Federal Court Cour fédérale

Date: 20260120

Docket: T-1273-24

Citation: 2026 FC 9

Montréal, Québec, January 20, 2026

PRESENT: The Honourable Madam Justice Ferron

BETWEEN:

OKSANA NEVOSTRUYEVA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

CORRECTED JUDGMENT AND REASONS

By inadvertence, due to an administrative technical error, a section intended to be part of the Court's Judgment and Reasons is missing from the published version. This corrected Judgment and Reasons now include the missing section.

I. Overview

[1] Ms. Oksana Nevostruyeva [Applicant] submitted an access to information request [ATIP Request] to Immigration, Refugee and Citizenship Canada [IRCC] pursuant to subsection 12(1) of the *Privacy Act*, RSC 1985, c P-2. Dissatisfied with IRCC's response, because she believes that

the agency withheld some documents, Ms. Nevostruyeva challenged that response and filed a complaint with the Privacy Commissioner [Commissioner]. Her complaint was dismissed.

[2] This application is brought pursuant to section 41 of the *Privacy Act*, in order to review the issues raised by the Applicant's complaint.

[3] In summary, Ms. Nevostruyeva claims that she possesses evidence dating back to 2010 establishing that a file bearing number Z011837640 [Z file] was created in relation to a claim for asylum that she allegedly made in Kiev (Ukraine). She believes that IRCC should still have a copy of this Z file, and therefore, she alleges that information pertaining to the Z file was inappropriately withheld in the response to her ATIP Request. Alternatively, if the Z file no longer exists, she submits that "IRCC intentionally did not fulfil its duty to maintain records safe and accurate, and that, moreover, IRCC tried to hide and cover up this offence for a long time".

[4] The Attorney General of Canada [AGC] submits that, as explained by IRCC to the Commissioner, information and documents dating back to 2010 have been purged and are no longer accessible by IRCC. After a reasonable search, IRCC claims that it was unable to locate the requested Z file. Furthermore, it found no sign that the Applicant ever made a claim for asylum. In support of its position, the AGC produced an affidavit signed by a "Team Leader" in the Access to Information and Privacy Office of IRCC [IRCC ATIP Office].

[5] Ms. Nevostruyeva represents her own interests in this file. She has previously appeared before the Federal Court on multiple occasions and has initiated at least four other proceedings against IRCC (files T-1132-18, IMM-4233-18, IMM-4926-18 and T-1392-20). These matters are

all related to her status in Canada and alleged mistreatment by IRCC. Each of these proceedings ended with a summary dismissal as the Court either (1) granted the defendant's motion to strike the entirety of Ms. Nevostruyeva' statement of claim or (2) dismissed her proceeding on its own initiative for delay or other fatal procedural deficiencies.

[6] Although, in her complaints to the Commissioner, the Applicant took issue with the redactions that IRCC made pursuant to sections 22(1)(b) and 26 of the *Privacy Act*, she does not dispute them before this Court. In fact, in her written submissions in the context of the AGC's request for a confidentiality order, she indicated: "Yes, indeed, the Applicant does not challenge the non-disclosure of the information about third parties. The Applicant understands and accepts that certain information might be undisclosed so that not to reveal methods and sources of information of various security services and departments of government institutions". Therefore, the main questions at issue are:

i. Whether there is some evidence, beyond mere suspicion, capable of establishing that the records Ms. Nevostruyeva sought to obtain from IRCC do, in fact, still exist; and if so

ii. Whether IRCC should be ordered to disclose said records.

[7] There is also an issue related to the applicability of sections 317 and 318 of the *Federal Courts Rules*, SOR/98-106 [*Rules*], in the context of the present matter, which I will address as a preliminary issue below.

[8] The application was heard on November 24, 2025, in person, in Montréal, in accordance with the Order dated October 7, 2025, setting the hearing. The Applicant, who had submitted informal requests for the hearing to be held virtually, which requests were dismissed by Acting Chief Justice Saint-Louis on October 7, 2025, and again on November 20, 2025, as well as by the undersigned on November 24, 2025, was absent. She did not retain counsel to appear on her behalf, as suggested by the Court either. Through the Court Directions of November 20, 2025, and November 24, 2025, the Applicant was made aware that, under these circumstances, the Court would essentially rely on the parties' written submissions.

[9] For the reasons that follow, the application is dismissed. Ms. Nevostruyeva failed to establish that the documents she sought from IRCC existed at the moment of her ATIP Request nor that IRCC failed to conduct a reasonable search. Further, many of the remedies she seeks fall squarely outside the scope of the Court's jurisdiction pursuant to section 41 of the *Privacy Act* and/or lack any evidentiary basis in the record.

II. Factual background

[10] The Applicant has raised various allegations and accusations that are completely irrelevant to the present matter. In a nutshell, the Applicant is convinced that someone at IRCC stole some of her personal information and documents back in 2009 to allow third parties to enter Canada illegally and inserted false information into her own records, impacting her immigration status in Canada. Not only is there no proper evidence supporting these claims before this Court, but they are simply not relevant to the issue at hand. What is relevant is the following.

[11] On October 12, 2023, Ms. Nevostruyeva made an ATIP Request in order to obtain information and documents she described as follows:

> The electronic notes of the immigration or citizenship officer(s) for the IRCC's Refugee Claim file concerning NEVOSTRUYEVA, Oksana. My FOSS notes show the file number Z011837640 that looks a lot like a 5-year ban. It's obvious that ban has to be grounded on some misrepresentation or other offence. I am waiting for the reasons why this file appeared. Also, I want to see this document itself.

