Cache has not met it. I disagree and explain why.

[27] For information to fall within the disclosure exemption of paragraph 20(1)(b), it must:

(1) be financial, commercial, scientific or technical;
(2) be confidential;
(3) be supplied to the government institution by a third party; and
(4) have been treated consistently in a confidential manner by the third party.

[28] I next address each requirement or criterion in turn.

(1) Commercial information

[29] The Minister argues that Cache does not establish how the names *per se* are commercial in nature or how its competitive advantage would be weakened in the event of disclosure. Again, I disagree.

[30] On the first part of the test, the at-issue information must be commercial in nature, as that term is commonly understood and defined in its dictionary sense: *Merck Frosst Canada Ltd v Canada (Health)*, 2012 SCC 3 [*Merck Frosst*] at para 139, citing *Air Atonabee*, above at 198.

[31] Although neither party adduced proper evidence of dictionary definitions of "commercial" (the Minister's written submissions on this point being improperly disguised evidence), I am prepared to take judicial notice of the meaning of "commercial" as relating to "commerce" which in turn consists of trade (i.e. the exchange of goods and services). (See, for example, the Wikipedia definition of "Commerce": https://en.wikipedia.org/wiki/Commerce.) In my view, the focus on the meaning of the word "commerce" addresses Cache's concern about the circularity of some definitions.

[32] Cache's evidence before the Court includes the affidavit of Victoria Fisher, Cache's Chief Executive Officer. Because the Minister did not cross-examine Ms. Fisher, her evidence essentially is uncontroverted.

[33] Ms. Fisher describes in detail how qualified consultants, identified by name, factor into the procurement process, as well as the implementation and execution of SAP projects. At the bidding stage, Cache submits a roster of consultants qualified to fulfill the requirements of a

particular project and provides detailed information about the consultants, including their names, resume information, security clearance and technical qualifications. Each consultant's technical qualifications include a point rating assessed according to the requirements of the particular RFP.

[34] Ms. Fisher explains how the strength of an organization's consultant roster is the basis of its competitive advantage in the consulting marketplace. Specifically, says Ms. Fisher, government contracts for SAP services require that consultants satisfy specific requirements, without which the contract cannot be awarded. Further, she explains that the primary function of Cache's business is identifying, developing, and retaining qualified consultants which requires a great deal of time and resources.

[35] There is no doubt in my mind that in the context of Cache's business, the names of its contracted consultants are commercial in nature in the sense of relating to commerce or trade (i.e. here, the exchange or sale of services of individuals with particular qualifications attached to their names). As the Supreme Court of Canada guides, information need not have an inherent value, like a client list, to be commercial: *Merck Frosst*, above at para 140.

[36] I find the Minister's arguments to the contrary unconvincing nor am I persuaded that the Court must examine each name individually, as the Minister advocates. Had the Minister wished to dispute the evidence in Ms. Fisher's affidavit, the Minister could have cross-examined her but, as mentioned, the Minister did not. A sworn or solemnly affirmed affidavit is evidence in itself and those who would forego cross-examination for whatever reason(s) would be wise to consider the consequences of making that choice (i.e. that the affidavit evidence may be uncontroverted,

depending on the circumstances). This is so because "whether or not the exemption applies must be considered in light of the nature of the information and the evidence in the particular case" (emphasis added): *Merck Frosst*, above at para 142.

(2) Confidential information

[37] There is no dispute between the parties regarding the three requisite elements for establishing confidentiality of information:

(a) the content of the record is such that the information it contains is not available from sources otherwise accessible by the public or that could not be obtained by observation or independent study by a member of the public acting on their own;

(b) the information originates and is communicated in a reasonable expectation of confidence that it will not be disclosed, and

(c) the information is communicated, whether required by law or supplied gratuitously, in a relationship between government and the party supplying it that is either a fiduciary relationship or one that is not contrary to the public interest, and which relationship will be fostered for public benefit by confidential communication.

See, for example, *Burnbrae Farms Limited v Canada (Canadian Food Inspection Agency)*, 2014 FC 957 [*Burnbrae Farms*] at para 74, citing *Air Atonabee*, above at 202, and *Merck Frosst*, above at para 133, which seemingly accepts the above test.

