

**Court File No. T-2436-24**

**FEDERAL COURT**

BETWEEN:

**EMMA BRIANT**

APPLICANT (RESPONDING PARTY)

AND:

**ATTORNEY GENERAL OF CANADA**

RESPONDENT (MOVING PARTY)

---

**RESPONDENT'S REPLY WRITTEN REPRESENTATIONS  
(Motion to Strike)**

---

1. The Applicant's request for costs is not warranted in these circumstances, and there is no need for court direction on this issue. The parties agree that this application is moot. Judicial economy would not be served by prolonging this proceeding any further.

2. At the outset, the Applicant's submission that she had no reasonable expectation of receiving the requested records but for the bringing of this application is speculative and disputed. The email correspondence included in the Applicant's affidavit demonstrates that on August 22, 2024 – prior to the Applicant filing her Notice of Application – the Department of National Defence confirmed that a thorough search for the records the Applicant had requested was “still being completed”, including a search of any records that may have been remaining on any released member accounts. In other words, the Department of National Defence was still demonstrably processing the

Applicant's request when she filed this application. The Applicant then received the sought personal information on October 18, 2024.

Email from Department of National Defence (August 22, 2024),  
Applicant's Motion Record ("**AMR**"), 21

3. The Applicant's evidence also demonstrates that the Department of National Defence provided her with personal information regarding a second, related request on or around August 15, 2024—absent any involvement from this Court.

Letter from Department of National Defence re Second Request Disclosure  
(August 15, 2024), AMR, 49

Second Request Disclosure, AMR, 51-69

4. The record does not support the Applicant's position that she was required to bring this application in order to receive the additional personal information she sought from the Department of National Defence. As such, the costs associated with bringing this application ought to be hers to bear.

5. This Court's recent jurisprudence demonstrates that applications and motions of this nature – where a section 41 proceeding has become moot and the Court dismisses it on this basis– do not typically attract costs awards to either party.

See *Canada (Public Safety and Emergency Preparedness) v Gregory*,  
[2021 FCA 33](#) at paras [14-15](#);

*Boland v Canada (Attorney General)*, [2024 FC 11](#) at paras [2](#), [33](#) [**Boland**];

*Sahota v Canada (Attorney General)*, [2024 FC 1493](#) at para [13](#);

*Sandiford v Canada (Attorney General)*, [2023 FC 1711](#) at para [42](#);

6. In *Cumming*, Justice Gleeson awarded the unsuccessful applicant on a moot section 41 application a \$200 costs award based on the following reasons:

[35] Mr. Cumming has been unsuccessful and normally the unsuccessful party is not entitled to costs. However, Rule 400 provides that the Court has full discretionary power over the amount, allocation and by whom costs are to be paid. The result of the proceeding is but one of the factors identified for consideration.

[36] The RCMP's handling of Mr. Cumming's complaint is relevant when considering costs. In this regard, I note that the RCMP failed to provide Mr. Cumming with any update about or explanation for the delay prior to his complaint or following the conclusion of the investigation. Mr. Cumming shall have costs in the amount of \$200 which represent the expenses he incurred in filing this Application and travelling to attend the oral hearing.

*Cumming v Canada (Royal Mounted Police)*, [2020 FC 271](#) at paras [35-36](#)

7. The Applicant's evidence demonstrates that the Department of National Defence was responsive to her email requests, that they provided her with specific updates (including in relation to difficulties they were experiencing locating records from released members), and that they provided her with personal information concerning a second, related request on August 15, 2024. While the statutory time limit attached to her first request was not met in these circumstances, it is apparent that the Department of National Defence took continuous steps to process the Applicant's request and keep her updated.

Email Correspondence re February 28, 2024 Request, AMR, 5-34

8. The Applicant relies heavily on the Federal Court of Appeal's decision in *Dagg* in support of her receiving party-and-party costs award in this matter. However, it is noted that in *Dagg*, the applicant did not receive the requested

records until approximately 20 months after their initial access request had been filed. By contrast, the Applicant here waited just under 8 months and – in the interim – received specific updates from the Department of National Defence and disclosure of personal information concerning a second, related request. The specific circumstances of this case should not attract a discretionary costs award under Rule [400](#).

*Dagg v Canada (Industry)*, [2010 FCA 316](#) at para [15](#)

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

**DATED** at the City of Vancouver, in the Province of British Columbia, this 9<sup>th</sup> day of December, 2024.



---

**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
British Columbia Regional Office  
900 – 840 Howe Street  
Vancouver, British Columbia  
V6Z 2S9

**Per: Suzy Flader and Monica Monroy**

Telephone: (236) 330-0675

Facsimile: (604) 666-4399

Email: [suzy.flader@justice.gc.ca](mailto:suzy.flader@justice.gc.ca)

[monica.monroy@justice.gc.ca](mailto:monica.monroy@justice.gc.ca)

Counsel for the Respondent