[12] As explained in the affidavit of the IRCC agent, filed in support of the Respondent's submissions, the acronym FOSS refers to the Field Operations Support System, an internal recording system that IRCC formerly used to annotate files, which was replaced by the Global Case management System [GCMS] in 2014.

[13] On October 25, 2023, being unable to locate the information requested by the Applicant, the IRCC ATIP Office contacted Ms. Nevostruyeva to obtain the date and location where her asylum application had been submitted, along with the associated file number or Unique Client Identifier [UCI]. Ms. Nevostruyeva responded on the same day, with the information requested and confirming that her claim for asylum was made on May 12, 2009, in Kiev (Ukraine).

[14] On October 27, 2023, the IRCC officer tasked with answering the ATIP Request indicated in a note to file that they were "unable to find Z file mentioned in request package" and would release all the FOSS entries related to the UCI that Ms. Nevostruyeva provided instead of issuing a letter limited to stating that no records were found.

[15] On November 16, 2023, the IRCC ATIP Office sent its final response to Ms. Nevostruyeva via email attaching a "release package" containing six pages of FOSS entries, some of which were,

as the text of the email itself explains, redacted based on sections 22(1)(b) and 26 of the *Privacy Act*. Those legislative provisions relate to information relevant to law enforcement activities and personal information pertaining to individuals other than the Applicant. The IRCC ATIP Office's email also indicated that Ms. Nevostruyeva could file a complaint with the Commissioner if she was dissatisfied with the answer to her ATIP Request.

[16] Between November 16 and November 23, 2023, the Applicant exchanged several emails with the IRCC ATIP Office. In some of these communications, she expressed her dissatisfaction with the information received, Ms. Nevostruyeva used very disrespectful language that this Court does not condone.

[17] On December 12, 2023, the Commissioner notified IRCC that Ms. Nevostruyeva had filed a delay complaint [the First Complaint] and asked for an official response. On December 18, 2023, the IRCC ATIP Office provided to the Commissioner with the email it had sent to the Applicant on November 16, 2023, in response to her ATIP Request of October 12, 2023. On January 11, 2024, the Commissioner informed IRCC that the First Complaint "has been closed at the early resolution stage and our office considers the matter resolved (no finding)".

[18] On March 14, 2024, the Commissioner notified IRCC that Ms. Nevostruyeva had submitted a right of access complaint related to her ATIP Request [the Second Complaint]. Between March 22, 2024, and May 7, 2024, the Commissioner and the IRCC ATIP Office exchanged information related to 1) the search conducted by IRCC to attempt to retrieve information related to the Z file, 2) the meaning of the "Z" prefix, and 3) the agency's retention policy for Z files. In the context of these exchanges, IRCC also provided the Commissioner with

a copies of all the documents released to Ms. Nevostruyeva and indicated that "IRCC was not able to find any sign of a refugee claim made by the complainant" and that "(t)here does not appear to be any records relevant to a refugee claim in the complainant's name in IRCC's system". On May 23, 2024, the Commissioner issued its final report dismissing Ms. Nevostruyeva' Second Complaint. In this report, the Commissioner concluded as follows:

> "We are satisfied that the exemptions have been properly applied and that no documents exist relating to the request. Under the circumstances, we consider that IRCC properly responded to the complainant's request and that it did not contravene their access rights under the Act in this case. Accordingly, the complaint is not well-founded."

III. Analysis

A. *Preliminary issues*

(1) *The Applicant is not entitled to obtain a Certified Tribunal Record*

[19] In her notice of application dated May 29, 2024, the Applicant included a request for a certified tribunal record based on section 317 of the Rules, including: "(a)ll records, notes, reasons, documents, cases in which (sic) name of the Applicant is mentioned that are in possession of IRCC".

[20] On August 13, 2024, the Respondent filed a motion to strike the Applicant's notice of application, without leave to amend, and dismiss the whole application. In said motion, the Respondent took issue with the Applicant's Rule 317 request. On August 24, 2024, Associate Judge Moore rejected the Respondent's motion to strike, noting that "the Respondent argues that the Rule 317 request is improper. It may well be, however, the proper way to challenge Rule 317

disclosure is an objection pursuant to Rule 318 within 20 days of the request. This is not the proper subject of a motion to strike." (*Nevostruyeva v Canada (Attorney General)* (August 24, 2024), Ottawa T-1273-24 (FC)).

[21] On October 1, 2024, the Respondent asked the Applicant whether she would consent to an extension of the time to file its objection to the request under subsection 318(2) of the *Rules*. The Applicant stated that she would agree to discuss and voluntarily exclude some materials requested, but that she did not agree to the extension. Therefore, on October 5, 2024, the Respondent brought forward a motion for an extension of the time to file its objection under subsection 318(2) of the *Rules*.

[22] On December 9, 2024, in the order disposing of the motion for an extension, Associate Judge Moore ordered the parties to attempt to resolve their disagreement regarding whether a certified tribunal record should be produced, and if so, what it should contain. She further provided that, if the parties failed to reach an agreement within 30 days, the Respondent should file a formal objection under subsection 318(2) of the *Rules* "along with a request for directions detailing what efforts were made to resolve the matter and a suggested process to resolve the objection" (*Nevostruyeva v Canada (Attorney General*) (December 19, 2024), Ottawa T-1273-24 (FC)).

[23] On January 24, 2025, the Respondent filed a formal objection to the Applicant's request for a certified tribunal record, pursuant to section 318(2) of the Rules. The Respondent's letter also described the parties' unsuccessful efforts to reach a consensual solution and asked that the Court dispose of its objection after eliciting further written submissions if it deemed it necessary.

[24] On November 6, 2025, the registry informed this Court that the January 24, 2025, letter formalizing the Respondent's objection had never been forwarded to any member of the Court. Therefore, the objection was never adjudicated until the merits hearing on November 24, 2025.