[38] I deal with each of these elements in turn.

(a) *Availability of information from publicly accessible sources*

[39] The Minister argues that Cache's consultants who work under a federal contract are given Government of Canada email accounts, and that their full names and position titles appear in

GEDS. As such, the Minister contends their names are part of the public domain and their connection to Cache can be accessed by the public through online research or their names may be associated to Cache in other publicly available platforms.

[40] Cache submits that while the fact of affiliation with the Government of Canada may be publicly available because of an email address or the appearance of a name in GEDS, there is no publicly available information that connects a particular consultant to Cache. The Minister counters that Cache has not produced any evidence to confirm none of the names of its consultants is associated with Cache on any publicly available platforms. In my view, the latter argument is unsupportable because it attempts, unjustifiably, to demand of Cache that it prove a negative, i.e. that none of the names of its contracted consultants is associated with Cache on any publicly available platform, something that is difficult, if not impossible, or nearly so, to accomplish.

[41] Further, I find that the Minister's arguments are largely speculative and do not explain, for example, how a member of the public can observe or research a consultant's connection to Cache. To the contrary, Ms. Fisher explains in detail the efforts Cache undertakes to maintain the confidentiality of its curated roster of consultants.

[42] According to Ms. Fisher, the roster, the proprietary formula used to develop bids and the per diem/hourly rates are Cache's three most valuable pieces of information. Cache thus always has treated the information as secret, says Ms. Fisher. This includes, states Ms. Fisher, never

sharing the roster externally, and providing access internally only to five of Cache's employees who require access because of their roles.

[43] Ms. Fisher also maintains that when Cache partners with a competitor or another company on an RFP, Cache never shares the consultant roster with the project partner. She explains that the information is shared only with the government institution in the context of the RFP and Cache's work with them. In rare, limited instances, states Ms. Fisher, certain names may be shared with a partner but not the full roster and only with specific individuals within the partner who need to know the information in the context of providing services under contract. In addition, Cache enters into a partnership agreement with its partners containing confidentiality and non-compete clauses and stipulates that Cache is the entity responsible for providing consultants to the government entity to complete the work. A sample agreement is attached to Ms. Fisher's affidavit as an exhibit.

[44] Notwithstanding that some of the consultant names are available on GEDS, what takes the information outside the general proposition that publicly disclosed information no longer is confidential if it is publicly available through another source (*Merck Frosst*, above at para 146), is Cache's assessment of and reliance on the consultants' qualifications in rating them and putting them forward to perform the work, under contract, for the government institution (*Merck Frosst*, above at para 148). I find that Cache's reliance in this regard is not publicly available and is confidential (*Merck Frosst*, above at para 147, citing *Janssen-Ortho Inc v Canada (Minister of Health)*, 2005 FC 1633 at para 39, aff'd see *Janssen-Ortho* above). Releasing the names in the context of invoices and time sheets, which are attached as exhibits to Ms. Fisher's affidavit, as

the Minister proposes to do, would undermine, if not eliminate, that confidentiality, in contrast to listing some of the names in GEDS or assigning a Government of Canada email address and phone number to a consultant. The former would disclose each consultant's connection to Cache, while the latter does not.

[45] Cache cross-examined the Minister's affiant about the latter point. The Minister's evidence consists of the affidavit of Dominique Bernier, an acting Team Leader in the Access to Information and Privacy team for the Department of Public Services and Procurement Canada [PSPC-ATIP].

[46] In his affidavit, Mr. Bernier provides background information regarding the parties' interactions culminating in the Decision. When he was cross-examined by Cache about what information a Government of Canada email address and phone number might reveal about an individual, he agreed that they do not reveal whether the individual is a consultant working under contract or not in their everyday duties.

[47] Cache's evidence also includes the affidavit of Kaitlyn Moar, an administrative coordinator at Cache. The affidavit describes that it addresses the Minister's submission in the Respondent's Record that information about consultants under contract with Cache could be found in GEDS. I note that, as with Ms. Fisher's affidavit, the Minister did not cross-examine Ms. Moar. Her evidence thus also is uncontroverted.

