

File: 02 03 46

Date: 20030328

Commissioner: M^e Jennifer Stoddart

MANZAR ATA GHAZNAVI

Applicant

c.

**CENTRE D'EXPERTISE EN
RÉADAPTATION**

Respondent

DECISION

THE APPLICATION FOR AN EXAMINATION OF THE DISAGREEMENT

[1] Mr. Ata Manzar Ghaznavi requested a complete copy of his file from the Centre d'expertise en réadaptation (« the Centre ») and Mr. Benjamin Dahan on January 10, 2002 and again on January 17, 2002. His registered letters were returned to him. He then filed an application for review with the Commission d'accès à l'information (« the Commission ») on March 7, 2002. A hearing was held in Montreal on June 27, 2002.

THE POSITION OF THE APPLICANT

[2] Mr. Ghaznavi wishes to have returned the original of a prescription given to him by Dr. Thierry Dahan, the brother of Mr. Benjamin Dahan. The latter, who has medical training, acts as a technical assistant at the Centre. Mr. Ghaznavi testifies that he had obtained some medical supplies from the Centre but had

returned them because he did not find them satisfactory. He states that he is certain that the prescription is in his file at the Centre. He acknowledges that he has a copy of some of his documents. These copies were obtained from the CSST. He wishes access to his complete file and deplors that Mr. Benjamin Dahan refuses all communication with him.

THE POSITION OF THE RESPONDENT

[3] Mr. Benjamin Dahan states that the Centre does not have a file on Mr. Ghaznavi at the present time.

THE RELEVANT FACTS

[4] The following facts emerge from the testimony of the two parties.

[5] Mr. Ghaznavi had a file with the Centre in which there were three documents: a prescription from Dr. Thierry Dahan, a requisition made out to the C.S.S.T. authorizing the rental of a TENS unit and the purchase of a therapeutic corset and a letter dated July 25, 2001 which he wrote himself. This letter requested information about the Centre.

[6] However, the Centre does not have a file on Mr. Ghaznavi at the time of the hearing. Mr. Dahan's testimony is vague and he asserts that he does not know the location of the file. He states that the file disappeared. However, he finally acknowledges having transferred most of the file to Dr. Thierry Dahan after May 28, 2001 because of a complaint lodged at that time with the Collège des médecins. However, he states that the Centre was never in possession of the original of any prescription.

[7] Mr. Dahan points out that Mr. Ghaznavi already had copies of the documents that were in his file. This was not denied, but Mr. Ghaznavi states that he wishes to recover the originals.

[8] The *Act respecting the protection of personal information in the private sector*¹ (« the Act ») states that those carrying on an enterprise must take certain measures to protect the personal information of individuals who deal with them :

10. Every person carrying on an enterprise who collects, holds, uses or communicates personal information about other persons must establish and apply such safety measures as are appropriate to ensure the confidentiality of the information.

¹ R.S.Q., c. P-39.1.

[9] The enterprise must ensure that the file is accessible :

27. Every person carrying on an enterprise who holds a file on another person must, at the request of the person concerned, confirm the existence of the file and communicate to the person any personal information concerning him.

29. Every person carrying on an enterprise who holds files on other persons must take the necessary steps to ensure the exercise by a person concerned of the rights provided under articles 37 to 40 of the Civil Code of Québec and the rights conferred by this Act. In particular, he must inform the public of the place where, and manner in which, access to the files may be granted.

36. The person holding information that is the subject of a request for access or rectification must, if he does not grant the request, retain the information for such time as is necessary to allow the person concerned to exhaust the recourses provided by law.

51. Every person must furnish to the Commission any information it requires for the examination of a disagreement.

55. The Commission has all the powers necessary for the exercise of its jurisdiction; it may make any order it considers appropriate to protect the rights of the parties and rule on any issue of fact or law.

The Commission may, in particular, order a person carrying on an enterprise to communicate or rectify personal information or refrain from doing so.

[10] Mr. Benjamin Dahan's testimony illustrated the casual manner in which personal information is handled at the Centre.

[11] The enterprise has contravened the Act by not organizing the personal information collected in such a way that it is accessible to the individual involved. However, the Act does not recognize the right of the individual to recover the originals of documents.

[12] In the light of the above facts, the Commission ORDERED Benjamin Dahan and the Centre, on October 15, 2002, to recover the information previously in the file of Mr. Ata Manzar Ghaznavi and to subsequently send a copy to the applicant and an identical copy to the Commission, within thirty days of the decision. It reserved the applicant's rights in the present case.

