



[2022] 1 F.C.R. D-17

**ACCESS TO INFORMATION**

Judicial review of Department of Canadian Heritage's response to access request under *Access to Information Act*, R.S.C., 1985, c. A-1 (Act) — Order in Council P.C. 2017-1684 approved series of land transactions pertaining to development of Chaudière, Albert Islands, in Ottawa River west of Parliament Hill — Applicant filed request for access to information with Office of the Minister of Canadian Heritage and Multiculturalism — Request sought answers to questions regarding application of current Canadian legislation to Chaudière, Albert Islands — In particular, applicant sought Acts of Parliament or statutes rescinding legal status of Chaudière, Albert Islands — Canadian Heritage referred applicant to National Capital Commission, Public Services and Procurement Canada for requested documents — Applicant filed complaint to Information Commissioner — Contended that Canadian Heritage did not address his access request — Investigator with Office of the Information Commissioner indicated her intention to recommend that complaint be recorded as not well founded — Information Commissioner's final report finding Canadian Heritage conducted reasonable search, no additional records responsive to request located — Respondent arguing Court having no jurisdiction to entertain this application — Further arguing Canadian Heritage's response to applicant's access request not refusal to release records — Main issues whether Court having jurisdiction to hear application; whether Canadian Heritage should be ordered to provide copies of Acts of Parliament or statutes requested — Court having jurisdiction to hear application — Before 2019 amendments, s. 41 application to Court for review available only to person who had been refused access — S. 41(1) now no longer limited to person who has been refused access — Person must have made complaint described in Act, s. 30(1)(a) to (e) — Absence of s. 30(1)(f) (complaints made with respect to any other matter relating to requesting or obtaining access to records) from this list deliberate legislative choice — Parliament deciding that those who have filed complaint with Information Commissioner regarding refusals, unreasonable fees or extensions, official languages, accessibility, or publications or bulletins, may subsequently seek judicial review, but not those who have filed complaint with respect to "any other matter relating to requesting or obtaining access to records." — Applicant's complaint raising no issue described in Act, ss. 30(1)(b) to (e) (unreasonable fees or extensions, official languages, accessibility, or a publication or bulletin issued under Act, s. 5) — Therefore, for applicant to be entitled to bring application for review under Act, s. 41, complaint must have been in respect of refusal under Act, s. 30(1)(a) — Question thus whether there was refusal to provide access in present case — Canadian Heritage effectively refused to provide documents on basis they did not exist as records in their control — Act, s. 10(1) requiring that notice given to requester to advise them of "right to make a complaint to the Information Commissioner about the refusal" specify whether basis for refusal is non-existence under s. 10(1)(a) or another provision of Act under s. 10(1)(b) — Term "does not exist" in s. 10(1)(a) having to be understood to mean "does not exist in the records of the government institution" rather than necessarily "does not exist anywhere." — In *Canada (Information Commissioner) v. Canada (Minister of the Environment)*, 2000 CanLII 15247 (F.C.A.), Federal Court of Appeal confirmed that refusal based on non-existence can be judicially reviewed by Federal Court — Court herein bound by that decision — It is consistent with language of s. 10(1) and states clearly that non-existence ground of refusal that may be challenged on review — Assessment of whether records do exist better viewed as going to merits of application, not to Court's jurisdiction to hear application — Therefore, response that record does not exist in records of government institution constituting refusal of access under s. 10(1)(a), permitting requester to seek judicial review under s. 41 — That said, applicant not establishing any grounds on which to make orders sought — Canadian Heritage authorized to refuse to disclose records to applicant — Act not creating general

right to obtain answers to questions — Neither access to information request nor application under s. 41 avenues to challenge legality of any governmental actions — Cannot be transformed into one by requesting legal opinions or positions in form of requests for copies of legislation — Act not permitting Court to order government institution to undertake legal research, analysis necessary to respond to request of nature made by applicant — Canadian Heritage response cannot reasonably be read in context as being other than refusal based on non-existence — No basis here to order production of records — Appeal dismissed.

LAMBERT V. CANADA (CANADIAN HERITAGE) (T-220-20, 2022 FC 553, McHaffie J., reasons for judgment dated April 19, 2022, 29 pp.)