Federal Court Cour fédérale

Date: 20251007

Docket: T-232-25

Citation: 2025 FC 1655

Ottawa, Ontario, October 7, 2025

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

RICHARD R. GOVIER

Applicant

and

NATURAL RESOURCES CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application brought pursuant to subsection 41(1) of the *Access to Information Act*, RSC 1985, c A-1 [ATIA] relating to two requests for information made by the Applicant, Mr. Richard Govier, to Natural Resources Canada [NRCan]. In his requests, the Applicant sought the dates and content of communications between the Ministry of Natural Resources and NRCan's Major Projects Management Office (West) [MPMOW], and the Ministry of Natural Resources and the Ministerial Review Panel [Panel] for the Trans Mountain Pipeline Expansion [TMX] project, relating to how they would handle the presentations and emails received during

the public meetings on the TMX. The Applicant asserts that NRCan did not ask for the communications held by the Panel and the contract employees that were assisting the Panel, which were under their control. He also asserts that the searches that were conducted of NRCan's files were incomplete.

[2] For the reasons set out below, I find that the application must be dismissed as it is speculative whether the requested documents exist and if they do and are still in the possession of the Panel or the contract employees working with the Panel, they are no longer under NRCan's control. With respect to documents that are under NRCan's control, reasonable searches were made.

[3] The Applicant's additional challenges regarding confidentiality of records from the TMX project meetings, retention of records, and redactions made to documents that were provided in response to his requests extend beyond the scope of the issues determined by the Information Commissioner and the available relief. Thus, they cannot be considered on this application.

I. **Background**

[4] In May 2016, the Ministry of Natural Resources appointed the Panel to assist with the TMX. The Panel's task was to report to the federal government on what Canadians thought was missing from the National Energy Board's review of the pipeline. The Panel had three members and was assisted by three additional contractors [collectively, referred to with the Panel as the Former Contractors], each of whom had individual contracts with NRCan that expired in 2016 after the Panel published its final report on November 1, 2016.

[5] The MPMOW was the project authority for the Panel's work and all dealings of the Panel with NRCan went through the MPMOW. During the project, the Panel held public meetings attended by over 2,400 Canadians. The Panel received 20,154 email submissions and 35,259 questionnaire responses. The MPMOW assisted with reading and categorizing the emails received by the Panel.

[6] The MPMOW was a division within the Major Projects Management Office [MPMO]. The MPMO involved 12 federal departments and agencies led by NRCan. During its operations, MPMOW's employees and information holdings were transferred to the MPMO sector. In October 2017, MPMOW was renamed Indigenous Partnership Office-West. In March 2022, the Indigenous Partnership Office-West was combined with the Indigenous Affairs and Reconciliation sector to form the Nòkwewashk sector.

[7] On August 3, 2023, NRCan received two access to information requests from Mr. Govier. The first request covered the time-period before and including the Panel's final report on November 1, 2016. The second request covered the time-period from the date of the final report to August 3, 2023. Each request was identical and sought the following information:

> 1) The dates and content of communication between the Ministry of Natural Resources (including the Office of Jim Carr) and the Ministerial Review Panel – Kim Baird (Chair), Tony Penikett, and Dr. Annette Trimbee.
>
> 2) The dates and content of communication between the Ministry of Natural Resources (including the Office of Jim Carr) and the Major Projects Management Office (West).

[8] The requests clarified that the subject of the communication requested was:

> ...what should happen to the hundreds of presentations that were submitted to and received by the Review Panel during the public meetings from July 7, 2016 ending on Aug. 23, 2016 and what should happen to the 20,000 emails that were reviewed by the Major Projects Management Office (West).

[9] On August 9, 2023, a consultant (Tara Rapley) working on behalf of the ATIP secretariat spoke to the Applicant by phone about his requests. She proposed to send him a package of documents that had previously been retrieved from an ATIP request received in 2016 (ATIP 7040-16-292) that she thought might address his requests. The documents from the 2016 ATIP package were provided to the Applicant.

[10] On August 21, 2023, the Applicant confirmed his desire to proceed with his ATIP requests despite receipt of the information. In his correspondence, he also commented on an aspect of their conversation that related to information gathered by the Panel:

> During our phone conversation on Aug.9 you also told me some surprising information that is of interest to me. You said that in 2016 (perhaps July or August) the legal branch of NRCan recommended that NRCan should not archive the information that was gathered by the TMX Review Panel. I find that a bit perplexing.