[25] I find that the Respondent's objection under section 318(2) of the *Rules* is well-founded. Section 317 of the *Rules,* which allows an applicant to obtain a certified record, applies only in the context of judicial review proceedings brought pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 (*Lukács v Swoop Inc.*, 2019 FCA 145 at para 21 cited in *Phillips v Capital One Bank (Canada Branch)*, 2021 FC 484 at para 39). It is meant to allow the applicant and the Court to gain access to the elements that were before the decision maker whose decision is under review (*Canada (Health) v Preventous Collaborative Health*, 2022 FCA 153 [*Preventous*] at para 8). In contrast and as explained below, the current application, brought pursuant to section 41 of the *Privacy Act*, is a *de novo* proceeding where the Federal Court undertakes its own analysis of the Second Complaint and of the evidence submitted and comes to its own conclusion as to whether a government institution interpreted and applied exemptions under the *Privacy Act* appropriately when refusing to disclose, in whole or in part, documents subject to an information request. There is no administrative decision under review, so section 317 does not require IRCC to produce a certified record (*Preventous* at paras 8-12; *Lill v Canada (Attorney General)*, 2020 FC 551 at para 34 citing *Lavigne v Canada Post Corporation*, 2009 FC 756 at para 26; *O'Grady v Attorney General of Canada*, (March 10, 2015), T-2587-14 cited in *Phillips v Capital One Bank (Canada Branch)*, 2021 FC 484 at para 26).

(2) *<u>The Applicant's Second Complaint is not part of the record</u>*

[26] Given that this Court's jurisdiction pursuant to section 41 of the *Privacy Act* is based on the Second Complaint, it should have been included in the Applicant's record.

[27] As the AGC correctly points out, applications brought pursuant to section 41 of the *Privacy Act* are not judicial reviews of the Commissioner's decision rejecting a complaint. Instead, they are d*e novo* hearings of the governmental agency's (here IRCC) refusal to release the information (*Love v Office of the Privacy Commissioner of Canada*, 2014 FC 643 at para 82 aff'd 2015 FCA 198 cited in *EW v Canada (Privacy Commissioner)*, 2015 FC 1420 at para 84; *Oleinik v Canada (Privacy Commissioner)*, 2011 FC 1266 at para 8 aff'd 2012 FCA 229).

[28] While the provisions of the *Privacy Act* are different from those of the *Access to information Act,* RSC 1985, c A-1 [ATIA] given their different wordings, they share many similarities. Canadian courts have stated that the two acts form a "seamless code", so their provisions must be construed harmoniously by reference to each other (*Canada (Information Commissioner) v Canada (Commissioner of the Royal Canadian Mounted Police*), 2003 SCC 8 at para 22; *Leahy v Canada (Citizenship and Immigration)*, 2012 FCA 227 at para 68 citing *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC) at paras 45 and 51; *Cumming v Canada (Royal Mounted Police)*, 2020 FC 271 at para 30 citing *HJ Heinz Co of Canada Ltd v Canada (Attorney General)*, 2006 SCC 13 at paras 33-34).

[29] As would be the case under the *ATIA* (*Lukács v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 1142 at paras 8, 44; see also paragraph 41(1) of the *ATIA*), the locus of the analysis is on the complaint that was made to the Commissioner.

[30] Given that the Court's role is to assess the merits of the Applicant's Second Complaint, *de novo*, her failure to include a copy of this Second Complaint constitutes a fatal flaw. As I explained for the *ATIA* in *Beniey c Canada (Agence des services frontaliers),* 2025 CF 1445 at paragraphs 14-21 and again in *Dehkissia c Technologies du développement durable Canada*, 2025 CF 1578 [*Dehkissia*] at paragraphs 29-30, the Court simply cannot perform its role without access to this crucial piece of evidence. This is sufficient to warrant the dismissal of Ms. Nevostruyeva's application.

[31] Nonetheless, the Court has decided to analyze the merits of the application based on the documents that were actually adduced. Even on this basis, the Court still reaches the conclusion that the application must be dismissed.

[32] The only documents that speak to the contents of the Second Complaint are the Commissioner's report dated May 23, 2024, and the Commissioner's email forwarding the complaint to the IRCC ATIP Office dated March 14, 2024.

[33] The Commissioner's report only states that:

> (T)he complainant alleged that Immigration, Refugees and Citizenship Canada (IRCC) contravened the access provisions of the Privacy Act ("the Act"), by failing to disclose the information they

> sought to obtain. Specifically, the complainant complained that specific information was withheld.

[34] According to the email, "(c)omplainant alleges information pertaining to their access request (file # Z011837640) was inappropriately withheld. The Complainant also alleges that sections 22(1)(b) and 26 were incorrectly applied to their privacy request." As explained above, Ms. Nevostruyeva no longer takes issue with the redactions made pursuant to sections 22(1)(b) and 26 of the *Privacy Act*.

[35] Therefore, based on the Commissioner's report and assuming that it truthfully and completely represents the contents of the Second Complaint, the remaining issue is, once again, whether IRCC withheld documents in its custody when it responded to the ATIP Request.

(3) *Some of the documents produced by the Applicant are inadmissible*

[36] Although no formal objection was raised by the Respondent, the Court notes that the Applicant's Record contains several documents that are not accompanied by any affidavit and are therefore not properly before this Court:

i. Several hundreds of pages of documents seemingly obtained pursuant to another access to information request made to IRCC (included at pages 38 to 43 and 50 to 765). According to their description in the table of content, these would be documents that the Applicant received from IRCC in response to her 2023 ATIP Request. Yet, according to the record and the affidavit filed by the Respondent, only six pages (pages 44-49) were produced by IRCC in response to the 2023 ATIP Request; and

ii. A document seemingly reproducing some page of IRCC's website titled "Info Source: Personal Information Banks" at pages 766 to 852 of the Applicant's Record.

