

Federal Court



Cour fédérale

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Date: 20260318

Docket: T-3639-24

Citation: 2026 FC 203

Ottawa, Ontario, March 18, 2026

PRESENT: The Honourable Madam Justice Ayles

BETWEEN:

ALAN BARNES

Applicant

and

PRIME MINISTER

Respondent

CLASSIFIED JUDGMENT AND REASONS

[1] This is an application commenced under section 41 of the *Access to Information Act*, RSC 1985, c A-1 [ATIA], arising from a request made by the Applicant approximately 10 years ago for a series of historical records about Canada's Joint Intelligence Bureau [JIB] and Special Research Bureau [SRB]. The Applicant disputes redactions made to the records by the Privy Council Office [PCO], pursuant to subsections 13(1) and 15(1) of the ATIA in relation to 18 of the 285 pages released to the Applicant.

I. Background

[2] The Applicant, Alan Barnes, is a Senior Fellow at the Centre for Security, Intelligence and Defence Studies at the Norman Paterson School of International Affairs in Ottawa, Ontario. He also serves on the Canadian Foreign Intelligence History Project, which encourages the study of the history of foreign intelligence assessments in Canada.

[3] The JIB was created by Cabinet in August 1967 and was primarily responsible for economic and topographical intelligence for defensive purposes. It was administered within the Department of National Defence [DND] until 1968.

[4] In 1968, the “non-defence”-related responsibilities of the JIB were transferred to the administrative control of Global Affairs Canada [GAC] and renamed SRB. These responsibilities included economic and political intelligence assessments and the Interview Program, which obtained information about so-called “closed” states, such as China and the Union of Soviet Socialist Republics.

[5] On January 21, 2016, the Applicant made a request to PCO under the *ATIA* seeking production of several historical records about Canada’s JIB and SRB. Specifically, the Applicant sought:

All records related to the [JIB] and the [SRB], including but not limited to the records contained in the following files in the PCO archive related to changes in Canada’s foreign intelligence arrangements:

- Folder 'JIB/SRB Historical Records'
- File 'JIB Origins'
- File 'JIB Creation'
- File 'JIB Background'
- File 'Organization, JIB'
- File, '1949-62 JIB Authorities and Terms of Reference'
- File 'JIB Miscellaneous'

The document "The Joint Intelligence Bureau" by R.L. McGibbon c. 1965 [likely contained in "JIB" Background file].

All records related to the Economic Intelligence Committee (EIC), including but not limited to the records contained in the file "Economic Intelligence Committee" in the PCO archive, including the documents "EIC Program of Work, 1962" and "Dissemination of Current Economic Intelligence", c.1962.

[6] In his request, under the heading "Information to Assist in the Review Process", the Applicant advised PCO that:

- A. A wide range of documents forming part of the request had already been cited and described in a document authored by Dr. Wesley Wark, which was released by PCO with several redactions.
- B. Copies of some of the documents he requested had already been released without redactions by GAC and Library Archives Canada [LAC] in response to previous access requests.

- C. Many files dealing with the JIB that were originally held by DND and GAC (which dealt with the same subject matter as the requested records) were held by LAC and had been released to researchers in response to access requests.
- D. Several document collections held by the DND Directorate of History and Heritage contain comprehensive records of the minutes and supporting documentation from 1945 to the mid-1960s for the meetings of the Chiefs of Staff Committee where the creation and operation of the JIB was discussed and approved.
- E. Minutes of the Joint Intelligence Committee from 1942 to 1950 (which include extensive discussions surrounding the creation and operation of the JIB) were already available through the LAC.

[7] The Applicant's request resulted in the identification of a 285-page record, comprised of intelligence documents prepared by either the JIB or the SRB. The record includes minutes and supporting documents of the Chiefs of Staff Committee and minutes of the Joint Intelligence Committee.

[8] On May 17, 2016, PCO produced to the Applicant the 285-page record. However, 267 pages were redacted in their entirety and 18 pages were partially redacted pursuant to subsections 13(1), 15(1) and 19(1) of the *ATIA*.

[9] In July 2016, the Applicant submitted a complaint, pursuant to section 30 of the *ATIA*, to the Office of the Information Commission [OIC], asserting that PCO had improperly applied

exemptions under subsections 13(1) and 15(1). In his complaint, the Applicant explained that the requested records were 30 to 50 years old and dealt with administrative, organizational and financial matters, rather than sensitive operational intelligence collection issues. He also observed that PCO had redacted all names and acronyms of any organizations affiliated with the JIB even though such information was already made publicly available.

[10] In August 2016, PCO provided an initial response to the OIC.

[11] In 2017, the Applicant corresponded with the OIC and provided the OIC with several records that he had obtained through his research. Three of the records were identical and unredacted versions of pages that PCO had initially redacted. For example, one of the records corresponded to page 151 of the record and revealed the information that had been redacted by PCO. Others were similar records, covering the same subjects and time periods, which had been released by other government departments (such as GAC and LAC) with no redactions.

[12] Seven years later, in 2024, the OIC issued a section 35 notice asking PCO to complete an exemption analysis worksheet to justify the exemptions. PCO consulted with the Intelligence Assessment Secretariate [IAS], GAC and DND in order to complete the worksheet. During the course of these efforts, a determination was made that certain information initially redacted could be released.

[13] On July 5, 2024, PCO provided the Applicant with a supplemental release of the records. This release contained more information, but remained heavily redacted. Moreover, PCO changed the basis for redacting certain information under subsection 13(1) to 15(1), without explanation.

[14] On September 20, 2024, the OIC sent an initial report to PCO recommending that PCO disclose several pages that remained redacted, including pages 100-111, 188-191, 193 and 197, in their entirety. Two months later, the Assistant Secretary to the Cabinet, Ministerial Services and Corporate Affairs, advised the OIC that PCO disagreed in part with the OIC's findings and would continue consulting with foreign partners to determine if more information could be released.

[15] On November 27, 2024, the OIC released its final report, confirming the recommendation contained in the initial report. The report concluded that the information withheld pursuant to subsection 13(1) on pages 100-111 and 151 meets the requirements of that section in that it was obtained in confidence from a government of a foreign state. However, the report noted that there was evidence that the information withheld under subsection 13(1) on pages 100-111 had already been made public by the government from which it had been obtained, which meant that PCO had the discretion to disclose these pages of the record.

[16] The report also found that the head of PCO (or his delegate) had failed to meet the burden of demonstrating that the information redacted on pages 100-111, 188-191, 193 and 197 under subsection 15(1) would result in harm if the information were disclosed. The report noted that disclosing these pages would not result in any apparent injury, particularly considering that the records contained only the titles, document classifications and dates, and did not reveal the content

of the reports in question. Moreover, the report noted that PCO had: (a) failed to provide any evidence that the redacted titles have any on-going operational relevance; (b) failed to confirm that covert operations could be determined from the redacted information; and (c) offered no detail to support its claim that bilateral operations could be negatively impacted by disclosure, nor what the specific injury would be.

[17] As a result of these findings, the OIC recommended, *inter alia*, that PCO disclose the information that remained withheld on pages 100-111, 188-191, 193 and 197. PCO did not follow this recommendation.

[18] On December 23, 2024, the Applicant commenced this application.

[19] On May 9, 2025, PCO agreed to release previously redacted information on several additional pages, but continued to withhold information on pages 100-111 and 151 pursuant to subsection 13(1) and information on pages 188-191, 193 and 197 under subsection 15(1). It is these 18 pages and associated redactions that remain at issue on this application.

II. Evidence on the Application

[20] In support of his application, the Applicant filed his own affidavit, which exhibited, among other things, copies of unredacted documents obtained by the Applicant that contain similar information to that which was requested from PCO, including a completely unredacted copy of page 151 of the record.

[21] In response to the application, PCO filed the affidavit of David Neilson, the Executive Director of Access to Information and Privacy and Executive Correspondence Services for PCO. The majority of his evidence is public, with the exception of part of paragraph 23 and all of Exhibits C and E. Exhibit C is PCO's Exemption Analysis Worksheet [Exemption Worksheet] related to the Applicant's request.