[11] On August 29, 2023, Ms. Rapley advised the Applicant of NRCan's intention to process his requests subject to confirmation of the scope of the inquiry. She also provided additional explanation on the advice received in 2016. The correspondence stated as follows:

> We will go ahead with processing the two requests. Just so I am absolutely clear about the scope, you are looking for records discussing what would happen with the presentations from the town halls and the survey responses specifically, and are not looking for all records generated from that time period, correct?

> That is my reading of the request texts, but I just want to make sure we retrieve exactly what you are looking for.
>
> With respect to the advice we received in 2016, it was that the records held by the Ministerial Panel were not under the control of NRCan, and therefore the department could not compel them to be turned over in response to the Access to Information request. I do not know whether advice was provided to either the Panel or the department concerning the retention of the records, as that is a separate issue. The Terms of Reference for the Panel (also included in the docs I sent) does not speak to retention of records.

[12] The scope of the inquiry was confirmed by Mr. Govier on August 30, 2023 with the following additional comments:

> Yes, I am looking for records discussing what should happen with the presentations from the town halls. No, I am not looking for the survey responses, they are already publicly available and I do not mention them in my request. I do mention emails received by MPMO because the MPMO provided the panel with the number of people who wish to make presentations to the panel at the town halls. As stated in the Report, at some town hall locations not all presenters could be heard due to lack of time. Were some presentations that could not be heard at the town halls sent directly to MPMO? If so, have they been kept? That is what I want to know.
>
> In regard to your comments (in your August 29 email) that records held by the Ministerial Panel were not under the control of NRCan may or may not be true, but the response I received from the Office of the Information Commissioner was that after their term as paid appointees had ended the Panel members could not be "tasked" to search their records pertaining to my December 13, 2022 ATIP request to NRCan.

[13] On September 27, 2023, NRCan provided Mr. Govier with a formal response to his ATIP requests along with the further responsive records retrieved from NRCan's searches. The response stated as follows:

> While we were unable to locate any files within NRCan's shared document repository that respond directly to your requests, we did find some related documents which outline plans for receiving

> information from Indigenous groups to support the Ministerial Panel in drafting their report.
>
> Enclosed you will find those records, which are being provided to you pursuant to the Access to Information Act. You will notice that certain information has been withheld from disclosure in accordance with the exemptions and exclusions described in sections 19(1) and 68(a) of the Act. We have enclosed the texts of these sections of the Act for your information.
>
> […]
>
> Given that the Ministerial Panel was an independent arms-length entity, it is not surprising that no records exist relevant to the request. The Panel was responsible for conducting engagement meetings with Indigenous groups and the public, analyzing those submissions and using them to form their recommendations as well as ensuring that these records remain confidential.

[14] The Applicant filed two complaints (one for each request) with the Information Commissioner [IC] on November 23, 2023. The complaints alleged that NRCan improperly determined that records from the TMX review located in the Panel's files were not under NRCan's control.

[15] The IC provided reports in response to the Applicant's complaints on December 4, 2024. Based in part on concessions stated to have been made during its investigation, the IC concluded that the Applicant's complaints were well founded in so far as NRCan improperly determined that parts of the records related to the Panel were not under its control. However, the IC determined an order was unnecessary because NRCan conducted a reasonable search for the records and was unable to locate them.

II. **Standard of Review and Issues for Determination**

[16] Subsection 41(1) of the ATIA provides that a complainant may apply to the Court for review of the matter that is the subject of their complaint:

41 (1) A person who makes a complaint described in any of paragraphs 30(1)(a) to (e) and who receives a report under subsection 37(2) in respect of the complaint may, within 30 business days after the day on which the head of the government institution receives the report, apply to the Court for a review of the matter that is the subject of the complaint.	**41 (1)** Le plaignant dont la plainte est visée à l'un des alinéas 30(1)a) à e) et qui reçoit le compte rendu en application du paragraphe 37(2) peut, dans les trente jours ouvrables suivant la réception par le responsable de l'institution fédérale du compte rendu, exercer devant la Cour un recours en révision des questions qui font l'objet de sa plainte.

[17] The standard of review for a proceeding under section 41 of the ATIA differs from the Court's review in an administrative law context because it is not a judicial review of the IC's decision: *Merck Frosst Canada Ltd v Canada (Health)*, 2012 SCC 3 at para 251; *Canada (Public Services and Procurement) v Canada (Information Commissioner)*, 2024 FC 918 at para 33.