[37] As I stated in *Belisle v Canada (Attorney General)*, 2025 FC 1370 at paragraph 111, it is trite law that arguments must be supported by admissible evidence, which, following sections 306 and 307 of the *Rules*, is to be filed by affidavit (*Access Copyright* at paras 20-21). As noted by the Federal Court of Appeal: "the rule that evidence is to be provided by affidavits is not a mere question of technicality; it ensures that no one is hurt by allegations which one does not have a chance to challenge" (*IBM Canada Ltd v Deputy Minister of National Revenue (Customs & Excise)*, 1991 CanLII 13584 (FCA), [1992] 1 FC 663 (FCA) at 678).

[38] Given that neither the Applicant's personal affidavit dated October 11, 2024, nor her affidavit of documents dated July 5, 2024, refer to this evidence, the Court will not consider the documents included at pages 38 to 43, 50 to 765 and 766 to 852 of the Applicant's record.

[39] In any event, the Court finds that this evidence would not be relevant to the present matter. The excerpts from IRCC's website that describe its retention policies for certain types of information and documents do not address the specific case of non-computer-based entries and special notices, such as the Z file at play here. Neither do we know when these retention policies were adopted, including whether they were already in place when the Z file was allegedly created in 2010. Therefore, these excerpts do not prove that the Z file should have been kept until 2023. As for the documents that seem to have been obtained from IRCC pursuant to an older ATIP

request, without further explanation, they do not seem to bear any relation with the 2023 ATIP Request that is the subject of this proceeding.

(4) *The remedies available under section 41 of the Privacy Act*

[40] According to the plea for relief in her memorandum, Ms. Nevostruyeva seeks the following:

i. if Z011837640 exists, to disclose information about Z011837640 and all information relevant to it;

ii. if this Honourable Court receives sufficient proof to consider that Z011837640 does not exists, to produce documents that were reasonably expected to be issued after it's expiry date and to present them to the Applicant;

iii. if even previous is impossible or if the Applicant once again finds produced and issued documents irrelevant, to carry out the revision of all Applicant's files so that to reinstate all the information based only on affidavits, testimony and documents provided by the Applicant;

iv. if none of listed above is possible, to recognize that IRCC intentionally did not fulfil its duty to maintain records safe and accurate and that, moreover, IRCC tried to hide and cover up this offence for a long time;

v. any other relief that this Court finds just.

[41] However, at the core of her memorandum, Ms. Nevostruyeva introduces additional questions and seeks other remedies, including a request that the Court decide whether IRCC "breached its obligation to keep the information in its databanks accurate, up-to-date and complete as prescribed by the section 6(2) of the Privacy Act, ignoring the attempts of the Applicant to correct wrong data". This request is based on the fact that Ms. Nevostruyeva claims to have found "several dozens" inaccuracies in documents that she obtained from IRCC. While the documents purportedly relate to her, she argues that they contain information that is entirely foreign to her,

which would have been introduced by a malicious IRCC agent who allegedly stole her official documents and created the Z file.

[42] The various orders Ms. Nevostuyeva seeks go beyond the scope of section 41 of the *Privacy Act*. As per section 48 of the *Privacy Act*, if the Court determines that the information sought by Ms. Nevostruyeva exists and that information pertaining to her ATIP Request was inappropriately withheld, the Court can order IRCC to disclose the information. While section 48 of the *Privacy Act* contains broad language such as “and shall make such other order as the Court deems appropriate”, this does not authorize the Court to go beyond the limited reviewing role that Parliament intended for it to have (*Blank v Canada (Justice)*, 2016 FCA 189 [*Blank*] at para 36). In fact, our jurisprudence clearly states that the only remedy available in an application brought pursuant to section 41 of the *Privacy Act* is an order mandating further disclosure (*Galipeau v Canada (Attorney General)*, 2003 FCA 223 at para 5 cited in *Frezza v Canada (National Defence)*, 2014 FC 32 at para 57; *Cumming v Canada (Royal Mounted Police)*, 2020 FC 271 at para 25 cited in *Izz v Canada (Attorney General)*, 2024 FC 566 at para 30). This is very similar to the regime that exists under the *ATIA* (*Friesen v Canada (Health),* 2017 FC 1152 at paras 8-12, citing *Blank* at para 36).

B. *The Applicant has not proven that the documents she seeks exist, nor that IRCC acted in bad faith or failed to conduct a reasonable search*

[43] Here, as in proceedings under sections 44 and 44.1 of the *ATIA*, “where the refusal is based on non-existence of records, the Court is called upon to make an independent assessment of the evidence to determine if the records would be held by the government institution” (*Carter v*

Canada (Attorney General), 2025 FC 974 [*Carter*] at para 76 citing *Constantinescu c Canada (Correctional Service)*, 2021 FC 229 [*Contantinescu*] at paras 70-71). Because "(t)he Court must simply consider whether "the records exist or they do not"", no standard of review applies (*Contantinescu* at para 71 citing *Railway Limited v Canada (Attorney General)*, 2018 FCA 69 at para 54, *Yeager v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 330 at para 27).

[44] As would also be the case under the *ATIA*, Ms. Nevostruyeva has the burden of establishing, on a balance of probabilities and through admissible evidence, that the records she seeks in fact exist and are held by IRCC (*Dehkissia* at para 35 citing *Contantinescu* at para 66). As this Court recalled in *Carter*:

> Mere assertions, suspicions or theories that the institution might have records are not sufficient. A government institution cannot be required to conduct fruitless searches for records and to defend its response that no such records exist where there is nothing to suggest that they do exist.
>
> (at para 82 citing *Constantinescu* at paras 67-68).