[22] Mr. Neilson provided evidence regarding PCO's receipt and response to the Applicant's request, including consultations with other government departments. In relation to the subsection 13(1) exemptions, Mr. Neilson stated that a determination was made, based on consultations internal to PCO and externally with GAC, that the information on pages 100-111 and 151 was obtained in confidence from other governments and was subject to exemption under subsection 13(1). With respect to subsection 13(2), Mr. Neilson gave the following evidence:

Based [on] [*sic*] consultations internal to PCO and with GAC, PCO considered whether the foreign governments made the requested information public or had consented to its disclosure. Where there was no clear indication that those criteria had been met, PCO protected the information provided in confidence.

[23] With respect to subsection 15(1), Mr. Neilson stated that PCO determined, based in part on recommendations from GAC (made following robust discussions between PCO and GAC), that the release of the information on pages 188-181, 193, 194 and 197 would reasonably be expected to be injurious to the conduct of international affairs. With respect to the exercise of PCO's discretion, Mr. Neilson stated:

22. PCO, exercised its discretion, based in part on recommendations from GAC, to exempt the records from release in part. In doing so, PCO considered, among other things:

- a. GAC's explanation for its recommendations for exemptions;
- b. GAC's expertise in international relations and harms that might arise from disclosure, derived from its mandate; and,
- c. The purpose and function of the ATIA and the importance of the public's right to access information in the government's control.

23. As a result, the exemptions applied by PCO after it exercised its discretion did not always match the recommendations from other government departments. For example, PCO did not adopt GAC's proposed redactions over certain country names where there was no allusion to [REDACTED] in relation to those countries. In another instance, PCO agreed with recommendations from DND to release the information in question over recommendations from GAC to redact the information. In this specific instance, PCO exhibited discretion in regard to the age of the information at issue, despite its nature as tradecraft. [...]

[24] PCO also filed the affidavit of Jonathan Yendall, the Executive Director of the Intelligence Policy and Programs Division of the Intelligence Bureau at GAC, in both public and classified form. Mr. Yendall provided evidence about the recommendations made by GAC to PCO regarding each of the exemptions claimed in relation to pages 100-111, 151, 188-191, 193 and 197, which I address in more detail below.

[25] PCO also filed two affidavits from Sébastien Chiasson, the Acting Deputy Director of the Access to Information and Privacy [ATIP] Protection Division at GAC. The majority of his evidence was public, although there were redactions to one of his affidavits.

[26] Mr. Chiasson's affidavits generally described the manner in which the GAC ATIP Office implements their obligations under subsection 13(2) of the *ATIA*. He stated:

9. Generally, while quasi-mandatory, Canada does not automatically consult a foreign government or organization. There are a number of criteria that can inform our exercise of discretion under 13(2)(a) to proceed with a foreign consultation when the information has not been found released in the public domain by the originating country. These include:

- Does the country still exist?
- Do they have an equivalent regime to our *ATIA* that we can consult?
- Are they friendly – meaning will they actually respond to the request?
- If the record is from multiple countries or is Canadian in origin, can the consultation be prepared in a reasonable fashion? For example, if we must protect the information that cannot be shared with the consulted country, is there sufficient information or context for them to provide an informed response?
- Can consulting the country injure our bilateral relationship?
- Is the information exempt from their equivalent of our *ATIA* regime?

[27] As addressed more fully below, Mr. Chiasson provided detailed evidence about the consultation with the foreign government in relation to pages 100-111. However, no similarly detailed evidence was provided in relation to page 151. Rather, Mr. Chiasson stated that “[i]n the case of the other pages [including page 151, along with pages 62 and 210-211, which are not at issue in this proceeding], surrounding information was from Canadian or other foreign country origin and the information remaining after excision would be essentially meaningless.”

III. Issues

[28] The issues for determination on this application are as follows:

- A. What are the applicable standards of review;
- B. Whether the head of PCO is authorized to refuse to disclose the redacted information on pages 100-111 and 151 of the record pursuant to subsection 13(1) and if so, whether the head of PCO (or his delegate) reasonably exercised their discretion to refuse to disclose the redacted information pursuant to subsection 13(2);
- C. Whether the head of PCO had reasonable grounds to refuse to disclose information pursuant to subsection 15(1) on pages 188-191, 193 and 197, and, if so, did the head of PCO or his delegate reasonably exercise their discretion in refusing disclosure; and
- D. What remedy, if any, should be granted to the Applicant.

IV. Analysis

A. The ATIA Regime

[29] The *ATIA* has been recognized by the Supreme Court of Canada as having a quasi-constitutional status [see *Canada (Information Commissioner) v Canada (Minister of National Defence)*, 2011 SCC 25 at para 40].

[30] The purpose of the *ATIA* is expressed in subsection 2(1) as follows:

2 (1) The purpose of this Act is to enhance the accountability and transparency of federal institutions in order to promote an open and democratic society and to enable public debate on the conduct of those institutions.

2 (1) La présente loi a pour objet d'accroître la responsabilité et la transparence des institutions de l'État afin de favoriser une société ouverte et démocratique et de permettre le débat public sur la conduite de ces institutions.

[31] Section 2 of the *ATIA* requires that exemptions to the right of access be limited and specific. In the case of ambiguity, the Court should choose the interpretation that infringes on the public's right of access the least [see *Bronskill v Canada*, 2011 FC 983 at para 5; *Sherman v Canada (Minister of National Revenue)*, 2003 FCA 202 at para 10].

B. Standards of Review

[32] Pursuant to section 41.1 of the *ATIA*, applications commenced pursuant to subsection 41(1) are heard and determined as if they were new matters — that is, the Court conducts a *de novo* review [see *Matas v Canada (Global Affairs)*, 2024 FC 88 at paras 10–12; *Perreault v Canada (Foreign Affairs)*, 2023 FC 1051 at paras 26–29; *McCarthy v Canada (Indigenous Services)*, 2025 FC 1843 at para 36].

[33] When conducting this *de novo* review, the Court makes its own determination regarding the applicability of the exemptions asserted by PCO [see *Geophysical Service Incorporated v Canada-Newfoundland & Labrador Offshore Petroleum Board*, 2024 FC 1616 at para 28, citing

Canada (Health) v Elanco Canada Limited, 2021 FCA 191 at para 15]. No deference is shown to the head of the government institution's views [see *Canada (Information Commissioner) v Canada (Commissioner of the Royal Canadian Mounted Police)*, 2003 SCC 8 at para 19].

[34] However, both subsections 13(2) and 15(1) assign a discretion to the head of a government institution in applying the relevant exemptions. The Court does not consider such exercises of discretion on a *de novo* basis, but rather, conducts a reasonableness review of the head of the government institution's exercise of discretion [see *Geophysical, supra* at para 31, citing *Perreault, supra* at paras 40–41 and *Matas, supra* at paras 42–44; *Attaran v Canada (Foreign Affairs)*, 2011 FCA 182 at para 14, citing *Ontario (Public Safety and Security) v The Criminal Lawyers' Association*, 2010 SCC 23 at para 48].

[35] When reviewing for reasonableness, the Court must take a “reasons first” approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8]. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85].

C. Burden of Proof and the Findings of the OIC

[36] On this application, PCO bears the burden of establishing, on a balance of probabilities, that the information was properly exempted from disclosure pursuant to subsections 13(1) and 15(1) of the *ATIA* [see section 48 of the *ATIA*; *Canada (Office of the Information Commissioner) v Canada (Prime Minister)*, 2019 FCA 95 at para 37; *Attaran, supra* at para 27].

[37] If the Court determines that the exercise of discretion is at issue, the determination of which party bears the onus of establishing that the discretion was exercised reasonably depends on the circumstances [see *Attaran, supra* at para 20]. When dealing with a confidential record upon which an applicant does not have access (which is the case here), the burden is on the government institution to establish that the discretion was exercised in a reasonable manner [see *Attaran, supra* at para 27; *Bronskill, supra* at para 124; *Imai v Canada (Minister of Foreign Affairs)*, 2021 FC 1479 at para 22].

[38] While this Court has the benefit of the OIC's report of its findings, the OIC's findings are not binding on the Court but are deserving of weight in light of the expertise possessed by the Information Commissioner [see *Imai, supra* at para 21; *Perrault, supra* at paras 23, 27-29].

D. Section 13 of the ATIA

(1) General Principles

[39] The relevant portions of section 13 of the *ATIA* provides as follows:

13 (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Part that contains information that was obtained in confidence from

(a) the government of a foreign state or an institution thereof;

[...]

