

CITATION: Chowdhury v. Toronto Police Services Board, 2018 ONSC 3587
DIVISIONAL COURT FILE NO.: 467/16
DATE: 20180612

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
R.S.J. MORAWETZ, R.S.J. GORDON and CONWAY J.

BETWEEN:)	
)	
MD AHASANULLAH CHOWDHURY)	<i>MD Ahasanullah Chowdhury</i> , in person
)	
Applicant)	
)	
- and -)	
)	
TORONTO POLICE SERVICES BOARD)	<i>Michael Sims</i> , for the Respondent
)	
Respondent)	
)	
)	
)	<i>William Challis</i> , for the Information and
)	Privacy Commissioner of Ontario
)	
)	HEARD: June 5, 2018

BY THE COURT

[1] The applicant, MD Ahasanullah Chowdhury, seeks judicial review of a decision of the Alec Fadel, Adjudicator with the Information and Privacy Commissioner of Ontario (the "**Adjudicator**") dated August 9, 2016 and the Adjudicator's decision of September 2, 2016 denying his request for reconsideration.

Background

[2] The applicant asserts that he is the victim of an illegal police investigation that involves gang stalking, 24 hour surveillance, mind control and human experimentation and that a number of community members are involved in carrying out this investigation.

[3] On March 31, 2015, the applicant made an access request to the Toronto Police Service ("TPS") requesting "any and all record[s] including my mental health [records], any and all record[s] under reviewing and/or reviewed, and any and all information pertaining to any

employment screening that you may [have] disclosed my mental health records [to] including the employers name from January, 2007 to the present."

[4] On April 10, 2015, the TPS issued a letter advising the applicant that it had conducted a complete search and that there were no responsive records. The applicant appealed the decision to the Information and Privacy Commissioner of Ontario. After he filed his appeal, a TPS analyst spoke with the applicant and conducted a further search based on two additional addresses that the applicant provided.

[5] On October 14, 2015, the TPS issued a supplementary decision letter. It advised the applicant that it had located one record in which the applicant was indicated as the contact person regarding an individual involved in a matter back in 2009. The TPS provided the applicant with a heavily redacted version of this record, on the basis that the disclosure of the withheld portions would constitute an unjustified invasion of another individual's privacy. During the mediation stage of the appeal, the applicant confirmed that he did not seek access to the withheld portions of that record.

[6] The supplementary decision also noted that the applicant had submitted an application to the TPS's Police Reference Check Program in 2011, but that such applications are purged after one year. However, it provided the applicant with a spreadsheet entry recording his record check application.

[7] The applicant's appeal was initially sent to mediation, and when it was not resolved, it was transferred to adjudication.

The Adjudicator's Decision

[8] On appeal, the Adjudicator determined that the sole issue before him was whether the TPS had conducted a reasonable search for the records responsive to the applicant's request. The Adjudicator found that the search was reasonable and dismissed the appeal.

[9] The applicant had argued that certain documents should exist that the police failed to identify, and as a result, a reasonable search must not have been conducted – for example, (i) records concerning the applicant as the victim of gang stalking, electrical and microwave harassment and invasion of privacy; (ii) false reports produced by Toronto Community Housing Corporation about the applicant's mental health that it sent to the police; and (iii) records of the City of Toronto's interference with the applicant obtaining a government job.

[10] The Adjudicator concluded that the TPS had provided sufficient evidence to establish that it had conducted a reasonable search for responsive records. He found that the applicant's belief that records exist was not supported and that the TPS had provided adequate explanations to rebut his belief. The Adjudicator also noted that the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (the "Act") does not require the TPS to prove with absolute certainty that no further records exist but instead must provide sufficient evidence to demonstrate that it made a reasonable effort to address the request.

[11] The Adjudicator dismissed the applicant's request for reconsideration of the original decision.

Standard of Review

[12] The applicant submits that the Adjudicator made numerous errors in his decision and did not afford him procedural fairness.

[13] The standard of review of the Adjudicator's decision is reasonableness. There is no standard of review analysis for a breach of procedural fairness, which is to be determined according to the factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

Issue #1: Did the Adjudicator apply the wrong test on the appeal?

[14] The applicant's submission to the Adjudicator was that the TPS had failed to produce records documenting its surveillance and mind control activities that fell within the scope of his request. He argued that the TPS failed to disclose who conducted the searches, where the searches were conducted, and the types of file searches.

[15] Given the nature of the applicant's submissions, the Adjudicator determined that the issue for adjudication was whether the TPS had conducted a reasonable search for responsive records, as required by s. 17(1) of the Act and the applicable case law. The Adjudicator made no error in the test applied on the appeal.

Issue #2: Did the Adjudicator violate the principles of procedural fairness and natural justice?

[16] The applicant submits that it was procedurally unfair for the Adjudicator not to rely sufficiently on his affidavit. He further submits that the Adjudicator erred in determining the content of procedural fairness that was required for the appeal.

[17] In our view, there was no breach of procedural fairness in this case. The Adjudicator provided the applicant with notice of the issues to be decided. He further provided the applicant ample opportunity to make submissions and to respond to the TPS's submissions.

Issue #3: Weight given to the applicant's evidence

[18] The applicant submits that the Adjudicator ignored his evidence supporting his position that a reasonable search for TPS records was not conducted – for example, that an antenna installed on his roof by Toronto Community Housing was used to subject him to mind control, abuse and human experimentation. He submits that the Adjudicator further ignored the fact that he had been denied at least four government jobs as a result of the conspiracy to abuse and torture him.

[19] We reject this submission. The Adjudicator is entitled to deference in his weighing of the evidence. The fact that the Adjudicator preferred TPS's evidence to that of the applicant does not reflect any error.

Issue #4: Was there a breach of the applicant's *Charter* rights?

[20] The applicant submits that the installation of a cellular antenna on the roof of his home for the purposes of surveillance, mind control, experimentation and harassment infringes upon his rights guaranteed by ss. 2(a) and (b), 7 and 8 of the *Charter of Rights and Freedoms*.

[21] The applicant did not raise any *Charter* issues in his submissions to the Adjudicator. This court will not consider these arguments for the first time on judicial review.

Decision

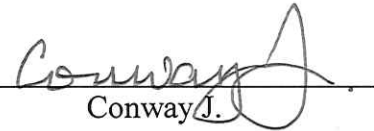
[22] The applicant has not established any error on the part of the Adjudicator or any breach of procedural fairness. The application for judicial review is dismissed. The applicant shall pay costs to the TPS in the amount of \$200, all inclusive. The Commissioner does not seek any costs.



R.S.J. Morawetz



R.S.J. Gordon



Conway J.

Released: JUN 12 2018

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MD AHASANULLAH CHOWDHURY

Applicant

– and –

TORONTO POLICE SERVICES BOARD

Respondent

REASONS FOR JUDGMENT

BY THE COURT

Released: June 12, 2018