[45] Furthermore, in *Olumide v Canada (Attorney General)*, 2016 FC 934, a decision related to an *ATIP* file, Prothonotary Tabib also wrote that applicants who contest a refusal to disclose information that the governmental institution alleges does not exist, must provide "some evidence, beyond mere suspicion, that records do exist and have been withheld" (at para 18).

(1) *The Applicant's evidence and arguments*

[46] Ms. Nevostruyeva filed two exhibits in support of her application. One dated October 11, 2024, detailing her claims (Affidavit), and the second, an affidavit of documents dated July 5, 2024 (Affidavit of Documents).

[47] Without listing all of Ms. Nevostuyeva's claims and allegations, here is a summary of the facts described in her Affidavit that are relevant to this application:

i. She learned of the existence of the Z file in Toronto in January 2010, when IRCC sent her notes from "Computer Assisted Immigration Processing System" [CAIPS], another internal note-taking software that IRCC used at the time, pursuant to an access to information request she filed [the 2010 ATIP Request];

ii. The Z file would have been created precisely on May 12, 2009, by an IRCC agent working at the Canadian embassy in Kiev (that she nominally identifies), with whom she claims she had a meeting earlier that day;

iii. She recognizes pieces of information that come from the Z file in the documents she received in response to her 2023 ATIP Request, specifically the "remarks".

[48] The Applicant also advances in her Affidavit a series of assertions related to threats that IRCC's personnel would have made against her over the years, irregularities in the fingerprinting procedure, a purported identity theft, interviews that happened at the Canadian embassy in Kiev in May 2009 and March 2018, documents that allegedly disappeared from IRCC records and personal documents of hers that were allegedly stolen by the IRCC agent who created the Z file. As mentioned above, those allegations are largely unsubstantiated, but more importantly, they are not relevant to the application currently before this Court and will not be considered.

[49] As for any documentary evidence to support her claims, the Affidavit of Documents introduces the following:

i. **Exhibit A**: Response from IRCC ATIP Division received by the Applicant in January 2010, in which document Z011837640 is mentioned;

ii. **Exhibit B**: Response from IRCC ATIP Division received by the Applicant in November 2023, which says that IRCC does not have any records or document in relation to Z011837640;

iii. **Exhibit C**: Report issued by the Office of the Privacy Commissioner regarding the issue in question.

[50] While the Applicant's Affidavit of Documents refers to section 306 of the *Rules*, she instead filed Form 223, prescribed pursuant to section 223 of the *Rules,* which applies to actions rather than applications. As a result, it is not applicable to this proceeding. Nevertheless , given that the Applicant is self-represented, that these documents are at the core of her allegations, that they were duly included in her application record as provided for in accordance with section 309 of the *Rules*, and that the AGC raised no objection to their filing, the Court will exercise its discretion and accept to consider these Exhibits pursuant to section 55 of the *Rules* (*Bird v Canada (National Revenue)*, 2014 FC 843 at paras 36-38; *Latham v Canada*, 2020 FC 670 at paras 20-21. See also *Belisle v Canada (Attorney General)*, 2025 FC 1370 at paras 28-36).

[51] As for the other documents included in her Application Record, as previously explained, they are not admissible evidence.

[52] Therefore, the only admissible document before this Court that establishes the existence of the Z file is Exhibit A to the Affidavit of Documents. According to the description the Applicant

provided, Exhibit A purports to contain the release package that IRCC sent to Ms. Nevostruyeva in January 2010 pursuant to her 2010 ATIP Request.

[53] In her Memorandum, Ms. Nevostruyeva begins by arguing that, given that the Z file was "cited and referred to in earlier system-generated records", it is clear that this Z file exists. She further contends that the Z file cannot have been destroyed because IRCC's 2023 release package contains notes about an application she submitted before the Z-file was created.

[54] In fact, Ms. Nevostruyeva argues that there are "remarks" in the documents sent to her in response to the 2023 ATIP Request that come directly from the Z file. However, the Applicant does not identify which remarks were reproduced, and, given that she redacted the only remark that was included in her Exhibit A, it is not possible for this Court to confirm this allegation.

[55] Regarding the 2014 "valid until" date attributed to the Z file on Exhibit A, the Applicant contends that this is "a property of a document issued to the person", rather than a date on which the original Z file was to be destroyed.

[56] Subsidiarily, if the Z file was erased, IRCC had to provide a more complete answer to her request. Specifically, she asserts that, to comply with subsection 12(1) of the *Privacy Act*, IRCC had to provide the circumstances of the deletion, including the "reasons why and by whom it was deleted". She also highlights the sensitive nature of the information that IRCC stored in its FOSS and GCMS software and the fact that it is used in determining eligibility on whether an applicant should be granted Canadian citizenship or not. Moreover, the Applicant submits that, although

some records are not kept by IRCC for more than a decade, the Z file “cannot be expected to be among (the records destroyed between 2010 and 2023) and to disappear without leaving any trace”.

[57] To support her position, Ms. Nevostruyeva partly relies on the description of databanks used by IRCC made available to the public pursuant to subsection 11(1) of the *Privacy Act,* which she located online but failed to produce properly before this Court, so it is inadmissible. She also relies on the idea that, because “records in databases are (…) created based on other information stored within databanks”, then “(o)nce one record is deleted, another track is left in the system”. For example, information related to an application for permanent residence would, according to this logic, be preserved because it would be transferred to the record linked to the successful applicant’s permanent residence card. Hence, she asserts that there must be information or documents “that were created or issued” based on the Z file that IRCC ought to have disclosed pursuant to her 2023 ATIP Request.