[48] Ms. Moar demonstrates how the GEDS database is incomplete and possibly not up to date. Her research using the database reveals that only about 25% (30 of 122) of Cache's consultants in the documentation the Minister proposes to disclose appeared in GEDS. Of those consultants, only eight were listed with the title "contractor" or "consultant." I am prepared to infer, based on this evidence, that 75% (i.e. 92 of 122, a significant majority) of the names of Cache's consultants in issue did not appear in GEDS at the time Ms. Moar conducted her research.

[49] Further, of the 30 consultants in GEDS, some were missing their title, email address and/or phone number. Some were shown as affiliated with a department for which Cache had not engaged the consultant to complete work. An example of the latter is attached to Ms. Moar's affidavit as an exhibit. More to the point, the GEDS entries for the 30 consultants do not contain any reference to Cache and, thus, do not reflect that the work completed by the consultants was done under contract with Cache.

[50] In sum, I am satisfied on a balance of probabilities that the connection of the names of the consultants with Cache, and Cache's assessment, rating and reliance on them to perform the work resulting from a successful bid, is not information available from sources otherwise accessible by the public and could not be obtained by observation (even with more effort, per *HJ Heinz*, above at para 34, citing *Air Atonabee*, above at 199) or independent study by a member of the public acting on their own. Further, context is important here. The Minister is not proposing to release the names alone but as they are listed in documentation such as invoices and timesheets that disclose the connection of the consultants with Cache.

(b) *Reasonable expectation of confidence*

[51] Given Cache's confidential treatment of the names of its contracted consultants explored above, and having regard to the seven previous access to information requests where Cache requested the redaction of, and PSPC-ATIP redacted, the names and financial rate information related to its consultants, as per Ms. Fisher's uncontroverted, sworn evidence, I find that information in issue originates and is communicated in a reasonable expectation of confidence that it will not be disclosed.

[52] Had there been only one or two previous access to information requests, the Minister's position that Cache cannot rely on the PSPC-ATIP's treatment of previous access requests might have been more persuasive, in my view. While the Minister did not posit explicitly that fewer prior access requests involving redacted names of consultants would undermine Cache's reliance on PSPC-ATIP's past practice, I do not accept the suggestion that the seven prior instances can be dismissed.

[53] I find Ms. Fisher's sworn, uncontroverted evidence that there have been seven previous access to information requests where the consultants' names were redacted gives rise to a reasonable expectation of confidence and is akin to "statements of department staff about the information remaining in confidence" (*Air Atonabee*, above at 203) having occurred seven times.

[54] I add that although there is no specific confidentiality agreement between Cache and the Government of Canada, Mr. Bernier admitted in cross-examination that if confidentiality were

established, the PSPC-ATIP would apply the section 20(1) exemption without an actual confidentiality agreement between the PSPC and the third party.

(c) *Relationship not contrary to public interest and will be fostered by confidential communication*

[55] The Minister argues that it is in the public interest for the public to be aware of who completes work using public funds and that a third party cannot expect reasonably the amounts to be paid out of public funds to a third party under a government contract would remain confidential. I do not disagree.

[56] That said, the direct contractual relationship is between Cache and the Government of Canada which pays Cache for the services provided by the consultants. Cache is responsible for compensating its consultants who are under direct contract with Cache. I agree with Cache that were the names of the consultants withheld, this would not prevent the public from understanding the contractual relationship between it and the Government of Canada.

[57] Further, the relationship seemingly will be fostered by withholding the consultants' names because, according to Ms. Fisher, Cache's proprietary formula for assessing and rating consultants, to which Cache has devoted significant resources, has enabled it to curate over the years a roster of high quality consultants (i.e. "only levels 2 and 3").

[58] I thus determine, on the second part of the test for whether information to be disclosed falls within the disclosure exemption of paragraph 20(1)(b), that Cache has shown the

information – the names of the consultants in the context of the in-issue records, such as invoices and timesheets – is confidential.

(3) Information supplied to the government institution by a third party

[59] There is no question that the names of the contracted consultants were supplied by Cache to the Government of Canada.