(2) The head of a government institution may disclose any record requested under this Part that contains information described in subsection (1) if the government, organization or institution from which the information was obtained

(a) consents to the disclosure; or

(b) makes the information public.

13 (1) Sous réserve du paragraphe (2), le responsable d'une institution fédérale est tenu de refuser la communication de documents contenant des renseignements obtenus à titre confidentiel :

a) des gouvernements des États étrangers ou de leurs organismes;

[...]

(2) Le responsable d'une institution fédérale peut donner communication de documents contenant des renseignements visés au paragraphe (1) si le gouvernement, l'organisation, l'administration ou l'organisme qui les a fournis :

a) consent à la communication;

b) rend les renseignements publics.

[40] Paragraph 13(1)(a) is a mandatory, class-based exemption that prohibits disclosure of records containing information obtained in confidence from a foreign government, organization or institution [see *Hoogers v Canada (Minister of Communications)*, 1998 CanLII 31520 (FC) at para 23]. It does not apply to Canadian information — that is, information produced or generated in Canada — unless that information reveals the contents of information received in confidence from a foreign government [see *Sherman, supra* at para 33(a)].

[41] While it is a mandatory exemption, subsection 13(2) grants the head of a government institution the discretionary power to disclose the records if the foreign government, organization or institution consents or makes the information public. If the head of a government institution decides not to disclose the records in circumstances where a foreign government, organization or institution consents or makes the information public, the head must provide reasons justifying the decision not to release the records [see *Do-Ky v Canada (Minister of Foreign Affairs and International Trade)*, [1997] 2 FC 907 at para 17, aff'd 1999 CanLII 8083].

[42] Accordingly, in relation to the subsection 13(1) exemptions at issue on this application, the Court must determine: (a) whether, on a *de novo* basis, PCO has demonstrated that paragraph 13(1)(a) applies to the exempted information; and (b) if so, whether PCO's exercise of discretion under subsection 13(2) to refuse to disclose the information was reasonable.

[43] If the Court determines that PCO is not authorized to refuse disclosure of the redacted information under subsection 13(1), section 49 of the *ATIA* empowers the Court to order its disclosure.

(2) Page 151

[44] Page 151 is one page from a 50-page JIB report. The only redaction to the document is on page 151, under the heading "Intelligence Collection from Canadian visitors to the Soviet Bloc, Cuba and China", which addresses how certain Canadians who visited these countries are selected by JIB to be interviewed.

[45] Following receipt of the redacted records, the Applicant was able to locate an identical copy of the 50-page JIB report, in which no redactions were made to page 151. The parties agree that the unredacted version of page 151 was released by GAC on an earlier *ATIA* request. Thus, the Applicant is aware that the redacted information is as follows:

CIA provides JIB with a list of names and passport numbers of Canadians who have obtained visas for entry into China.

[46] Mr. Yendall's evidence is that the exempted information is operational information provided by the Central Intelligence Agency [CIA] through intelligence communication channels and was subject to an implied confidentiality. He states that the exempted information "describes information regarding the operations of a foreign intelligence agency" and that to the best of his knowledge, the information was not previously disclosed publicly by the foreign agency. He states that the exempted information refers to the foreign agency's ability to acquire personal information on Canadian citizens surreptitiously and send this information to a unit of the Canadian government. Consequently, the nature of the information being obtained by the foreign government and the means by which it was obtained would likely continue to be protected by the foreign government.

[47] In relation to GAC's earlier disclosure of this information, Mr. Yendall states:

18. I understand that the Applicant found a public version of this information, which he included at page 11 of Exhibit K to the Applicant's affidavit. While this would indicate that the information is in the public domain, subsection 13(2) is restricted to situations where the information is made public by government organization or institution from which the information was obtained. There is no indication that the information was made public by the US

government. As a result, GAC recommended that PCO ATIP refuse disclosure of this information.

[48] The Applicant asserts that PCO has failed to establish that the information on page 151 falls within subsection 13(1) for two reasons. First, the Applicant asserts the information is merely a description of the confidential information, authored by a Canadian official, that acknowledges that confidential information provided by a foreign government in confidence exists, but does not reveal its contents (i.e., the actual names and passport numbers). As the contents of the information provided by the foreign government in confidence would not be revealed by the disclosure of the Canadian information, the information cannot be exempted pursuant to subsection 13(1).

[49] In support of this assertion, the Applicant relies on the Federal Court of Appeal's decision in *Sherman*. In that case, the issue before the FCA was to what extent, pursuant to paragraph 13(1)(a) of the *ATIA* and paragraph 1 of Article XXVII related to Article XXVI A of the Protocol amending the *Convention Between Canada and the United States of America with Respect to Taxes on Income and on Capital* [Convention], can the Minister of National Revenue deny the appellant access to information in the hands of Revenue Canada relating to tax collection assistance sought from and provided to the U.S. Internal Revenue Service [IRS]. The appellant in that case had made an access request for the statistical information compiled by the Minister of National Revenue and, in particular, the appellant sought access to the number of requests made by Revenue Canada and the IRS, the amount of dollars claimed, the level of acceptance by each agency, the success rate in collecting monies due and the amount of dollars effectively collected and remitted.

[50] In commenting on the scope of subsection 13(1), the FCA held that paragraph 13(1)(a) does not apply to Canadian information (information produced or generated in Canada) unless that information also contains information received in confidence from a foreign government and the contents of that confidential information would be revealed by the disclosure of the Canadian information [see *Sherman, supra* at para 33(a)]. The FCA stated that “the mere fact that such information exists is not caught by the mandatory exemption of paragraph 13(1)(a).” The FCA based this conclusion on the fact that the Convention allowing for the exchange of confidential information and the laws implementing it are public documents. The FCA stated:

[21] [...] To merely confirm the existence of what everybody already knows or of what is common knowledge is no disclosure. More problematic, however, is the question of the volume of exchange of such information, in terms of requests made and money sought, collected and remitted, coming from the United States.

[51] After noting that mandatory exemptions like that found in paragraph 13(1)(a) that presume disclosure of the information to have a detrimental effect are to be specific and narrowly construed and interpreted, the FCA went on to find that, for the statistics generated by the Minister of National Revenue to fall within paragraph 13(1)(a), the statistics would have to reveal more than the existence and volume of the confidential information obtained from the IRS — they would have to reveal the contents of the information.

[52] The Applicant asserts that, in this case, the Canadian information redacted on page 151 contains none of the actual information received in confidence from the CIA, nor does it reveal the contents of that information. Rather, the redacted information confirms what everybody

already knows or what is common knowledge — namely, that the U.S. is a key defence partner and that Canada collaborates closely with U.S. defence and national security agencies.

[53] Notwithstanding that this issue was raised in the Applicant's written representations, PCO failed to address it in its written representations. At the hearing, PCO asserted that the circumstances of this case are unlike those in *Sherman* as the information at issue here is more than just a description of the information provided by the CIA. Moreover, in *Sherman*, the public's knowledge came from the fact that the sharing of information was detailed in the Convention, which is a public document. Here, PCO asserts that there is no such similar public document. While PCO acknowledges that the public is aware that Canada generally cooperates with other foreign governments, the context of how the information at issue was obtained by the foreign agency in this case is not publicly known.

[54] I find that there is no merit to PCO's submissions. I agree with the Applicant that the information at issue is merely a description of the information provided by the CIA. It is Canadian information that does not reveal the content of the information provided by the CIA. To find otherwise would be to adopt an overly broad interpretation of the exemption in subsection 13(1), contrary the applicable jurisprudence. Moreover, the fact that the CIA provided information to the JIB was made public on page 139 of the same report. While PCO stresses that the context of how the information was obtained by the CIA is not publicly known, this has no bearing on the issue as the redacted information does not disclose that context.

[55] Accordingly, I find that PCO has failed to demonstrate that paragraph 13(1)(a) applies to the exempted information. As such, I find that PCO was not authorized to refuse disclosure of the redacted portion of page 151. As a result of this finding, I need not go on to consider the application of subsection 13(2).

