

01 09 14

X.

Applicant

c.

MUNICIPALITY OF SAINT-EUSTACHE
Respondent

THE REQUEST FOR REVIEW

On May 16 2001, X. wrote to the Municipality of Saint-Eustache requesting all documents and videocassettes concerning her minor children. On May 24 2001, the Responsable d'accès à l'information, M. Gilles Gougeon, replied, refusing her request and referring to articles 28 and 59 of the *Act respecting Access*¹ (the Law) to documents held by public bodies and the Protection of personal information and articles 11.2 and 72.5 of the *Youth Protection Act*².

X. applied to the Commission d'accès à l'information du Québec (the Commission) to review this decision on May 28, 2001. A hearing was held at the Commission's offices in Montreal on February 22, 2002.

¹ R.S.Q., c. A-2.1.

² R.S.Q. c. P-34.1.

THE HEARING

The applicant's version

X. is the mother of two young girls, born in 1992 and 1994 respectively. In January 2001 she made a complaint to the police of Saint-Eustache, alleging that the father of the children, from whom she had been divorced for several years, had sexually assaulted the children while they were visiting him. A police officer investigated the case. In the course of the investigation, the children were interviewed on videotape in February 2001.

X. wishes to obtain the videotapes in order that she may help her children. These tapes would be of great personal use to her. She feels that in viewing the tapes she could better see and understand the situation her children are in. She understands that the police file is now closed and that the files at the Youth Protection's Direction are inactive as well.

However, she testified that she does not feel safe because she thinks the father of the girls has hired a detective to have her followed. She believes that article 60 (4) of the Law is relevant to her situation and could be used as a basis to give her access to the videotapes. As for the other documents in the police files, she states that she already has a copy of some of them and as for the others which are confidential, she does not wish to have access, except for the videotapes.

The version of the Municipality

Mr. Jean-Pierre Lecot is the associate director for the police department of the Municipality of Saint-Eustache. He has personal knowledge of the file and deposited before the Commission the relevant documents in the file, O-1 and O-2, both in folio, which contain correspondence, hospital records, etc, all of which X. already has. He also

deposited O-3, the confidential documents in the police files and C-1 and C-2, the originals of the videocassettes containing the interviews of the girls.

Mr. Lecot stated that the police officer investigating the case has sent an information (signalement) to the Youth Protection authorities in both the geographical area where the alleged incidents took place and the area where the children now live. After the investigation was completed, the file was transferred to the Crown Attorney at St-Jérôme for evaluation. It was decided not to proceed with a criminal accusation against the father. Mr. Lecot further testified that although this file is closed, it could be reopened if there was other relevant information which was brought to the knowledge of the police. He was also of the opinion that the Crown Attorney could need the file at a future date. There had been no trial and therefore no acquittal up until now.

Counsel for the Municipality explained why the public body felt it was not authorized to release the tapes. He argued that the applicant's personal interest in the tapes was irrelevant, as was the role played by either parent in the children's lives. He stated that for either parent, the same approach was followed by the Municipality.

The Municipality took the position that the tapes were confidential for the following reasons : first of all, the tapes contained personal information, secondly that art. 28 of the *Act respecting Access to documents held by public bodies and the Protection of personal information* applies, thirdly, X. was not involved in the incident and was not included in the purview of art 59.9, and finally articles 11.2 and 72.5 of the *Youth Protection Act* would clearly not allow access to X. in the circumstances of the present case.

THE DECISION

The Youth Protection Act states :

11.2 Any information collected under this Act concerning a child or his parents that would allow their identification is confidential and may not be disclosed by anyone except to the extent provided for in Chapter IV.1.

72.5 Notwithstanding subparagraph 1 of the first paragraph of section 53 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no information collected under this Act in respect of a child or his parents that would allow the identification of the child or parents may be disclosed except with the authorization of the child himself if he is 14 years of age or over, where the information relates to him, or with the authorization of one of his parents where the information relates to a child under 14 years of age. However, where the information relates solely to the parents, it may not be disclosed except with the authorization of the parent to whom it relates.