[18] Pursuant to section 44.1 of the ATIA, applications under section 41 of the ATIA are to be "heard and determined as a new proceeding": *Canada (Health) v Preventous Collaborative Health*, 2022 FCA 153 at para 13 [*Preventous*]. The objective is not to conduct a judicial review of the IC's findings and recommendations: Canada (Attorney General) v Bellemare, 2000 CanLII 16569 (FCA) at para 13. Rather, the issue is whether the information requested should be disclosed to the requester: *Preventous* at para 13.

[19] In this case, the Applicant seeks communications between *inter alia*, the Panel and the Ministry of Natural Resources that relate to how they were to handle the email submissions, questionnaire responses, and presentations received during their work on the TMX project. As I understand, there is no dispute that any such communications that were in the possession of MPMOW are under NRCan's control. The outstanding question is whether any such communications that remain in the Former Contractors' possession (which I shall refer to as the "Requested Records") are under NRCan's control and should have been produced. The Applicant also takes issue with the completeness of the searches conducted of NRCan's records in respect of his requests.

[20] The following issues thus require determination:

A. Does NRCan have control over the Requested Records?

B. Did NRCan conduct a reasonable search?

[21] The Applicant also raises additional challenges. He refutes any confidentiality designation given to the record of the meetings of the Panel, challenges NRCan's retention of records, and during the hearing sought to challenge redactions made to certain documents within the 2016 ATIP release package that was provided in response to his requests. He asks the Court for additional relief in connection with these arguments that extends beyond the Court's allowable jurisdiction, including a determination relating to the confidentiality of the meeting records, particulars as to the earlier 2016 ATIP release package, and expanded searches by NRCan.

[22] As emphasized in *Blank v Canada (Justice)*, 2016 FCA 189 at para 36 [*Blank*], the Court's role under section 41 of the ATIA is narrowly circumscribed and is limited to evaluating whether access to a specific record that was denied should be allowed:

> [36] Once again, the primary oversight role under the Act remains with the Commissioner. The Federal Court's role is narrowly circumscribed; section 41, when read in conjunction with sections 48 to 49, confines its reviewing authority to the power to order access to a specific record when access has been denied contrary to the Act. Unless Parliament changes the law, it is not for the Court to order and supervise the gathering of the records in the possession of the head of a government institution or to review the manner in which government institutions respond to access requests, except perhaps in the most egregious circumstances of bad faith.

[23] Further, section 41 of the ATIA expressly limits the scope of the application to matters that were the subject of the IC complaint. Where an applicant seeks to challenge redactions made to documents provided (and the exemptions the government institution relies on for them), such challenge must be explicitly set out in the IC complaint so that proper consideration can be given to the challenge: see for example, *Perreault v Canada (Foreign Affairs)*, 2023 FC 1051 at para 9; *Beniey v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 858.

[24] As highlighted by the Respondent, a report from the IC regarding the particular challenges raised is a prerequisite before the Federal Court can consider an application under subsection 41(1) of the ATIA. Until then, all adequate and alternative administrative remedies have not been pursued: *Blank* at para 30.

[25] As the Applicant's further arguments either do not relate to the communications at issue, or were not specifically raised before and considered by the IC, they cannot be addressed by the Court now.

[26] The issues for consideration shall therefore be limited to the two issues identified as issues "A" and "B" above.

III. **Analysis**

A. *Does NRCan have control over the Requested Records?*

[27] Subsection 4(1) of the ATIA grants a right of access to any record under the control of a government institution, subject to the Act's provisions. NRCan is a "government institution" within the definition provided in section 3 of the ATIA. While the word "control" is not defined under the ATIA, it has been given a broad and liberal interpretation consistent with the ATIA's intention of creating a meaningful right of access to government information: *Canada (Information Commissioner) v Canada (Minister of National Defence)*, 2011 SCC 25 at para 48 [*National Defence*].

[28] In *National Defence* at paragraphs 55-56, the Supreme Court of Canada established a two-step test to determine whether records that are not physically held by a government institution are "under its control" for the purposes of the ATIA. Step one is a screening step and requires that the content of the record relate to a departmental matter. If this condition is not satisfied, the inquiry concludes. If this condition is satisfied, the second step of the test then asks whether the government institution could reasonably be expected to obtain a copy of the

requested record, considering all relevant factors. This assessment is objective and considers factors such as the record's substantive content, the circumstances in which the record was created, and the legal relationship between the government institution and the record holder. If a senior official of the government institution, based on all relevant factors, reasonably should be able to obtain a copy of the record at the time of the request, the test is made out and the record must be disclosed, unless it is subject to a statutory exemption.