[56] However, I do wish to address a number of issues related to the evidence filed by PCO in relation to subsection 13(1) and 13(2), which the Court found problematic. First, the Applicant made much of GAC's inconsistent redactions in relation to page 151, given that GAC had previously released the redacted information in response to another *ATIA* request. PCO asserted that the prior disclosure was inadvertent. However, PCO filed no evidence demonstrating that the prior release of this information was through inadvertence. Mr. Yendall's evidence completely ignored the fact that it was GAC — i.e., the government department that he works for — that released the information in question. Mr. Yendall was well-positioned to address the circumstances surrounding the prior release of the information by GAC and his failure to do so is troubling.

[57] Second, in relation to subsection 13(2), PCO did not make a request to the U.S. government seeking its consent to the disclosure of the information. While Mr. Chiasson provided detailed evidence about the factors that PCO considers in deciding whether to seek consent, he did not explain why no such request was made to the U.S. government. The only evidence he gave was that, in relation to a number of the pages (including page 151) "surrounding information was from Canadian or other foreign country origin and the information remaining after excision would be essentially meaningless." This explanation is entirely illogical, as there was no other information redacted from the report in which page 151 was found. The entire report is public. Therefore, the

U.S. government would be able to read the full report in considering whether to give its consent, such that there is no concern that the US government would be unable to meaningfully review the document.

[58] Third, at the *ex parte, in camera* hearing, counsel for PCO argued that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. PCO should not be counting on the Court's willingness to draw inferences in order to remedy weaknesses in their case.

(3) Pages 100-111

[59] Pages 100-111 are a report entitled [REDACTED]
[REDACTED] [100-111 Report].
The pages are redacted in their entirety. Mr. Yendall's evidence is that the author of the report was from the [REDACTED], which is part of the [REDACTED]
[REDACTED]. He states that the report is highly classified and contains sensitive information and would have been obtained by Canada in confidence.

[60] I am satisfied that PCO has demonstrated that these pages contain information obtained in confidence from a foreign government and thus paragraph 13(1)(a) applies to the exempted information.

[61] The remaining question is whether PCO's exercise of discretion under subsection 13(2) to refuse to disclose the information was reasonable. The OIC concluded that there was evidence that this information had been made public by the relevant foreign government, triggering PCO's discretion under subsection 13(2), and recommended that PCO disclose the records. PCO elected not to do so.

[62] Before the Court is a report entitled [REDACTED]
[REDACTED] Page 13 of that report cites the [REDACTED]
[REDACTED] and citing as its source the 100-
111 Report. The footnote citing the 100-111 Report states that it was [REDACTED]
[REDACTED] The
[REDACTED] are identical to the [REDACTED] set out on pages [REDACTED]
of the 100-111 Report.

[63] The Applicant asserts that as the foreign government released at least a portion of the 100-111 Report, PCO had the discretion under subsection 13(2) to release that same portion. The Applicant asserts that PCO failed to acknowledge that it had that discretion and then failed to grapple therewith. As such, the Applicant asserts that PCO cannot be found to have reasonably exercised its discretion.

[64] Again, PCO did not address this issue in its written representations despite it being squarely raised by the Applicant. During the hearing, PCO asserted that there was no discretion for PCO to exercise, as the foreign government refused to consent and the foreign government had not made the 100-111 Report public. PCO states that after receipt of the OIC's report, PCO revisited the issue and still found no evidence that the foreign government had released the 100-111 Report.

[65] However, a careful review of the evidence put forward by PCO on this application does not support PCO's position. Mr. Yendall acknowledged that the [REDACTED] referred to a release of the 100-111 Report by the [REDACTED]. However, he stated that it was "unclear whether that release was of the entire report or of only those portions cited by the author."

[66] Mr. Chiasson stated that:

14. Through further research, GAC's ATIP Office found that the [100-111 Report] was available in the public domain due to a reference to it at page [REDACTED], footnote [REDACTED] of [REDACTED], authored by [REDACTED], attached as Exhibit "A". While the footnote in question refers to a release by the [REDACTED], their equivalent of the ATIA, it is unclear whether that release was of the entire report or of only those portions cited by the author. As there was no clear indication of what information has been made public by the [REDACTED], GAC is of the view that the report be exempted in its entirety.

[Emphasis added.]

[67] I find that both Mr. Yendall and Mr. Chiasson accepted that the [REDACTED] government had released at least a portion of the 100-111 Report. Neither of them questioned the accuracy of the footnote but, rather, only questioned how much of the 100-111 Report had been released by the

█ government. Mr. Neilson did not provide any evidence related to these pages but, presumably, PCO followed GAC's recommendation regarding the release of this document. As the █ government had released at least part of the document, this triggered PCO's discretion to release that same part of the 100-111 Report. While PCO ultimately decided to seek the █ government's consent to release the entirety of the 100-111 Report (which consent was denied), that does not change the fact that under subsection 13(2), PCO had the discretion to release at least part of the document even absent the █ government's consent, as the language in subsection 13(2) is disjunctive. The evidence before the Court is clear that PCO did not acknowledge that it had any such discretion and thus took no steps to exercise that discretion. No adequate explanation has been provided by PCO as to why it did not release the excerpt from the 100-111 Report. As a result, I find that PCO failed to reasonably exercise its discretion under subsection 13(2).

[68] I would also note that, based on the limited evidence before the Court regarding PCO's request for consent sent to the █ government, it is not clear whether PCO alerted the █ government to its prior release of at least a portion of the 100-111 Report. The Court would have expected that, in all of the circumstances, PCO would have so alerted the █ government and included evidence to this effect in its application materials.

E. Subsection 15(1) of the ATIA

(1) General Principles

[69] Subsection 15(1) of the *ATIA* provides as follows:

15 (1) The head of a government institution may refuse to disclose any record requested under this Part that contains information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities, including, without restricting the generality of the foregoing, any such information

(a) relating to military tactics or strategy, or relating to military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention or suppression of subversive or hostile activities;

(b) relating to the quantity, characteristics, capabilities or deployment of weapons or other defence equipment or of anything being designed, developed, produced or considered for use as weapons or other defence equipment;

(c) relating to the characteristics, capabilities, performance, potential, deployment, functions or role of any defence establishment, of any military force, unit or

15 (1) Le responsable d'une institution fédérale peut refuser la communication de documents contenant des renseignements dont la divulgation risquerait vraisemblablement de porter préjudice à la conduite des affaires internationales, à la défense du Canada ou d'États alliés ou associés avec le Canada ou à la détection, à la prévention ou à la répression d'activités hostiles ou subversives, notamment :

a) des renseignements d'ordre tactique ou stratégique ou des renseignements relatifs aux manœuvres et opérations destinées à la préparation d'hostilités ou entreprises dans le cadre de la détection, de la prévention ou de la répression d'activités hostiles ou subversives;

b) des renseignements concernant la quantité, les caractéristiques, les capacités ou le déploiement des armes ou des matériels de défense, ou de tout ce qui est conçu, mis au point, produit ou prévu à ces fins;

c) des renseignements concernant les caractéristiques, les capacités, le rendement, le potentiel, le déploiement, les fonctions ou le rôle des

personnel or of any organization or person responsible for the detection, prevention or suppression of subversive or hostile activities;

établissements de défense, des forces, unités ou personnels militaires ou des personnes ou organisations chargées de la détection, de la prévention ou de la répression d'activités hostiles ou subversives;

(d) obtained or prepared for the purpose of intelligence relating

d) des éléments d'information recueillis ou préparés aux fins du renseignement relatif à :

(i) the defence of Canada or any state allied or associated with Canada, or

(i) la défense du Canada ou d'États alliés ou associés avec le Canada,

(ii) the detection, prevention or suppression of subversive or hostile activities;

(ii) la détection, la prévention ou la répression d'activités hostiles ou subversives;

(e) obtained or prepared for the purpose of intelligence respecting foreign states, international organizations of states or citizens of foreign states used by the Government of Canada in the process of deliberation and consultation or in the conduct of international affairs

e) des éléments d'information recueillis ou préparés aux fins du renseignement relatif aux États étrangers, aux organisations internationales d'États ou aux citoyens étrangers et utilisés par le gouvernement du Canada dans le cadre de délibérations ou consultations ou dans la conduite des affaires internationales;

(f) on methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (d) or (e) or on sources of such information;

f) des renseignements concernant les méthodes et le matériel technique ou scientifique de collecte, d'analyse ou de traitement des éléments d'information visés aux alinéas d) et e), ainsi que des renseignements concernant leurs sources;

(g) on the positions adopted or to be adopted by the Government of Canada, governments of foreign states or international organizations of states for the purpose of present or future international negotiations;

g) des renseignements concernant les positions adoptées ou envisagées, dans le cadre de négociations internationales présentes ou futures, par le gouvernement du Canada, les gouvernements d'États étrangers ou les organisations internationales d'États;

(h) that constitutes diplomatic correspondence exchanged with foreign states or international organizations of states or official correspondence exchanged with Canadian diplomatic missions or consular posts abroad; or

h) des renseignements contenus dans la correspondance diplomatique échangée avec des États étrangers ou des organisations internationales d'États, ou dans la correspondance officielle échangée avec des missions diplomatiques ou des postes consulaires canadiens;

(i) relating to the communications or cryptographic systems of Canada or foreign states used

i) des renseignements relatifs à ceux des réseaux de communications et des procédés de cryptographie du Canada ou d'États étrangers qui sont utilisés dans les buts suivants :

(i) for the conduct of international affairs,

(i) la conduite des affaires internationales,

(ii) for the defence of Canada or any state allied or associated with Canada, or

(ii) la défense du Canada ou d'États alliés ou associés avec le Canada,

(iii) in relation to the detection, prevention or suppression of subversive or hostile activities.