(4) The third party has treated the information consistently in a confidential manner

[60] This issue is addressed above in connection with the second part of the applicable test under the heading "(a) Availability of information from publicly accessible sources." I need say nothing further on the issue.

[61] For the above reasons, I find that Cache has met the test for establishing that an exemption from disclosure of the names of its contracted consultants is warranted, under paragraph 20(1)(b) of the *ATIA*, in respect of the records the Minister proposes to disclose to the requester.

[62] Although this issue is determinative of Cache's section 44 application, I consider the remaining two issues for completeness.

C. ATIA *Paragraph 20(1)(c) – Reasonably Expected Financial Loss or Prejudice to Competitive Position*

[63] I find Cache has shown a reasonable expectation of at least prejudice to its competitive position if the names of its contracted consultants are disclosed.

[64] Unlike paragraph 20(1)(b) which is a class-based exemption, paragraph 20(1)(c) is a harms-based exemption that focuses on the prejudice flowing from the disclosure of information, specifically the degree and likelihood of harm, as well as the type of harm: *Porter Airlines Inc v Canada (Attorney General)*, 2014 FC 392 at para 79. As stated by the Supreme Court of Canada, information that is "not already public, that is shown to give competitors a head start in developing competing products, or to give them a competitive advantage in future transactions may, in principle, meet the requirements of s. 20(1)(c)": *Merck Frosst*, above at para 219.

[65] A third party claiming an exemption under paragraph 20(1)(c) must show that the risk of harm is considerably more than or well beyond a mere possibility, but does not have to establish on a balance of probabilities that the harm in fact will occur: *Merck Frosst*, above at paras 199, 206.

[66] This Court previously considered non-exhaustive factors that can be useful in assessing whether or not there is a reasonable expectation of probable harm from disclosure in a given situation, including:

(a) an assumption the disclosed information will be used;
(b) whether the information is available from other sources or could be obtained by observation or independent study;
(c) possible press coverage of a confidential record;
(d) the period of time between the date of the confidential record and its disclosure;
(e) the individual and cumulative effect of each record proposed for release; and

(f) whether the information can be severed reasonably from the rest of the record under section 25 of the ATIA.

See *Canada (Information Commissioner) v Canada (Prime Minister)*, 1992 CanLII 2414 (FC), [1993] 1 FC 427 [*Calamai* (i.e. one of the applicants of the four matters heard together)] at 444-445.

[67] Cache submits that while the enumerated factors are not a checklist, consideration of them favours non-disclosure. I agree.

[68] The Minister argues that Cache's evidence is largely speculative and is not supported by any expert evidence or evidence of treatment of similar elements of proof or similar situations, and pressures from competitors as part of its evidentiary record. I find the Minister's submissions regarding this claimed exemption sparse and essentially based on the view that statements in the sworn affidavit are insufficient absent corroboration. The Minister, however, has not pointed to any specific statements that the Minister says should have been supported with corroborative evidence.

[69] The Minister's arguments, in my view, seemingly discount the fact that Ms. Fisher, along with three business partners, purchased Cache in 2009 and she has held the position of CEO since 2017. In other words, her involvement with Cache is neither recent nor low level. Her affidavit demonstrates a depth of knowledge of Cache's business and its position in a relatively small (in the sense of 5-10 direct competitors) but competitive consulting marketplace. According to Ms. Fisher, the strength of an organization's consultant roster is the basis of its

competitive advantage in the consulting marketplace. Because her evidence is uncontroverted and Ms. Fisher's credibility is not in issue, I am prepared to accept it.

[70] Turning to the above factors, I note that there is no evidence of the identity of the requester. Nonetheless, having regard to the guidance in *Calamai*, I assume that the information concerning the names of Cache's contracted consultants will be used.

[71] The issue of whether the information is available from other sources or could be obtained by observation or independent study has been canvassed above and I have determined that it is not in so far as the connection to Cache is concerned in the context of the records the Minister proposes to disclose, such as invoices and timesheets that disclose the connection. While Cache's proprietary formulas used to develop its bids and per diem/hourly rates for each consultant already will not be part of the disclosure, I am prepared to infer that it would not be a stretch for a competitor to assume that Cache rates them highly (i.e. level 2 or 3, as attested by Ms. Fisher) and to seek to retain them.