[29] NRCan acknowledges that the Requested Records relate to a departmental matter: MPMOW's communications with the Panel relating to the TMX project. However, they argue that the second step of the *National Defence* test has not been met.

[30] The Applicant notes that the IC found that NRCan had control over the Panel's records. As noted earlier, the IC decision refers to concessions that were made by NRCan during its investigations. The details of the investigation are not before the Court, nor are they relevant to the Court's task on this application: *Hendrikx v Canada (Public Safety)*, 2022 FC 1068 at para 13. Nonetheless, the IC's comments are focussed on communications in the possession of MPMOW. As noted earlier, and will be discussed further below, there is no dispute that the records of the Former Contractors that are in the possession of MPMOW and its related sectors are under NRCan's control. The analysis under this first issue is focussed only on any documents that might remain in the possession of the Former Contractors. On considering this limited issue, I agree that the Requested Records, if they still exist in 2023, would not be under NRCan's control.

[31] First, as highlighted by NRCan, there is no evidence to suggest that communications of the type requested were even created. The communications in question relate only to the retention and handling of emails and presentations from the TMX review. The Applicant does not request copies of the actual emails and presentations from the TMX review.

[32] As set out in the Terms of Reference for the Panel:

> The mandate of the Panel is to complement the National Energy Board environmental assessment and regulatory review and to identify whether there are any additional views that could be relevant to the Government's final decision. In order to provide the best possible advice, the Panel will:
>
> - Review and consider input from the public via an on-line portal;
> - Meet with local stakeholder representatives in communities along the pipeline and shipping route;
> - Meet with Indigenous groups who wish to share their views on the Panel, noting that the Panel's work will complement but not substitute the Crown consultations; and,
> - Submit a report to the Minister of National Resources no later than November 1, 2016.

[33] There was no mandate relating directly to the issue of retention of emails and presentations from the TMX review. Thus, I agree with the Respondent, if the topic of what to do with the emails and presentations ever arose between NRCan and the Panel, it was ancillary to their mandated tasks.

[34] The correspondence between Ms. Rapley and the Applicant suggests that at some point in 2016 NRCan may have received advice relating to the retention of documents from the TMX.

However, there is no evidence to suggest that this advice or that additional communications on the issue of retention and handling of records was sent to the Former Contractors.

[35] Indeed, the contracts of employment already included certain obligations relating to documents. For the Former Contractors that received documents, this included the obligation to "keep all documents and proprietary information confidential", "return all materials belonging to NRCan upon completion of the Contract", "submit all written reports in hard copy and electronic Microsoft Office Word", and "maintain all documentation in a secure area". For NRCan, this included the obligation to provide "access to departmental library, government and departmental policies and procedures, publications, reports, studies etc." and "access to facilities and equipment".

[36] Second, the date of the ATIA requests is important. Here, the ATIA requests were not made until 2023. This is seven years after the final report by the Panel. Thus, even if peripheral communications like the type requested were created at some point during the TMX review, or shortly thereafter, there is no evidence to suggest that at the time of the Applicant's request, in 2023, they still existed and remained in any of the Former Contractors' possession.

[37] Third, the legal relationship between the Former Contractors and NRCan at the time of the Applicant's requests does not support the contention that any such communications would still be in the Panel's possession in 2023 or if so, remain under NRCan's control.

[38] All contracts of employment relating to the TMX project expired in 2016 and there is no evidence to suggest that any of the Former Contractors were still employees of NRCan at the time of the Applicant's requests in 2023.

[39] The estimated period of the contract identified in each of the contracts of employment did not extend beyond 2016 and there were no ongoing obligations identified that related to retention of documents.

[40] While the Former Contractors were subject to an Access to Information clause (set out below) under the general conditions for service contracts section of the *Standard Acquisition Clauses and Conditions Manual* issued by Public Works and Government Services Canada [Standard Clauses], the clause was limited to "[r]ecords created by the Contractor" that were "under the control of Canada":

> Records created by the Contractor, and under the control of Canada, are subject to the *Access to Information Act*. The Contractor acknowledges the responsibilities of Canada under the Access to Information Act and must, to the extent possible, assist Canada in discharging these responsibilities. Furthermore, the Contractor acknowledges that section 67.1 of the *Access to Information Act* provides that any person, who destroys, alters, falsifies or conceals a record, or directs anyone to do so, with the intent of obstructing the right of access that is provided by the *Access to Information Act* is guilty of an offence and is liable to imprisonment or a fine, or both.