(iii) la détection, la prévention ou la répression d'activités hostiles ou subversives.

[70] Subsection 15(1) is a discretionary, injury-based exemption that permits, but does not mandate, the head of a government institution to refuse disclosure of a record that contains “information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities” [see *Imai, supra* at paras 30–31]. In this case, the only injury asserted by PCO relates to the conduct of international affairs.

[71] The burden lies on PCO to show a reasonable expectation of probable harm using evidence of a “clear and direct connection between the disclosure of specific information and the injury that is alleged” [see *Merck Frosst Canada Ltd v Canada (Health)*, 2012 SCC 3 at paras 197, 219]. Affidavit evidence simply attesting that harm will result is insufficient to discharge PCO’s burden of establishing a clear and direct connection, as is affidavit evidence that is vague or speculative [see *Clowater v Canada (Industry)*, 2024 FC 916 at para 74 citing *American Iron & Metal Company Inc v Saint John Port Authority*, 2023 FC 1267 at para 57]. Descriptions of possible harm, even in substantial details, are insufficient. The more general the evidence, the more difficult it will be for the Court to be satisfied as to the linkage between disclosure of particular documents and the alleged harm [see *Imai, supra* at paras 34, 42; *Do-Ky, supra* at para 32; *Merck Frosst, supra* at paras 192–196]. As noted by Justice Noël in *Bronskill*, this burden of proof has been interpreted as a “heavy onus” [see *Bronskill, supra* at para 125]. PCO must show that the risk of harm is considerably above a mere possibility, but need not establish on a balance of probabilities that the harm will in fact occur [see *Imai, supra* at para 35; *Merck Frosst, supra* at paras 196, 199].

[72] Where the head of a government institution determines that disclosure could reasonably be expected to be injurious to one of the identified interests, the head of the government institution must then decide whether, having regard to the significance of the risk and other relevant factors, disclosure should be made or refused [see *Imai, supra* at para 36; *Attaran, supra* at para 14]. Those factors include: (a) the principles and objectives of the *ATIA*; (b) the public interest in access to information requests and the public's right to know; (c) the historical value of a document; (d) the passage of time between the inception of the document and the access request; and (e) prior public disclosure of the information [see *Bronskill, supra* at paras 213–220].

[73] Accordingly, for the subsection 15(1) exemptions at issue on this application, the Court must (a) determine, on a *de novo* basis, whether PCO has demonstrated that disclosing the redacted information on pages 188-191, 193 and 197 could reasonably be expected to be injurious to the conduct of international affairs; and (b) if so, engage in a two-prong assessment of: (i) whether PCO turned its mind to the exercise of discretion under subsection 15(1); and (ii) exercised that discretion reasonably [see *Imai, supra* at para 31; *Attaran, supra* at paras 16, 18].

[74] In considering whether PCO turned its mind to the exercise of discretion under the first prong of the assessment pursuant to subsection 15(1), the Court must examine the totality of the evidence to determine whether, on a balance of probabilities, the head of the government institution or their delegate understood that there existed a discretion to disclose or to refuse to disclose. Evidence of the discretion may be express or implied [see *Attaran, supra* at para 36].

[75] In considering whether PCO reasonably exercised its discretion under the second prong of the assessment, the Court must consider the grounds for justification invoked by PCO, as well as the transparency and the intelligibility of the decisional path with regard to the facts in evidence; PCO cannot simply state that they have considered all the relevant factors but, rather, must concretely demonstrate how they have considered them [see *Canada (Information Commissioner) v Canada (Transport)*, 2016 FC 448 at paras 64–66].

[76] It is not necessary for the head of a government institution to provide a detailed analysis of each factor that has an impact on the decision or how they were weighed against each other, but it will not suffice to recite boilerplate declarations that discretion was exercised and that all relevant factors were considered [see *Prime Minister, supra* at paras 82–83]. The Court will consider the totality of the factors a government institution considered. The Court may even reasonably infer that all the factors were duly considered, including those favouring disclosure. An exercise of discretion is not unreasonable simply because the institution did not specifically identify certain factors favouring disclosure that a requestor deems relevant [see *Prime Minister, supra* at paras 82–90].

[77] If the Court determines that PCO did not have reasonable grounds on which to refuse disclosure under subsection 15(1), section 50 of the *ATIA* empowers the Court to order disclosure of the redacted information.

(2) Pages 188-191 and 193

[78] Pages 188-191 and 193 are pages from an intelligence report of the Africa, Middle East and Western Hemisphere Section for the period July 1, 1975, to June 30, 1976. Pages 188 to 190 consist of a list detailing the number, title, classification and dates of various SRB Memoranda. Page 191 is a list of “items for IAC weekly intelligence review” detailing the title, classification and date for each item. Page 193 is a list of “other work requested from outside this bureau” detailing the item, classification, who it is for and the date. The memoranda and items cover a number of countries and have differing security classifications. On each of the pages at issue, redactions are made so as to remove all information about a particular memorandum, item or work request [Redacted Items].

[79] The first issue for this Court’s consideration is whether PCO has demonstrated that disclosing the redacted information on pages 188-191 and 193 could reasonably be expected to be injurious to the conduct of international affairs.

[80] PCO’s justification for the redactions turns on the security classification of the Redacted Items. Mr. Yendall’s evidence is that each of the Redacted Items have a security classification level of “CW” [REDACTED]. At the relevant time, he stated that CW implied [REDACTED]

[REDACTED]

[REDACTED] He states that this is highly sensitive information regarding [REDACTED]

[REDACTED] since the end of the Second World War and remains sensitive within the conduct of Canada’s international relations. In essence, Mr. Yendall’s

evidence is that the release of the report name would [REDACTED]

[81] The names of the reports identify the following countries and organizations: Saudi Arabia, “OPEC Countries”, “CIEC”, Cuba, Kuwait, Iran, Argentina, Mexico, “Latin America”, Angola, Venezuela, Egypt, USSR, Brazil, and Syria. There is one report name that does not identify any particular country – namely, “Memo – Comments on Economic 8”.

[82] Mr. Yendall identified three potential harms from the release of information regarding targets of [REDACTED]. First, Mr. Yendall states that the release of the information may cause harm to Canada’s collection of intelligence. Given the age of the records, he states that GAC assessed that there is a minimal and limited expectation of this harm. Mr. Yendall states that it is reasonable to expect that the disclosure of the fact that countries and industries were historically the targets of [REDACTED]

However, given the age of this information and the corresponding technological changes, he states that it is unlikely — albeit not impossible — [REDACTED] and that there would be limited injury to Canadian or [REDACTED]

[83] Second, Mr. Yendall states that the release of the information may cause harm to Canada’s diplomatic relations. Given the age of the records, he states that GAC assessed that there is a “slightly more reasonable expectation of injury” to the conduct of Canada’s international affairs

and diplomatic relations with other countries that would accuse Canada of [REDACTED]. He detailed a number of historical reactions to disclosures of [REDACTED], which resulted in diplomatic, consular and other counter-measures, including: (a) demarches against the targeting country; (b) the implementation of visa requirements or other travel restrictions for targeting country citizens; (c) increased reluctance to interact positively with targeting country's diplomatic, trade or consular representatives, or with private citizens or entities working in the target country; (d) the arbitrary detention of targeting country citizens; (e) refusals of agreements for diplomats to the target country; (f) the expulsion of diplomats as *personae non grata*; and (g) the use of such disclosures to accuse the targeting country of espionage in order to bolster their own domestic and/or international reputation against those of the targeting country's interests in international fora.