[72] Regarding the issue of possible press coverage, I acknowledge Cache's concern but find that its submissions on this issue are speculative and without evidentiary support.

[73] Although the period of time between the date of the confidential record and its disclosure is about 4-5 years at this point, Cache's evidence is that it continues to use the same core roster of consultants, tailored to specific contracts based on suitability.

[74] While the disclosure alone of a single name or even the thirty names in GEDS may not give rise to reasonably expected harm, the Minister proposes to disclose the names in records that reveal the connection with Cache and that will encompass essentially the whole of Cache's roster (i.e. approximately 122 names). In other words, I find the context in which the Minister proposes to disclose the information is a factor that favours Cache.

[75] Regarding the issue of whether the information can be severed reasonably from the rest of the record, Cache has restricted this section 44 application to the issue of the names which can be redacted in a similar manner to other information the Minister already is prepared to redact in the records to be disclosed.

[76] Although I thus determine that Cache has shown a reasonable expectation of prejudice to its competitive position, there is insufficient evidence to support an assessment regarding expected financial loss.

D. *ATIA Paragraph 20(1)(d) – Reasonably Expected Interference with Contractual or Other Negotiations*

[77] I find Cache has not shown a reasonable expectation of interference with contractual or other negotiations if the names of its contracted consultants are disclosed.

[78] I agree with Cache that it need not prove the harm will in fact occur and that the Court generally must engage in some speculation. I am not persuaded, however, that the decision of

this Court in *Calian Ltd v Canada (Attorney General)*, 2015 FC 1392 [*Calian*], rev'd in part, 2017 FCA 135, on which Cache relies, is of assistance.

[79] There, the information at issue was the proposed disclosure of "personnel rates or unit prices [Personnel Rates] for each labour category or type of specialist provided by the bidder": *Calian*, above at para 4. The evidence before Justice Brown was that if some customers knew how much was being charged, they might seek to pay less, and conversely, consultants and contractors would seek to be paid more: *Calian*, above at paras 81-83. A consideration of upward and downward cost pressures is not applicable to Cache's circumstances, however, because the Minister already has agreed to redact the per diem or hourly rates charged by each consultant as well as the number of days each consultant worked from each invoice. This is seemingly a different circumstance, therefore, from that before Justice Brown because other Cache customers will not learn the rates charged for each of Cache's consultants and, thus, they will not be in a position to demand to pay less. Nor could individual Cache consultants compare their rates and demand to be paid more because each is bound by a confidentiality obligation in their subcontractor agreement with Cache, an example of which is an exhibit to Ms. Fisher's affidavit.

[80] In my view, the remainder of Cache's evidence does not show more than a mere possibility of harm. On a reading of Ms. Fisher's affidavit, it is the combination of the consultant names and their associated point rating which, together, create a risk of interference with its contractual negotiations. In the records proposed for disclosure, however, there do not appear to be any references to the point ratings for each of Cache's consultants, and Ms. Fisher's affidavit confirms this.

[81] While I agree with Cache that the inclusion of consultant names in the released records would reveal that the consultants worked for various Government of Canada departments as part of contracts awarded to Cache (i.e. the connection between Cache and its consultants), I am not convinced this would create the kinds of cost pressures described by Justice Brown in *Calian*.

[82] Instead, I find that Cache's concerns can be characterized as "merely the heightening of competition" for talent. Similarly, my reading of Cache's affidavit evidence has not disclosed "any particular contract or negotiations would be obstructed by disclosure" beyond the future RFPs on which Cache intends to bid: *Burnbrae Farms*, above at para 125. See also *American Iron & Metal Company Inc v Saint John Port Authority*, 2023 FC 1267 at para 71.