[58] Lastly, she argues that by providing documents that are not related to the Z file instead of simply telling her that the documents she requested did not exist, IRCC tried to mislead her and circumvent its duties under the *Privacy Act*.

(2) *The Respondent’s position*

[59] In response, the AGC essentially submits that, in processing the Applicant’s ATIP Request, the IRCC ATIP Office performed a “complete and thorough search” of its databases using “the search criteria” provided by Ms. Nevostruyeva herself (that is her name, UCI and the Z file number). There are no alternative search criteria that could enable the localization of a “Z file”.

Said search returned no information related to an asylum claim or to the Z file. The AGC further submit that if such information previously existed, il would have been purged by the time of the 2023 ATIP Request under IRCC's retention policy.

[60] Moreover, the AGC submits that Ms. Nevostruyeva failed to adduce concrete evidence that goes beyond mere suspicion to establish that some undisclosed records exist, calling her allegations of record-tampering and other misbehavior "baseless speculations".

[61] Finally, the AGC emphasizes that not only is there no basis in the record supporting a declaratory judgment recognizing that IRCC failed to maintain its records in accordance with the law and even covered up an "offence", but that same would be unwarranted given that the IRCC ATIP Office disclosed what it had access to in due course.

[62] In their affidavit supporting the AGC's pretensions, the IRCC ATIP Office Team leader explains that they reviewed the documents produced by Ms. Nevostruyeva in support of her application, including Exhibit A, which seems to indicate that a Z file did exist as of January 2010. They write that it was only upon reviewing these documents that they became aware of the existence of this Z file for the first time and further explain that the IRCC ATIP Office does not retain access to information requests beyond a two-year period.

[63] Furthermore, they explain that the acronym "NCB" that appears in the column next to the Z entry in Exhibit A refers to a "noncomputer based" entry, that is "a temporary record of fixed duration, which was automatically purged upon reaching its retention period". The NCB entry is created "in situations where insufficient information or grounds existed for the completion of a

report or immigration document". Moreover, the column entitled "valid until", with respect to the Z file, indicates the date of May 12, 2014. According to the agent, this was the day on which the entry was purged. This sworn statement concords with and further complements the explanations provided to the Commissioner.

[64] In fact, in its emails in response to the Commissioner's enquiries in relation to the Applicant's complaint, the IRCC ATIP Office explained that:

i. IRCC conducted a complete search of GCMS and FOSS notes using the Applicant's name, her UCI and the Z file number she provided;

ii. The "Z" prefix was used for files that contained a "Watch For", that is a notice informing all IRCC personnel that the applicant should be "given especially careful consideration" possibly due to "some element of concern being noted";

iii. The "Watch For" system was abolished in 2011 and no alternate naming convention exists to facilitate the localization of files on which there was a "Watch For" notice;

iv. Any document created in 2009 or before, would not have been retained until 2023;

v. There is no specific retention policy attached to files containing a "Watch For" notice currently available;

vi. The oldest retention guidelines that could be accessed date back to 2011-2013 and, under these guidelines, even information and documents of a contentious nature (related to criminal history, war crimes, public safety, etc.) were destroyed "two to five years after the last administrative action" in the file;

vii. "(T)here is no indication of (a Watch-For) in any file belonging to the complainant", and no sign that she was ever the subject of a five-year ban;

viii. IRCC could not locate any sign of a refugee claim ever made by the complainant, but "only" two study permit applications (both approved) and two permanent resident applications (one withdrawn, the other refused).

[65] The information provided by IRCC to the Commissioner regarding "Watch For" notices is also consistent with the one-page excerpt from an IRCC "Field Operational Manual" that is

attached to the IRCC officer's affidavit. This document further confirms the temporary nature of "non-computer based" entries.

(3) *The Applicant failed to provide sufficient evidence to support her claims*

[66] With all due respect, the sole evidence that Ms. Nevostruyeva adduced to prove the existence of the Z file is Exhibit A to her Affidavit, which dates back to 2010. This document does not demonstrate to the continued existence of this file until her 2023 ATIP Request. There are no admissible documents that contradict IRCC's representations and evidence regarding IRCC's retention policy and the fact that the Z file no longer exists in their records.

[67] The fact that the IRCC response to her 2023 ATIP Request contains information or documents related to an application that predates the creation of the Z file does not prove that IRCC withheld anything. Different retention policies can exist and apply to different categories of files or entries. For instance, the IRCC confirmed that the "Z file" was always meant to be short-lived.

[68] Therefore, the Applicant has not discharged her burden of proving that the documents she seeks still existed at the time of her 2023 ATIP Request. She only submitted inferences, suspicions, and theories that are unsupported by admissible evidence. This is far from sufficient *(Carter* at para 82; *Constantinescu* at para 68 citing *Tomar v Canada (Parks)*, 2018 FC 224 at paras 45-46, *Olumide* at paras 18-19).

[69] Even if the Court was to adopt the expansive reading of the ATIP Request that the Applicant proposes, so that it would cover “any information relevant to Z011837640 or any other information of documents that were created or issued based on (this file)”, Ms. Nevostruyeva fails to show how IRCC could have located more documents than those it already provided to her. The evidence indicates that IRCC conducted a thorough search using the elements that the Applicant herself provided in her ATIP Request, and that they provided all that they could find in relation thereto. There is no evidence to show that IRCC withheld anything.

[70] Lastly, the Court agrees with the AGC that the Applicant made incredibly grave allegations regarding year-long mistreatment by IRCC and a cover-up that are also not substantiated by any evidence. Such un-founded accusations cannot be condoned.