[84] Mr. Yendall states that, "in most instances", Canada continues to have relations with the named targets of [REDACTED] described in these reports and therefore the release of the information would have deleterious effects on Canada's current bilateral relations with these targets as they could accuse Canada, or Canada's allies, of [REDACTED]. Further, he states that the release of this information would serve to "confirm suspicions" and could reasonably be expected to create bilateral irritants among the named countries. This could cause them to justify downgrading the bilateral relationship, which would impact all aspects of foreign policy priorities, such as consular, trade and political advocacy.

[85] Third, Mr. Yendall states that the release of the information may cause harm to Canada's intelligence sharing agreements. Mr. Yendall identified this harm as a "potentially significant risk"

to Canada's intelligence sharing agreements arising from [REDACTED] [REDACTED] information received in confidence from Canada's Five Eyes allies (U.S., U.K., Australia and New Zealand).

[86] Mr. Yendall states that in the [REDACTED] [REDACTED].

As such, he states it is "almost certain" that the [REDACTED] information referred to on these pages was acquired from one or more of Canada's Five Eyes allies. However, given the limited detail available on the origin of the Redacted Items, it is impossible to determine which ally provided what information. He states that all intelligence information shared among foreign agencies is shared with the express or implicit understanding that neither the information nor its source will be disclosed without the prior consent of the entity that provided it, i.e., the "third-party rule". As such, any release of Five Eyes information without the consent of the relevant parties would cause significant and long-lasting harm to that relationship. If Five Eyes allies form the view that Canada cannot be trusted, Mr. Yendall states, this would result in a reduced flow of intelligence information to Canada, which would cause severe injury to Canada's intelligence community and ability to foresee or respond to current or future threats.

[87] Finally, Mr. Yendall states that the passage of time does not negate the possibility of injury, as there is no defined cessation or completion of events (such as the end of a war) surrounding the [REDACTED] of the geopolitical and economic entities detailed in the Redacted Items. As these entities continue to exist, the disclosure of these historical reports could reasonably be expected to negatively affect Canada's current diplomatic relationships with the relevant

countries or entities. Even where Canada does not currently have a diplomatic relationship with the named country or entity, he states that consideration must be given to the potential impact on a future relationship.

[88] It must be recalled that the OIC found that PCO had: (a) failed to make the injury resulting from disclosure apparent, particularly considering the record at issue contains only titles, document classification and dates and does not reveal the contents of the reports in question; (b) failed to offer evidence that the Redacted Items had any ongoing operational relevance or could confirm covert operations; and (c) provided no detail to support its claim that bilateral operations could be negatively impacted by disclosure.

[89] PCO had an opportunity to remedy the evidentiary shortcomings found by the OIC on this application, as this Court conducts a *de novo* review based on the full evidentiary record before it. Unfortunately, I find that there remains a number of problems with PCO's evidence and their associated assertions of injury.

[90] In his affidavit, Mr. Neilson stated that in October 2024, following receipt of the initial OIC report, PCO conducted another review of the redactions made to pages 188-191 and 193 and consulted with GAC and the Communications Security Establishment [CSE] regarding the redactions. While GAC recommended that certain exemptions be maintained, Mr. Neilson stated that "CSE had no objections to the release of information relating to their portfolio." At the *ex parte, in camera* hearing, I raised with counsel for PCO the fact that SIGINT, or signals intelligence, falls squarely within CSE's portfolio. PCO did not disagree. Mr. Neilson confirmed

that CSE had no objections to the release of information “relating to their portfolio”. All of the redactions made to pages 188-191 and 193 turned on the risk of injury related to the disclosure of the use of signals intelligence by Canada or its allies, which is clearly a matter relating to CSE’s portfolio. If CSE had no issue with the release of this information, then why did PCO? No explanation was provided by Mr. Neilson as to why CSE’s position was not adopted by PCO. While I do not discount the fact that GAC has a stake in the potential release of this information as well, I find the fact that CSE had no objection to the release of this five-decades’ old information undermines PCO’s position regarding the prospect of injury, particularly as it relates to Canada’s relationship with its Five Eyes allies.

[91] It must be recalled that, to meet its burden, PCO must provide evidence of a clear and direct connection between the disclosure of the specific information and the alleged injury. The more general the evidence, the more difficult it will be for the Court to be satisfied of the required linkage between disclosure and injury. I accept that the risks of injury identified by Mr. Yendall are all “possible”. However, PCO had to go further than identifying a possible injury. PCO had to demonstrate a direct link between the redacted information and the various asserted injuries. I find that PCO has failed to do so, instead providing only “generic” evidence.

[92] The redactions at issue cover at least thirteen countries (leaving aside the countries covered by the organizations) yet there is no evidence as to the assessment of the risk of injury for each country. No details are given as to Canada’s current relationship with each country and how it could be impacted by the release of the information. Rather, PCO lumps all of the countries together and treats the risk of injury equally, regardless of whether Canada has a strong, weak or

non-existent current diplomatic relationship with that country. While Mr. Yendall speaks to the risk of jeopardizing future relationships with countries with whom Canada does not have a current diplomatic relationship, he has not identified how that might apply to any of the countries at issue. During the hearing, counsel for PCO urged this Court to simply rely on GAC's expertise and assume that GAC did in fact consider their relationship with each country individually. However, there is nothing in the materials before the Court to support the making of such an assumption.

[93] Moreover, allegations of harm from disclosure must be considered in light of all relevant circumstances, which includes the extent to which the same or similar information is already in the public realm [see *Prime Minister, supra* at paras 85-90]. Here, PCO provided no evidence as to whether it is already publicly known that Canada or its allies spied on any of the countries or organizations at issue during the relevant period of time, or whether any of the Redacted Items or their titles have ever previously been made public.

[94] I am also mindful of the age of the records. I accept Mr. Yendall's evidence that the age of the reports does not, on its own, negate the risk of injury given as there is no apparent defined cessation or completion of events surrounding the [REDACTED] of these geopolitical and economic entities. However, the amount of time that has passed since these [REDACTED] occurred is certainly a relevant consideration to the manner in which the countries at issue or Canada's security partners may react to any disclosure. Mr. Yendall included in his affidavit a number of articles detailing consequences of revealing [REDACTED]. However, as rightly noted by the Applicant, those articles addressed the fallout from the disclosure of on-going and contemporary operations rather than the disclosure historic [REDACTED].

██████████; and there is no evidence before the Court to suggest that any of the ██████████ that could be inferred from the report titles are ongoing. In the circumstances, I find that PCO has not adequately addressed the age of the records and its impact on the purported risk of injury.

[95] With respect to the asserted risk of harm to Canada's collection of intelligence (which PCO acknowledges is minimal), PCO has provided no evidence as to what collection methods may have been used at the relevant time, whether they are still being used, how disclosure of the names of the reports could put that particular methodology at risk and how that could negatively impact Canada's current collection methodologies. Thus, I find this evidence of risk of injury to be speculative.

[96] With respect to the risk to Canada's relationship with its Five Eyes allies, I am not satisfied that PCO has provided evidence of a direct link between disclosure and the asserted injury. I accept that the third-party rule would apply to any information provided to Canada by a Five Eyes ally and that disclosure of Five Eyes information without the consent of the relevant ally could certainly cause significant and long-lasting harm to that relationship. However, the circumstances of this case do not involve the disclosure of Five Eyes information. There is no evidence before this Court to suggest that the names of the reports themselves contain any Five Eyes information. PCO has failed to provide any evidence that would directly link the names of the reports on their own to a risk of injury to Canada's Five Eyes relationships. I find that PCO's evidence does not demonstrate that this risk of harm to Canada's Five Eyes relationships rises above a mere possibility, which is insufficient to meet PCO's evidentiary burden.