[13] On November 20, 2002, the Commission received by registered letter some 21 pages of documents, accompanied by a note from Mr. Benjamin Dahan stating that this was everything in his possession related to Mr. Ghaznavi.

[14] These documents are :

1. A letter from Mr. Ghaznavi to the Centre dated July 25, 2001, pages 1 and 2.
2. A letter from the Commission to Mr. Dahan and the Centre dated March 22, 2002 informing them of Mr. Ghaznavi's request for an examination of the disagreement, page 3.
3. A letter from the CSST to Mr. Dahan dated June 25, 2002, page 4.
4. A certificate of exemption of the CSST, page 5.
5. Note from Sylvie St-Germain of the CSST to Mr. Dahan dated January 30, 2001, page 6.
6. Letter from the Commission transmitting the interim decision dated October 17 2002, pages 7 and 8.
7. Prescription of Dr. Thierry Dahan dated November 11, 2000, page 9,
8. A second prescription on the same date, page 10.
9. A third prescription on the same date, page 11.
10. A letter to Mr. Ghaznavi dated March 4, 2002, from the Ordre professionnel des physiothérapeutes du Québec, Bureau du syndic, pages 12 and 13.
11. A letter dated March 5, 2002 from the Société québécoise des thérapeutes en réadaptation physique, page 14.
12. A letter from Mr. Ghaznavi to the Centre dated July 25, 2001 and which appears to be identical to the first document listed above, page 15 and 16.
13. A cover page for a fax sent to Sylvie St-Germain by Mr. Dahan on November 22, 2000, page 17.
14. A cover page for another fax sent to Sylvie St-Germain by Mr. Dahan on the same day, page 18.
15. Two blanks pages, pages 19 and 20.
16. A bill on CSST stationery for medical equipment received by the CSST on January 15, 2001 and by Mrs. St-Germain on January 30, 2002, pages 21.

A) The comments of the applicant

[15] On November 26 2002, the Commission received the comments of the applicant who alleged that although he had received some 26 pages from Mr. Dahan, he still sought other information and documents « ...which were previously part of his file ». He complained that he had been sent copies of documents already in his possession and another copy of the Commission's interim decision. He seeks « true photocopies » of the originals of the documents, which he states were in his file. He wishes to « ...compare the information and the signatures ».

[16] He also points out that on one of the documents, the letter he addressed to Mr. Dahan on July 25, 2001 a fax address reading « August 16 2001 Jewish Rehab Hop Juif » with fax numbers. He queries the identity of the person with whom Mr. Dahan is sharing his personal and medical information and alleges that the Centre and Mr. Dahan have failed to meet their legal obligations to safeguard this information.

THE DECISION

[17] The Act does not specify that access to one's files necessarily includes furnishing « true photocopies ». Should the applicant require these documents in the course of other legal proceedings against the respondent, the court which has jurisdiction may require these documents to be submitted in proof in the form that it will stipulate at that time, according to its powers and discretion.

[18] The applicant has not specified why or how he believes there is other information on file concerning him. The Commission, having heard the parties and examined the documents, comes to the conclusion that the applicant has received copies of all the information in his file.

[19] The differences in the number of pages of documents received by the applicant and the Commission can be explained by the inclusion of the interim decision and parts of the relevant legislation in the copy sent to the applicant.

[20] However, the inclusion in the applicant's file of a fax address of the Jewish Rehabilitation Hospital, reveals that a letter which contains personal information on him and was sent by him to the enterprise at another address must have been faxed out from this place to persons unknown.

[21] This fact, coupled with the above-noted careless handling of the personal information of a client of the Centre leads the Commission to conclude that the Centre and Mr. Dahan have not respected the Act and used appropriate procedure for processing the information to ensure that its confidentiality is respected. In fact, the Commission notes great disregard for the principles of confidentiality and access to one's own file contained in the Act. The elaboration of a proper policy in this regard would guide the Centre's employees and better protect the public.

[22] **CONSEQUENTLY, THE COMMISSION:**

[23] **ACCEPTS** the request for the examination of the disagreement;

[24] **TAKES NOTE** of the fact that the Centre has complied with the Commission's order to make the applicant's file accessible and that the applicant has received a copy of his file.

JENNIFER STODDART
Commissioner