Order of the tribunal.

Such information may, on application, be disclosed by order of the tribunal where the disclosure is intended to ensure the protection of the child to whom the information relates or the protection of another child. Only the director or the Commission, according to their respective powers, may apply to the tribunal for an order for the disclosure of such information.

Power of a court.

This section shall not be construed as limiting the power of a court to order of its own motion or on application the disclosure of such information in the exercise of its powers and functions.

The *Youth Protection Act* does not apply to the information sought in the present case. The tapes in question were made by the police in the course of an investigation of a criminal complaint. The fact that the information (signalement) regarding the situation of a child whose security or development is or may be considered to be in danger was made by the officer investigating the case at the time the tapes were made by the police does not change the fact that, at the time of the request for access, the tapes were in the possession by the police department of the Municipality. The Act respecting Access is the relevant statute to consider.

The videotapes are thus subject to the same rules as other evidence held in police files. Generally, the Commission has held that information concerning a third party gathered in the course of a police investigation but which has not yet been used in prosecution is not

accessible. Criminal accusations can be brought at any time³ and evidence which has been unused until that time could take on a new significance. In the case of alleged sexual abuse by a family member, evidence could be relevant at some unforeseeable time in the future and prudence suggests that the videotaped interviews with young children be kept in police files. Articles 28, s. 1 and 2 are applicable :

28. A public body must refuse to release or to confirm the existence of information received by a person responsible under the law for the prevention, detection or repression of crime or statutory offences, if its disclosure would likely

- (1) impede the progress of proceedings before a person or body carrying on judicial or quasi judicial functions;
- (2) hamper an investigation;

[...]

The exception contained in article 59.9 which allows access to police reports does not apply here as X., the mother, is not involved in the alleged incidents under investigation which concern the girls and the father :

59. A public body shall not release nominative information without the consent of the person concerned.
Conditions.

Notwithstanding the foregoing, a public body may release nominative information without the consent of the person concerned in the following cases and strictly on the following conditions:

9° to a person involved in an incident that has been the subject of a report by a police force; in the case of information on the identity of any other person involved in the incident, except a witness, an informer or a person whose health or safety could be endangered by the release of such information.

Article 60 of the Law, quoted by X., does not apply here as it only specifies the obligations of the public body in the case it is contemplating the release of the information sought :

60. Before agreeing to the release of nominative information pursuant to paragraphs 1 to 3 of section 59, a public body must ascertain that the information is required for the purposes of a prosecution or proceedings contemplated in the said paragraphs.
Prior ascertainment.

³ *Le Procureur général du Québec c. Gauthier et Assemblée nationale* [1997] C.A.I. 420.

In the case contemplated in paragraph 4 of the said section, the body must, similarly, ascertain that an urgent and dangerous situation exists.

Refusal.

Where a public body has not ascertained that the information is required for such purposes or, where such is the case, that an urgent and dangerous situation exists, the public body must refuse to release the information.

Record of request.

Where a public body agrees to release nominative information following a request made pursuant to paragraphs 1 to 4 of section 59, the person in charge of the protection of the personal information within the public body must record the request.

In the videotapes, the girls answer questions and talk about incidents involving their father. X., the mother, is only mentioned briefly, as is another third party. While X. is the mother and legal guardian of the girls, her right of access to the tape is determined by the right of third parties, in this case especially that of the father, to have personal information concerning them :

88. Except in the case provided for in paragraph 4 of section 59, a public body must refuse to release nominative information to the person concerned if its release would likely disclose nominative information concerning another natural person or the existence of such information, unless the latter person gives written consent.

The conclusion of the Commission that the documents must therefore remain confidential.

FOR THE ABOVE REASONS, the Commission :

REJECTS the application for review and **CLOSES** the file.

Montreal, March 14, 2002

JENNIFER STODDART
Commissioner

M^e Marc Tourangeau
Attorney of Respondent