[97] I would also note that PCO has exempted a Redacted Item on the bottom of page 193 which is described as “Memo – Comments on Economic 8”. PCO’s entire injury assertion for these pages is premised on all of the reports being CW and thus signalling to the referenced country or organization that they had been spied upon by Canada or its allies. Unlike all of the other Redacted Items, this memo does not have a CW classification. Rather, the document has no listed classification designation. As such, PCO’s injury assertion cannot apply to this document and no alternative injury assertion has been made in relation thereto. Even if the document did have a CW classification, the description of the memo refers to no specific country and no explanation has been provided by PCO as to what the “Economic 8” refers to. When questioned about this redaction during the *ex parte, in camera* hearing, counsel for PCO could not explain why this redaction had been made.

[98] Accordingly, I am not satisfied that PCO has demonstrated that disclosing the redacted information on pages 188-191 and 193 could reasonably be expected to be injurious to the conduct of international affairs. In light of this finding, I need not go on to consider whether PCO turned its mind to the exercise of discretion under subsection 15(1) and exercised that discretion reasonably.

(3) Page 197

[99] Page 197 is one page from an SRB internal memorandum dated November 30, 1973, from the Head, Africa, Middle East – Western Hemisphere Section to the Director entitled “SRB

Contributions During the Middle East Crisis”. A portion of a sentence was redacted on the basis that it is protected information pursuant to subsection 15(1). The paragraph reads as follows:

a) IAC – Middle East Working Group

1. SRB attended the meetings of the special IAC Middle East Working Group that met regularly from 12 October to 25 October. SRB contributed to the IAC Special Assessments on the Middle East crisis with analysis of the economic effects of the conflict on the combatant states and the effects of the ME conflict on international petroleum trade. Information came largely XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX although all categories of information were searched to glean pertinent data.

[100] The redacted phrase states, “from highly classified controlled access information”. Mr. Yendall provided limited evidence regarding this page. He stated that this phrase indicates [REDACTED] information. Like pages 188-193, Mr. Yendall states that a reasonable expectation of injury to the conduct of Canada’s international affairs arises from harm to the sharing of intelligence and/or diplomatic relations with those countries engaged in the petroleum trade, for the same reasons as pages 188-191 and 193.

[101] PCO therefore relies on the same evidence and submissions to assert that disclosure of the redacted information on page 197 could reasonably be expected to be injurious to conduct of international affairs as they relied upon for pages 188-191 and 193. As I found that that evidence fell short of meeting PCO’s burden on this application, the same holds true for page 197. As such, I am not satisfied that PCO has demonstrated that disclosing the redacted information on page 197 could reasonably be expected to be injurious to the conduct of international affairs. In light of this finding, I need not go on to consider whether PCO turned its mind to the exercise of discretion under subsection 15(1) and exercised that discretion reasonably.

V. Remedy

A. **Release of the records**

[102] The Applicant requests that the Court compel PCO to release an unredacted version of pages 100-111, 151, 188-191, 193 and 197 of the record.

[103] PCO submits that in the event that the Applicant is successful on any aspect of the application, due to the sensitive nature of the information at issue, the Court should send the matter back for redetermination by PCO's head delegate. PCO submits that it is not aware of any circumstances where the Court has used its powers granted by sections 49 and 50 of the *ATIA* to release the records where the information at issue is sensitive in nature. In that regard, PCO notes the decisions in *Bronskill* and *Attaran*, where the Court remitted the matter for redetermination by the head of the government institution.

[104] The remedial powers granted to this Court on an application pursuant to section 41 of the *ATIA* are as set out in sections 49 and 50 of the *ATIA*. Section 49 of the *ATIA*, which applies to exemptions claimed under subsection 13(1), provides:

49 Where the head of a government institution refuses to disclose a record requested under this Part or a part thereof on the basis of a provision of this Part not referred to in section 50, the Court shall, if it determines that the head of the institution is not authorized to refuse to disclose the record or

49 La Cour, dans les cas où elle conclut au bon droit de la personne qui a exercé un recours en révision d'une décision de refus de communication totale ou partielle d'un document fondée sur des dispositions de la présente partie autres que celles mentionnées à l'article 50,

part thereof, order the head of the institution to disclose the record or part thereof, subject to such conditions as the Court deems appropriate, to the person who requested access to the record, or shall make such other order as the Court deems appropriate.

ordonne, aux conditions qu'elle juge indiquées, au responsable de l'institution fédérale dont relève le document en litige d'en donner à cette personne communication totale ou partielle; la Cour rend une autre ordonnance si elle l'estime indiqué.

[105] Section 50 of the *ATIA*, which applies to exemptions claimed under subsection 15(1), provides the Court with the following powers where it finds that no reasonable grounds for injury have been demonstrated by a government institution:

50 Where the head of a government institution refuses to disclose a record requested under this Part or a part thereof on the basis of section 14 or 15 or paragraph 16(1)(c) or (d) or 18(d), the Court shall, if it determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the record or part thereof, order the head of the institution to disclose the record or part thereof, subject to such conditions as the Court deems appropriate, to the person who requested access to the record, or shall make such other order as the Court deems appropriate.

50 Dans les cas où le refus de communication totale ou partielle du document s'appuyait sur les articles 14 ou 15 ou sur les alinéas 16(1)c) ou d) ou 18d), la Cour, si elle conclut que le refus n'était pas fondé sur des motifs raisonnables, ordonne, aux conditions qu'elle juge indiquées, au responsable de l'institution fédérale dont relève le document en litige d'en donner communication totale ou partielle à la personne qui avait fait la demande; la Cour rend une autre ordonnance si elle l'estime indiqué.

[106] Section 50 applies to matters that inevitably involve sensitive information, given that it applies to matters involving federal-provincial affairs (section 14), national security and international affairs (section 15), the enforcement of laws and the conduct of investigations

(paragraph 16(1)(c)), the security of penal institutions (paragraph 16(1)(d)) and the economic interests of Canada (subsection 18(d)). Section 49 also has the potential, as it does here, to involve sensitive information. Yet, as is clear from the language of sections 49 and 50, the power granted to the Court to order the head of a government institution to release a record to a requester is not curtailed or in any way impacted when the information at issue is sensitive in nature.

[107] It must also be recalled that part of the determinations made by the Court on subsection 13(1) and subsection 15(1) exemptions are conducted on a *de novo* basis. That applies in the case of the Court's determination that: (a) PCO has failed to establish that the information on page 151 falls within subsection 13(1); and (b) PCO has failed to demonstrate that disclosing the redacted information on pages 188-191, 193 and 197 could reasonably be expected to be injurious to the conduct of international affairs. I fail to see any reason why PCO should be permitted to make a redetermination of these issues when the Court has already determined them. As such, the Court will not remit these issues for redetermination by PCO. The Court will order that these pages be released by PCO to the Applicant.

[108] The situation, however, is different in relation to pages 100-111. For these pages, the Court determined that PCO had failed to recognize and then reasonably exercise its discretion under subsection 13(2) of the *ATIA*. As detailed above, the Court conducted a reasonableness review of the head of PCO's exercise of discretion (or lack thereof) and did not consider the exercise of discretion on a *de novo* basis. This raises the possibility of remitting this issue to the head of PCO for redetermination, which would typically be the remedy granted by the Court on an application for judicial review. I am mindful, however, that this is not an application for judicial review and

that the *ATIA* expressly grants the Court the power to order the release of pages 100-111. I am also mindful of the fact that the Applicant has been seeking release of these pages for almost ten years.

[109] However, I am satisfied that the appropriate remedy in relation to pages 100-111 of the record is to set aside PCO's decision exempting these pages from disclosure pursuant to subsection 15(1) and remit to PCO, for determination, the question of whether PCO should exercise its discretion to disclose the relevant portions of pages 106-107 given that PCO has in fact never determined this issue.

B. Declaratory relief

[110] In his Notice of Application, the Applicant requests that the Court issue, pursuant to section 50 of the *ATIA*, a declaration that when the head of a government institution refuses to disclose a record or parts of a record requested under the *ATIA* pursuant to subsection 15(1), the head of the government institution must give the requester notice of: (a) the link between the disclosure of specific information and the harm that can reasonably be expected to occur; and (b) the general type of harm that can reasonably be expected to occur.

