



[2022] 1 F.C.R. D-9

ACCESS TO INFORMATION

Related subjects: Privacy; Penitentiaries

Judicial review pursuant to *Access to Information Act*, R.S.C., 1985, c. A-1 (ATIA), s. 41(1) of decision by Office of the Information Commissioner investigator concluding that applicant's exemption complaint in relation to Access to Information and Privacy (ATIP) request not well founded — Correctional Service Canada (CSC) received access to information request from applicant for all inmate grievances at local level in Bath Institution, federal penitentiary operated by CSC, regarding correctional officers not wearing masks — Canadian government's COVID-19 response measures included physical distancing, increasing hygiene practices, mandatory wearing of masks, other personal protective equipment by correctional officers (COs), other CSC agents, employees, prisoners — Inmate grievances include written complaint made by prisoner to appropriate recipient — CSC identified a dozen grievances brought by six different inmates, corresponding CSC responses — Two grievances were typewritten, remainder were handwritten — Handwritten portions of remaining eight inmate grievances redacted because CSC determined it was personal information pursuant to ATIA, s. 19(1) — OIC Investigator explained that her conclusion was the same as that of CSC, i.e. that the exempted information falls within class test of s. 19(1), as it is personal information defined in *Privacy Act*, R.S.C., 1985, c. P-21, s. 3 — OIC investigator's final report (Commissioner's decision) held that handwriting about identifiable individual, that information not falling under any exceptions to definition of "personal information" set out in *Privacy Act* — Commissioner's decision also found that CSC provided detailed rationale as to why circumstances in s. 19(2) not existing in this case to permit disclosure — Main issue whether inmates' handwriting styles constituting "personal information" exemption in s. 19(1) — Respondent not establishing that inmates' handwriting styles "personal information" within meaning of *Privacy Act*, s. 3 — Appropriate test to determine when information about identifiable individual set out in *Gordon v Canada (Health)*, 2008 FC 258, [2008] 3 F.C.R. D-5: information will be about identifiable individual where there is serious possibility that individual could be identified through use of that information, alone or in combination with other available information — Disagreement of parties not concerning legal test but instead arising from application of facts to the law in this case — Any consideration of whether handwriting personal information inherently contextual, fact-specific — Identifiable individual someone whom it is reasonable to expect can be identified by combining information in issue with information from other available sources — Identification of inmates from handwritten inmate grievances predominantly speculative — Identification simply too far removed in circumstances, implications of identification should not threaten inmates' personal safety — Here, respondent's evidence from ATIP analyst merely pointed to fact that inmates write letters to loved ones, to legal counsel — Cross-referencing against love letters, court records in hands of third parties, while on spectrum of possibility, at most mere possibility, not serious possibility — No evidence of more than mere possibility that releasing inmates' handwriting will lead to identification — Commissioner's Directive 081: "Offender Complaints and Grievances" providing confidentiality to process — Directive not presumptively shielding all handwritten grievances from release — Wholesale redaction of handwritten complaints due to CSC qualifying handwriting as personal information inappropriate in these circumstances — As information in question not personal information, s. 19(2) not coming into play — CSC directed to review handwritten information to ensure appropriate portions containing personal information, such as names, fingerprint serial numbers, dates of birth redacted before release — Matter remitted to CSC for redetermination — Application allowed.

JOHN HOWARD SOCIETY OF CANADA V. CANADA (PUBLIC SAFETY) (T-148-22, 2022 FC 1459,
McVeigh J., amended reasons for judgment dated March 13, 2023, 24 pp. + 3 pp.)