IV. Conclusion

[71] In light of the reasons above, the application is dismissed. The Applicant failed to prove that IRCC has any record relevant to her ATIP Request that it failed to disclose.

V. Obiter

[72] Although the comments below have no bearing on the merits of this judgment, the Court considersit important to highlight the following. M. Nevostruyeva’s cavalier and highly disrespectful attitude toward agents of the justice system has been noted by this Court on several occasions. The following are but a few examples.

[73] In unreported orders dismissing two of her applications, in 2019, Associate Chief Justice Gagné wrote that Ms. Nevostruyeva:

> […] questioned the authority of two judges of this Court to issue directions to her" and was "disrespectful toward Registry officers and counsel for the Respondent" (*Nevostruyeva v Canada (Citizenship and Immigration)* (February 20, 2019), Ottawa IMM-4233-18 (FC)); and
>
> […] systematically challenged every instruction she received from the Registry and every direction she received from this Court" in addition to being "disrespectful toward Registry officers and toward counsel for the Respondent (*Nevostruyeva v Canada (Citizenship and Immigration)* (February 20, 2019), Ottawa IMM-4926-18 (FC)).

[74] In the case at bar, the record also indicates that the Applicant used accusatory and loaded language in her emails with IRCC personnel when following up regarding her ATIP request. She wrote "your answer is a lie", referred to the officer's "eternal stupidity" and their "idiotic response", asked "please provide me the names of bastards who informed you the document does not exist", and signed off one of her emails with "Aport bastards again!".

[75] Moreover, in January 2025, as described by the Respondent, "the Applicant filed a 121-page document, where she accused the Respondent's counsel of tendering fake affidavits and engaging in criminal offenses. On the same day, the Court dismissed the appeal and found that the Applicant's allegations of bad faith, egregious behavior and causing delays unfounded" (*Nevostruyeva v Canada (Citizenship and Immigration)* (January 10, 2025), Ottawa IMM-4926-18 (FC)).

[76] Later, in her multiple letters to the Registry, Ms. Nevostruyeva personally targeted members of this Court, as well as counsel for the Respondent, with outrageous accusations. She notably used the word "thief" to refer to IRCC and its counsel and accused the Respondent's counsel of trying to have someone else pass for her at the hearing. She further argued that this

unknown person who would pretend to be her was a “terrorist”, whose status in Canada would be legalized with the aid of this Court:

> “The Respondent stole my status documents and transferred them to the terrorist. The Court was made aware of this. The fact that they were stolen is proven by documents issued by at least IRCC and CSIS.”; and “Ms. Shahin, Counsel for the Respondent, tries to present somebody else in the Court instead of myself to legalize in Canada terrorists under my name. (…) I consider conducting a hearing on November 24, 2025, without my presence an attempt to legalize terrorist in Canada with documents that the Respondent stole from me. Stop falsifying documents. Stop lying. Transferring terrorists to Canada is not a Canadian security matter, it’s a crime.”

[77] The use of such language was excessive and inappropriate in the context of this litigation. Ms. Nevostruyeva did not tender the emails in which opposing counsel allegedly suggested that they would have another person appear for her in Court into evidence. Nor did she produce any document from IRCC or the Canadian Security Intelligence Service (CSIS) capable of proving the alleged “theft” she constantly refers to. Last, it goes without saying that at the November 24, 2025, hearing, no one pretended to be the Applicant.

[78] The Court wishes to stress that *ad personam* attacks are unacceptable. Further, those who use derogatory language without adducing any evidence to support the grave criminal allegations they put forward risk undermining their credibility and can face serious consequences.

[79] Lastly, the Registry has had to deal with numerous calls and written communications from Ms. Nevostruyeva, whereby she challenges, in different manner, the Directives of this Court. On December 5, 2025, given the Applicant’s conduct, the Court had to issue a Direction in which the Court concluded as follows:

> "The Court considers the Applicant's behavior as an abuse of the Court system. Therefore, the Court is hereby issuing a new directive. No further communications from the Applicant will be entertained by this Court, except only with respect to the issue of costs, until a final decision has been rendered on this matter. The Court is hereby ordering the Registry office to disregard any further letters, emails or phone communications from the Applicant that is not specifically related to the issue of costs. Failure to abide by the Court's directions will result in further sanctions**.**

[80] As the Federal Court of appeal stated:

> [21] In *Canada v. Olumide*, 2017 FCA 42 [Olumide] and *Canada (Attorney General) v. Fabrikant*, 2019 FCA 198, this Court (per Justice Stratas) surveyed the law with respect to vexatious litigants and enunciated a number of principles that bear on the case at bar (see also *Canada (Procureur général) c. Yodjeu*, 2019 CAF 178). The vexatious litigant shares many of the characteristics underlying the concept of abuse of process, one of which is the propensity to relitigate matters that have already been determined against him or her: *Wilson v. Canada (Revenue Agency)*, 2006 FC 1535 at para. 30; *Foy v. Foy (1979)*, 1979 CanLII 1631 (ON CA), 102 D.L.R. (3d) 342 (Ont. C.A.).
>
> [22] It has been stressed more than once that the judicial system is a community property and a scarce resource, just like health and educational services. It falls upon courts and judges themselves to ensure the most efficient use of their limited capacity to deal with all sorts of litigants who come before them. As Justice Stratas aptly put it in *Olumide*:
>
> [19] The Federal Courts have finite resources that cannot be squandered. Every moment devoted to a vexatious litigant is a moment unavailable to a deserving litigant. The unrestricted access to courts by those whose access should be restricted affects the access of others who need and deserve it. Inaction on the former damages the latter.
>
> [23] In that spirit, litigants who inundate the courts with meritless proceedings or motions, or who repeatedly seek to reassert claims and arguments that have already been determined, even through no ill-will, have to be restrained in their access to the courts. It is worth stressing that an order made under subsection 40(1) of the *Federal Courts Act* does not operate as a total bar on a litigant's access to the courts; it only regulates the litigant's access to the courts. It is a gate-

> keeping mechanism whereby the litigant is required to get leave before starting or continuing a proceeding.
>
> (*Coady v Canada (Attorney general)*, 2020 CAF 154 at paras 21-23, citing *Canada v Olumide*, 2017 CAF 42 at para 19).