[111] Neither party made any submissions in their written representations regarding this requested remedy. Of particular concern is the failure on the part of the Applicant, who seeks this relief, to address it in his materials. At the hearing, the Applicant made brief submissions in support of the request, but never articulated a basis for the imposition of such an obligation on the head of a government institution, either from the language of the *ATIA* or from principles emanating from

the jurisprudence. In the absence of an articulation of the basis for the imposition of this obligation on the heads of government institutions, I see no basis to entertain the request.

[112] In any event, I would note that the issues before the Court on this application do not include the sufficiency of the notice given by the head of PCO when it refused to disclose pages 188-191, 193 and 197 to the Applicant. As such, I do not see any basis for the Court to be embarking on a consideration of whether the requested declaration should be granted. Even if that were not the case, the declaration sought, on its face, is sufficiently broad that it would, in this case, have required the disclosure of the very information sought to be protected.

[113] Accordingly, the declaration sought by the Applicant will not be granted.

VI. Costs

[114] In light of my determinations above, I find that the Applicant is the successful party on this application. I see no reason to depart from the general principle that the successful party should recover their costs and, as such, the Applicant shall be awarded his costs of this application. The sole issue remaining for determination is the appropriate quantum.

[115] Turning to the applicable Rules and principles, Rule 400(1) of the *Federal Courts Rules*, SOR/98-106, provides this Court with “full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.”

[116] The principal objectives underlying an award of costs are to: (a) provide indemnification for costs associated with successfully pursuing a valid legal right or defending an unfounded claim; (b) penalize a party who has refused a reasonable settlement offer; and (c) sanction behaviour that increases the duration and expense of litigation or is otherwise unreasonable or vexatious [see *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at para 25; *Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 at para 19].

[117] The default level of costs in this Court is now the midpoint of Column 2 of the applicable tables to Tariff B [see Rule 407]. However, Rule 400(4) expressly contemplates an award of costs in a lump sum in lieu of any assessed costs pursuant to Tariff B.

[118] A lump sum award, based on a percentage of a party's actual legal fees, can simplify the costs determination and further the goal articulated in Rule 3 of ensuring "the just, most expeditious and least expensive" determination of every proceeding on its merits. The burden is on the party seeking increased costs to demonstrate why their particular circumstances warrant an increased award [see *Apotex Inc v Shire LLC*, 2021 FCA 54 at para 18; *Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 at para 13]. As noted by the Federal Court of Appeal in *Nova*, there appears to be a trend in recent intellectual property decisions of favouring lump sum costs awards, particularly in cases involving sophisticated commercial litigants [see *Nova, supra* at para 16]. However, this Court has also made lump sum cost awards in non-intellectual property proceedings, noting that it is becoming increasingly common and being done "wherever possible" [see *Jahazi v Canada (Citizenship and Immigration)*, 2024 FC 2072 at para 30, citing *Philip Morris Products SA v Marlboro Canada Limited*, 2015 FCA 9 at para 4; *Elevate*

LLP v Canada (Attorney General), 2025 FC 858 at para 16; *Powless v Canada (Attorney General)*, 2025 FC 1425; *Barnes v Canada (Prime Minister)*, 2025 FC 1559].

[119] Lump sum costs awards tend to be between 25% and 50% of a party's actual fees. However, there may be cases where a higher or lower percentage is warranted. The Court's wide discretion to award costs is structured by the factors set out in Rule 400(3), the case law and the objectives that underly awards of costs [see *Nova, supra* at paras 17, 19]. While the criteria under Rule 400(3) are useful beacons in the selection of the percentage of actuals to award, the determination of the lump sum is not an exact science [see *Nova, supra* at para 21].

[120] The Applicant seeks a lump sum cost award of \$18,046.91, representing 33% of his actual legal fees, and disbursements in the amount of \$228.82. The Applicant asserts that such an award is appropriate in the circumstances given the recent trend towards awarding lump sum cost awards and that the factors enumerated in Rule 400(3) support such an award. Specifically, the Applicant notes that: (a) the issues raised in this proceeding are of particular importance to him given his area of studies, his frequent resort to requests under the *ATIA* and the ongoing resistance he encounters to the disclosure of records; (b) the issues raised in this proceeding engage the public interest, as they address the scope of exemptions under the *ATIA* and promote government accountability; (c) there is a serious financial imbalance between the parties such that a heightened cost award is consistent with the objective of facilitating access to justice; and (d) the OIC already determined that PCO should release the records and PCO failed to do so, which necessitated the commencement of this proceeding.

[121] PCO asserts that costs should be awarded in accordance with what was previously the mid-point of Column III of the applicable tables to Tariff B of the *Federal Courts Rules*, to be determined on an assessment or by way of the fixing of a lump sum in the equivalent of that amount. PCO submits that an award of lump sum costs representing a percentage of the Applicant's actual costs remains an exceptional remedy and the circumstances of this application do not warrant such an award.

[122] Having regards to the above-referenced principles and the factors detailed in Rule 400(3), together with the submissions of the parties, I am satisfied that an award of lump sum costs is warranted in this application, based on 25% of the Applicant's actual legal fees, given the importance of the issues to the Applicant, the public interest in the issues raised on the application and the significant resource imbalance between the parties.

[123] Having reviewed the Applicant's Bill of Costs, I find that the fees incurred are reasonable and justified and I note that the Respondent has not raised any concerns related thereto.

[124] Accordingly, the Respondent shall pay to the Applicant his costs, inclusive of taxes and disbursements, in the amount of \$13,727.38.

VII. Conclusion

[125] For the reasons stated above, PCO shall disclose to the Applicant pages 151, 188-191, 193 and 197 of the record.

[126] PCO's decision exempting pages 100-111 from disclosure pursuant to subsection 15(1) is hereby set aside and the matter shall be remitted to PCO for redetermination in accordance with these Reasons.

[127] As redactions will need to be made to these Reasons, the time for commencement of any appeal shall run, for the Applicant, from the date of issuance of the Public Judgment and Reasons and, for PCO, from the date of issuance of the Classified Judgment and Reasons.

[128] There is one further matter that warrants commentary. The manner in which PCO prepared and delivered their submissions in this application was unhelpful to the Court. PCO did not provide specific submissions in relation to each of the pages of the record. Moreover and importantly, notwithstanding that PCO filed classified evidence explaining the basis for the redactions, PCO did not file any classified written submissions or seek to make *ex parte, in camera* oral submissions on the classified evidence (which was open to PCO to do under the *ATIA*). While an *ex parte, in camera* hearing was held, the hearing was limited to questions raised by the Court as PCO had undertaken (in response to a potential motion by the Applicant for the appointment of a special advocate or *amicus curiae*) not to make additional submissions in the absence of the Applicant.

[129] While PCO stated that it did not file classified submissions as it wanted its position to be transparent to the Applicant, this explanation is illogical as the Applicant's understanding of PCO's position was already rendered opaque by PCO's redactions to the pages at issue and PCO's reliance on classified evidence. PCO's failure to provide classified submissions meant that it was left to the Court to search through the classified record and compile a complete evidentiary picture

in relation to each exemption and then determine, without the benefit of submissions from PCO on the totality of the evidence, whether PCO had met its evidentiary burden. Proceeding in this manner imposes an unnecessary burden on the Court and counsel is advised not to repeat this strategy in future applications.

JUDGMENT in T-3639-24

THIS COURT'S JUDGMENT is that:

1. The Respondent shall, within 14 days of release of the Public Judgment and Reasons, disclose to the Applicant an unredacted version of pages 151, 188-191, 193 and 197 of the record.
2. The Respondent's decision exempting pages 100-111 of the record from disclosure pursuant to subsection 13(1) is hereby set aside and the matter shall be remitted to the Respondent for redetermination in accordance with these Reasons.
3. The Respondent shall, within 14 days of issuance of the Classified Judgment and Reasons, provide the Court with their proposed redactions thereto.
4. The time for commencement of any appeal shall run, for the Applicant only, from the date of issuance of the Public Judgment and Reasons.
5. The Respondent shall pay to the Applicant his costs of this application fixed in the amount of \$13,727.38, inclusive of taxes and disbursements.

"Mandy Aylen"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-3639-24

STYLE OF CAUSE: ALAN BARNES v PRIME MINISTER

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: DECEMBER 11, 2025

JUDGMENT AND REASONS: AYLEN J.

**~~CLASSIFIED~~ JUDGMENT
AND REASONS DATED:** MARCH 18, 2026

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