[41] There is no explanation as to which records satisfy the requirement or what "control" means. Therefore, it does not assist with the *National Defence* test. It also does not address records given to the Contractor by Canada.

[42] As highlighted by the Respondent, there were no access provisions imposed on the Former Contractors that were as broad as the clause that was at issue in *Canada (Public Services and Procurement) v Canada (Information Commissioner)*, 2024 FC 918 which required the contractor to "provide all reports that are required by the Contract and any other information that Canada may reasonably require from time to time".

[43] The Standard Clauses additionally included a confidentiality provision that provided limitations on the use of confidential information provided to the Former Contractors in connection with the TMX project. The provision (set out below) specified that such information was to remain the property of Canada and to be returned to Canada at the termination of the contract:

> 1. The Contractor must keep confidential all information provided to the Contractor by or on behalf of Canada in connection with the Work, including any information that is confidential or proprietary to third parties, and all information conceived, developed or produced by the Contractor as part of the Work when copyright or any other intellectual property rights in such information belongs to Canada under the Contract. The Contractor must not disclose any such information without the written permission of Canada. The Contractor may disclose to a subcontractor any information necessary to perform the subcontract as long as the subcontractor agrees to keep the information confidential and that it will be used only to perform the subcontract.
>
> 2. The Contractor agrees to use any information provided to the Contractor by or on behalf of Canada only for the purpose of the Contract. The Contractor acknowledges that all this information remains the property of Canada or the third party, as the case may be. Unless provided otherwise in the Contract, the Contractor must deliver to Canada all such information, together with every copy, draft, working paper and note that contains such information, upon completion or termination of the Contract or at such earlier time as Canada may require.

[44] There was no provision that provided Canada with a proprietary interest over peripheral communications sent by a government department to the Contractor.

[45] In her affidavit, Ms. Rapley states that she did not ask the Former Contractors if they possessed any records responsive to the Applicant's requests because the Panel no longer existed, its members were no longer government employees, and their contracts were limited to their work on the Panel, which had expired. It seemed unlikely to her that they would personally retain the kind of material that related to the Applicant's requests, particularly when the Panel's work ended in 2016 and any records that had been created would have either been returned to NRCan or disposed of at the termination of the contracts.

[46] I do not consider these actions to be unreasonable. In my view, it is unlikely that the Requested Records still exist if they were created, and even if they did still exist, they would not be under the control of NRCan in August 2023 based on the legal relationship between NRCan and the Former Contractors.

B. *Did NRCan conduct a reasonable search?*

[47] As highlighted by the Respondent, the communications in question relate to communications involving MPMOW. As such, it is likely that MPMOW would have had a duplicate copy of the communications in their possession as they would have either been the sender or a recipient of the communications. As found by the IC, copies of communications that were in the hands of MPMOW would be under NRCan's control and retrievable by NRCan's searches if they still existed.

[48] The Applicant asserts that a sufficient search was not conducted of NRCan's records. However, he could not point to any specific documents that NRCan refused to produce. Indeed, when asked directly about this at the hearing, the Applicant could not point to any documents that fell within his requests that he knew existed and were not provided.

[49] A mere suspicion or belief that further records exist is not sufficient. Some evidence beyond mere suspicion is required: *Tomar v Canada (Parks Agency)*, 2018 FC 224 at para 45 [*Tomar*]; *Olumide v Canada (AG)*, 2016 FC 934 at para 18. The Federal Court's role is narrowly circumscribed; absent evidence of tampering or similar egregious behaviour, there is no authority for the Court to order a further and better search for records: *Blank* at para 36; *Tomar* at para 53.

[50] In this case, Ms. Rapley was the person in charge of NRCan's ATIP investigation. Through follow-up correspondence with the Applicant, she made significant effort to ensure that she understood the full scope of the Applicant's requests so that this scope could be addressed in the searches conducted. In her affidavit, she explains the nature of the searches conducted at NRCan and the rationale for the searches:

a) A request for records was sent to the Nòkwewashk sector which was believed to be the sector that was likely to have responsive records considering that it had subsumed MPMOW. This involved a search of a shared electronic document repository for MPMO, MPMOW, and business value records of the Panel. Ms. Rapley attests that the folders searched were the only ones expected to contain NRCan records relating to the Panel or anything related to MPMO and MPMOW for the times specified in the Applicant's requests. The entirety of the document

repository was searched using keywords that included the names and the emails of the Panel members, as well as broader terms (“Ministerial review”, “Ministerial panel”, “Panel”, “TMX Panel”). Additional, advanced manual searches of specific folders in the repository relating to MPMOW, MPMO, and the project were also conducted.