VI. Costs

[81] The AGC request costs and has filed additional submissions supporting an amount of $8,932.67.

[82] In exercising its discretion to award costs, the Court can consider many factors, including the non-exhaustive list found in section 400(3) of the *Rules*. Furthermore, pursuant to section 400(4) of the *Rules*, it can assess costs using a lower or higher column than column III of Tariff B (see for example *Thirion v Lessard*, 2025 FC 1498 at para 13).

[83] The Court agrees with the AGC that as per the guidance of the Federal Court of Appeal, “when exercising its discretion in awarding costs, this Court ought to weigh the three-fold objectives of costs, namely, providing compensation, promoting settlement and deterring abusive behaviour” (*Thibodeau c Air Canada*, 2007 FCA 115 at para 24; *Hill v Canada*, 2025 FC 242 at para 28). The Supreme Court has stated that costs are not only meant to indemnify the victorious party, they “can also be used to sanction behaviour that increases the duration and expense of litigation or is otherwise unreasonable or vexatious” (*British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at para 25). Furthermore, it has been found that when a party advances scandalous and unsupported allegations against opposing counsel, the Court may award costs in accordance with column V of Tariff B (*Archambault v Canada (Canada Customs and Revenue Agency)*, 2005 FC 183 at para 19-28).

[84] While the Court sometimes uses its discretion to refuse to order costs, especially when the Applicant is self-represented, in this case, the Court is of the view that the Applicant must bear the consequences of her abusive behaviour. Ms. Nevostruyeva was warned on several occasions and yet she continued her unnecessary and vexatious actions, including her repeated and serious accusations (which she knew or ought to have known she could not support with any credible evidence) against opposing counsel and IRCC personnel, as well as against the Court, including judges and registry clerks (see *Attorney General) v Azubuike*, 2024 FC 1233 at paras 24-25; *Law Society of Upper Canada v. Nourhaghighi*, 2013 FC 89 at paras 4, 6 and 17).

[85] Furthermore, as the AGC pointed out, they had to respond to a disproportionate volume of proceedings given the nature of the present matter, which "stemmed from the Applicant's unnecessary and frivolous correspondence with both the Respondent and the Federal Court".

[86] Therefore, while the Applicant has not yet been found vexatious under subsection 40(1) of the *Federal Courts Act*, her behavior was certainly improper, vexatious and unnecessary. It will not be condoned by this Court.

[87] Contrary to the Applicant' submissions, this Court's goal is neither to punish nor to discourage those who might come before it to gain access to governmental records containing their personal information. As the Applicant highlights, freedom and transparency are indeed core values in Canadian society. However, even if the goal is legitimate, when someone abuses the Court system to reach this goal, they must bear the consequences.

[88] In this case, it is clear from Ms. Nevostruyeva's lengthy response regarding costs submissions that she fails to grasp and recognize the abusive nature of her tone, her use of procedure and her methods, as well as the impact these have on the judicial system, its actors, and ultimately all of its potential users: the Canadian public. Instead, she attempts to justify her abusive actions and transfer the blame onto others.

[89] As for her alleged attempts to settle the matter out of Court with IRCC - which are not evidenced in the record - they are immaterial when it comes to her liability for costs. They seem to have all been premised on the idea that the "Z file" was still in existence in 2023 and could therefore be communicated to her, an assumption that the evidence in this file disproves. Her irresponsible and impulsive behavior throughout the proceeding, including the repeated informal motions and letters to the Court that sought to secure the reconsideration of previous decisions, as well as, for example, her choice to withdraw her consent to an extension of time for the filing of the Respondent's affidavit of document, undoubtedly materially increased the duration and expense of litigation.

[90] Given the above, Ms. Nevostruyeva must bear the consequences of her repeated abuses, including the grave and baseless criminal accusations she made against members, employees and officers of this Court. No litigant can repeatedly and brashly question and attack the integrity and authority of a Court and its personnel without facing consequences.

[91] The AGC suggested an award of $8,932.67 ($8,850.00 in fees and $82.67 in disbursements) as costs. After reviewing their bill of costs and considering the Federal Court of

Appeal's decision in *Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 at paragraphs 10-20, the Court finds that a lump sum is the appropriate way to deal with costs in the circumstances of this matter. Using its discretionary powers pursuant to paragraph 400(4) of the *Rules*, the Court grants costs in favor of the AGC in the amount of $9000.00.

JUDGMENT in T-1273-24

THIS COURT'S JUDGMENT is that:

1. The application is dismissed, with costs in the amount of $9,000.00 in favor of the AGC.

"Danielle Ferron"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1273-24
STYLE OF CAUSE:	OKSANA NEVOSTRUYEVA v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUÉBEC
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JUDGMENT AND REASONS:	FERRON J.
DATED:	JANUARY 20, 2026

APPEARANCES:

Oksana Nevostruyeva (absent)	ON HER OWN BEHALF
Andrea Shahin	FOR THE RESPONDENT (ATTORNEY GENERAL OF CANADA)

SOLICITORS OF RECORD:

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