



[2021] 3 F.C.R. D-15

ACCESS TO INFORMATION

Judicial reviews of six decisions (four by Parole Board of Canada (Parole Board), two by Correctional Service of Canada (CSC)) denying requests for further disclosure of personal information about incarcerated individuals, Craig Munroe, Paul Bernardo (Inmates) — Of these requests, five made pursuant to *Access to Information Act*, R.S.C., 1985, c. A-1 (ATIA), one by way of letter, requesting disclosure based on open court principle (OCP) — Files on Inmates including records relating to case management reports, preventative security, sentence administration — Decisions grouped into three proceedings — First group consisting of four applications pursuant to ATIA, s. 41 — Applicants therein asking Court to determine constitutional validity of several sections contained in ATIA, *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (CCRA), *Privacy Act*, R.S.C., 1985, c. P-21 — Second group consisting of judicial review pursuant to ATIA, s. 41 of decision of Parole Board denying release of Paul Bernardo's prison, parole hearing records — Third group consisting of judicial review by applicant Canadian Broadcasting Corporation (CBC) of decision of Parole Board denying CBC's request for withheld personal information about Inmates similar to second group's requests — Whether *Canadian Charter of Rights and Freedoms*, s. 2(b) right to information requested existing — Applicants not having s. 2(b) Charter right to withheld information because hearings of Parole Board not judicial or quasi-judicial in character — Supreme Court in *Mooring v. Canada (National Parole Board)*, [1996] 1 S.C.R. 75 determining that Parole Board hearing inquisitorial — No reason to depart from those precedents on facts herein — *R. v. Bird*, 2019 SCC 7, [2019] 1 S.C.R. 409 neither overturning nor displacing *Mooring* — S. 2(b) entitling access only where it is shown to be necessary precondition of meaningful expression, does not encroach on protected privileges, compatible with function of institution concerned (*Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, [2010] 1 S.C.R. 815) — *Criminal Lawyers* test not satisfied herein — Presumption of open court rebutted in this case — Intensely intimate details of requests by applicants potentially striking at individual dignity, thereby rebutting presumption of OCP — Highly sensitive nature of information requested going to dignity of Inmates — CCRA, s. 140(14) indicating that fact information, documents discussed at hearing not meaning publicly available within meaning of ATIA, *Privacy Act* — Whether Parole Board, CSC decisions unreasonable — Record in each instance herein disclosing sufficient reasons, evidence to understand decisions to reject ATIP requests, to assess whether those decisions reasonable — Applicants' argument that use of boiler-plate paragraphs for substantive part of the analysis demonstrating outcome of ATIP requests pre-determined misplaced — Decision makers' analysis demonstrating that they considered, weighed variety of factors in their assessment of applicants' requests — Apparent that Parole Board, CSC considered requirements of ATIA s. 19(2)(c), *Privacy Act*, s. 8(2)(m)(i) (allowing for disclosure of personal information where public interest in disclosure clearly outweighing invasion of privacy arising from disclosure) — Parole Board, CSC not erring in their analysis of Inmates' privacy interests under s. 8(2)(m)(i) — Parole Board, CSC's decision that public interest in disclosing withheld information not clearly outweighing invasion of Inmates' privacy reasonable — Withheld information containing personal information, therefore falling within exemption at ATIA, s. 19(1) — Charter, s. 2(b) only guaranteeing access to government documents "where it is shown to be a necessary precondition of meaningful expression, does not encroach on protected privileges, and is compatible with the function of the institution concerned" — Applicants' Charter rights not limited — Parole Board sufficiently contemplated other reasonable possibilities — While Parole Board may not have considered alternatives that CBC wished, such as releasing parts of recordings, it considered how to permit media to access information at parole hearings — Parole

Board proportionately balanced Charter values with its statutory objectives, mandates — Nothing disproportionate about putting onus on media to ensure they are in attendance at parole hearings in question — Parole Board, CSC's decisions to not disclose withheld information reasonable — Applications dismissed.

FRASER V. CANADA (PUBLIC SAFETY AND EMERGENCY PREPAREDNESS) (T-101-18, T-102-18, T-103-18, T-1358-12, T-465-20, T-1884-19, 2021 FC 821, McVeigh J., reasons for judgment dated August 4, 2021, 68 pp. + 38 pp.)