b) A retrieval notice was also sent to the Communications & Portfolio sector of NRCan. It was believed that this sector was responsible for the online public engagement for the TMX Project and might have records relating to the online submissions.

c) NRCan ATIP staff also searched forty to fifty prior requests for information and their corresponding release packages that were identified through a search of NRCan’s document management software using the keyword “TMX”. This included Ms. Rapley personally reviewing fifteen former release packages, page by page, to determine if these packages contained any responsive documents.

[51] Ms. Rapley explains that she did not ask the Nòkwewashk sector or the Communications & Portfolio sector to search for physical documents as a previous search for physical documents had already been conducted in response to an earlier ATIA request made by the Applicant for documents associated with the TMX. As the earlier search found that no physical documents still existed, Ms. Rapley was of the view that it was highly unlikely that any physical copies of documents relating to the Applicant’s requests would have been retained by NRCan.

[52] On August 9, 2023, Ms. Rapley provided the Applicant with 1836 pages of disclosure from the earlier 2016 ATIA request for "Copies of all emails sent, received or viewed by Gregg Dahl [MPMO staff member] regarding or related to the ministerial panel reviewing the Kinder Morgan Trans Mountain Expansion project from August 1, 2016 to September 16, 2016". After the additional searches and inquiries were made with the Nòkwewashk and Communications & Portfolio sectors, four additional documents were provided with NRCan's response on September 27, 2023.

[53] During the hearing, the Applicant acknowledged that the information provided from the earlier 2016 ATIA response materials was of interest and responsive to his requests.

[54] Aside from speculation by the Applicant that there should be more, there is nothing before me to suggest that further communications exist or that the searches conducted were insufficient or incomplete.

[55] The Applicant questions whether MPMO was included in NRCan's searches. He asserts that this is a separate sector from Nòkwewashk. The Applicant refers to Ms. Rapley's affidavit which states that "[e]mployees of MPMO-W and responsibility for their information holdings was transferred to the Major Projects Management Office ("MPMO") sector of NRCan", and her description of the amalgamation that formed the Nòkwewashk sector. He notes that the evolution of the Nòkwewashk sector only refers to MPMOW, without reference to MPMO.

> 20. In October 2017, the MPMO-W was renamed Indigenous Partnership Office-West. Then, in March 2022, it was combined with the Indigenous Affairs and Reconciliation Sector to form the Nòkwewashk sector, which serves as the Centre of Expertise in

> meaningful Indigenous participation in natural resources projects and net-zero transition within NRCan.

[56] While I agree that this part of the affidavit could have been written more clearly, when read in conjunction with later portions of the affidavit (set out below), it does not impart the interpretation the Applicant proposes. When read in context the affidavit establishes that the entire MPMO sector, including everything on the TMX project that was transferred from MPMOW to MPMO, was subsumed into the Nòkwewashk sector in 2022.

> 30. My understanding and belief from Nòkwewashk Sector is that the Nòkwewashk Sector OPI searched its GCDocs repository for MPMO, MPMO-W, and business value records of the Panel.
>
> 31. My understanding and belief from Nòkwewashk Sector is that the folders which Nòkwewashk OPI searched are the only ones which would be expected to contain NRCan records relating to the Panel or anything related to MPMO and MPMO-West for the times specified in the request.

[57] The notes from the searches made by the Nòkwewashk sector confirm that manual searches were conducted of folders relating to the holdings of MPMO.

[58] There is no basis to suggest that the searches were deficient or egregious in any way to justify an order for a further search

[59] Further, I agree with the Respondent that if the government institution does not have the requested records at the time an information request is made, absent evidence of tampering, it does not mean that the institution is violating the requester's right of access: *Blank v Canada (Minister of Justice),* 2004 FCA 28 at 77.

[60] In this case, it is not clear that the Requested Records ever existed. Without evidence that NRCan controls records that are responsive to the Applicant's requests that it has not disclosed or formally withheld, there is no authority for the Court to compel NRCan do a further search.

IV. **Conclusion**

[61] For all these reasons, the application is dismissed. As there was no request for costs, none shall be awarded.

JUDGMENT IN T-232-25

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no order as to costs.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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