V. Conclusion

[83] For the above reasons, I conclude that Cache has established the exemptions described in paragraphs 20(1)(b) and (c) of the *ATIA*. The application thus will be granted on these bases, and the Minister will be ordered, pursuant to section 51 of the *ATIA*, to redact the names of Cache's consultants from the records to be disclosed in response to the access to information request. Cache will be given the opportunity to review all the proposed and ordered redactions before the Minister discloses the records.

VI. Costs

[84] The parties advised the Court at the outset of the hearing that they had agreed to costs in the amount of $2,500 to the successful party. This sum is reasonable in my view. I thus award

Cache lump sum costs in the amount of $2,500, inclusive of fees and disbursements, payable by the Minister.

JUDGMENT in T-1175-23

THIS COURT'S JUDGMENT is that:

1. The Applicant Cache Computer Consulting Corp.'s application pursuant to section 44 of the *Access to Information Act*, RSC 1985, c A-1 [*ATIA*] is granted in part, based on paragraphs 20(1)(b) and (c) of the *ATIA*.
2. The Respondent Minister of Public Services and Procurement is ordered, under section 51 of the *ATIA*, to redact the names of the Applicant's contracted consultants from the records proposed for release, in substantially the same form as in Exhibit "G" to the affidavit of Victoria Fisher sworn on October 30, 2023.
3. The Respondent shall provide the redacted records, including pursuant to this Judgment, to the Applicant for review before their release. Upon receipt of the redacted records, the Applicant shall have 20 days to submit to the Respondent comments regarding any omissions or incomplete redactions of the names of its contracted consultants.
4. The Applicant is awarded lump sum costs in the amount of $2,500, inclusive of fees and disbursements, payable by the Respondent.

"Janet M. Fuhrer"

Judge

Annex "A": Relevant Provisions

***Access to Information Act*, RSC 1985, c A-1.**
***Loi sur l'accès à l'information*, LRC 1985, ch A-1.**

Purpose of Act **Specific purposes of Parts 1 and 2** **(2)** In furtherance of that purpose, **(a)** Part 1 extends the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government; and […]	**Objet de la loi** **Objets spécifiques : parties 1 et 2** **(2)** À cet égard : **a)** la partie 1 élargit l'accès aux documents de l'administration fédérale en consacrant le principe du droit du public à leur communication, les exceptions indispensables à ce droit étant précises et limitées et les décisions quant à la communication étant susceptibles de recours indépendants du pouvoir exécutif; […]
Definitions **3** In this Act, […] **personal information** has the same meaning as in section 3 of the *Privacy Act*; (***renseignements personnels***)	**Définitions** **3** Les définitions qui suivent s'appliquent à la présente loi. […] **renseignements personnels** S'entend au sens de l'article 3 de la Loi sur la protection des renseignements personnels. (***personal information***)
Personal information **19 (1)** Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Part that contains personal information. **Where disclosure authorized** **(2)** The head of a government institution may disclose any record requested under this Part that contains personal information if	**Renseignements personnels** **19 (1)** Sous réserve du paragraphe (2), le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant des renseignements personnels. **Cas où la divulgation est autorisée** **(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; **(b)** the information is publicly available; or **(c)** the disclosure is in accordance with section 8 of the *Privacy Act*.	**a)** l'individu qu'ils concernent y consent; **b)** le public y a accès; **c)** la communication est conforme à l'article 8 de la *Loi sur la protection des renseignements personnels*.
Third party information **20 (1)** Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Part that contains […] **(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; […] **(c)** information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or **(d)** information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.	**Renseignements de tiers** **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)** 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; […] **c)** des renseignements dont la divulgation risquerait vraisemblablement de causer des pertes ou profits financiers appréciables à un tiers ou de nuire à sa compétitivité; **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.
Notice to third parties **27 (1)** If the head of a government institution intends to disclose a record requested under this Part that contains or that the head has reason to believe might contain trade secrets of a third party, information described in paragraph 20(1)(b) or (b.1) that was supplied by a third party, or information the disclosure of which the head can reasonably foresee might effect a result described in paragraph 20(1)(c) or (d) in respect of a third party, the head shall make every reasonable effort to give the third party written notice of the request and of the head's intention to disclose within 30 days after the request is received.	**Avis aux tiers** **27 (1)** Le responsable d'une institution fédérale qui a l'intention de communiquer un document fait tous les efforts raisonnables pour donner au tiers intéressé, dans les trente jours suivant la réception de la demande, avis écrit de celle-ci ainsi que de son intention, si le document contient ou s'il est, selon lui, susceptible de contenir des secrets industriels du tiers, des renseignements visés aux alinéas 20(1)b) ou b.1) qui ont été fournis par le tiers ou des renseignements dont la communication risquerait vraisemblablement, selon lui, d'entraîner pour le tiers les conséquences visées aux alinéas 20(1)c) ou d).

Third party may apply for review **44 (1)** Any third party to whom the head of a government institution is required under paragraph 28(1)(b) to give notice of a decision to disclose a record or a part of a record under this Part may, within 20 days after the notice is given, apply to the Court for a review of the matter.	**Recours en révision du tiers** **44 (1)** Le tiers que le responsable d'une institution fédérale est tenu, en application de l'alinéa 28(1)b), d'aviser de la décision de donner communication totale ou partielle d'un document peut, dans les vingt jours suivant la transmission de l'avis, exercer un recours en révision devant la Cour.
***De novo* review** **44.1** For greater certainty, an application under section 41 or 44 is to be heard and determined as a new proceeding.	**Révision *de novo*** **44.1** Il est entendu que les recours prévus aux articles 41 et 44 sont entendus et jugés comme une nouvelle affaire.
Order of Court not to disclose record **51** Where the Court determines, after considering an application under section 44, that the head of a government institution is required to refuse to disclose a record or part of a record, the Court shall order the head of the institution not to disclose the record or part thereof or shall make such other order as the Court deems appropriate.	**Ordonnance de la Cour obligeant au refus** **51** La Cour, dans les cas où elle conclut, lors d'un recours exercé en vertu de l'article 44, que le responsable d'une institution fédérale est tenu de refuser la communication totale ou partielle d'un document, lui ordonne de refuser cette communication; elle rend une autre ordonnance si elle l'estime indiqué.

***Privacy Act*, RSC 1985, c P-21.**
***Loi sur la protection des renseignements personnels*, LRC 1985, ch P-21.**

Definitions **3** In this Act, […] ***personal information*** means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing, […] **(i)** the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,	**Définitions** **3** Les définitions qui suivent s'appliquent à la présente loi. […] ***renseignements personnels*** Les renseignements, quels que soient leur forme et leur support, concernant un individu identifiable, notamment : […] **i)** son nom lorsque celui-ci est mentionné avec d'autres renseignements personnels le concernant ou lorsque la seule divulgation du nom révélerait des renseignements à son sujet;

but, for the purposes of sections 7, 8 and 26 and section 19 of the *Access to Information Act*, does not include	toutefois, il demeure entendu que, pour l'application des articles 7, 8 et 26, et de l'article 19 de la *Loi sur l'accès à l'information*, les renseignements personnels ne comprennent pas les renseignements concernant :
(j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,	**j)** un cadre ou employé, actuel ou ancien, d'une institution fédérale et portant sur son poste ou ses fonctions, notamment :
[…]	[…]
(k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,	**k)** un individu qui, au titre d'un contrat, assure ou a assuré la prestation de services à une institution fédérale et portant sur la nature de la prestation, notamment les conditions du contrat, le nom de l'individu ainsi que les idées et opinions personnelles qu'il a exprimées au cours de la prestation;

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1175-23
STYLE OF CAUSE:	CACHE COMPUTER CONSULTING CORP. v MINISTER OF PUBLIC SERVICES AND PROCUREMENT
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MARCH 18, 2025
JUDGMENT AND REASONS:	FUHRER J.
CONFIDENTIAL JUDGMENT AND REASONS ISSUED:	SEPTEMBER 12, 2025
PUBLIC JUDGMENT AND REASONS ISSUED:	SEPTEMBER 29, 2025

APPEARANCES:

Hunter Fox Michael Walsh	FOR THE APPLICANT
Sheldon Leung	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gowling WLG (Canada) LLP Ottawa, Ontario	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT