



Commission d'accès
à l'information
du Québec

Date : 20021220

File : 02 06 15

Commissioner : M^e Jennifer Stoddart

RICHARD ANTHONY BREAKENRIDGE

Applicant

v.

MINISTÈRE DU REVENU

Respondent

DECISION

THE REQUEST FOR REVIEW

[1] Mr. Richard Anthony Breakenridge, the applicant, requested on March 6, 2002:

- a) Personal information which concerns Me (refer to my access to information request)
- b) list of persons who have consulted information which concerns Me (refer to my access to information request)
- c) list of categories of persons who were exempted from registering when they consulted information which concerns Me (refer to my access to information request).

[2] On April 5, 2002, the Ministère replied and sent him the documents requested which were still in existence, concealing however third party information.

[3] On August 30, 2002, Mr. Breakenridge asked the Commission d'accès à l'information (the "Commission") to review this answer.

THE PROOF AND ARGUMENTS SUBMITTED

[4] In its April 5, 2002, letter to the applicant the Ministère explained its decision:

[...]

Please note, however, that confidential information concerning third parties has been blocked out in a certain number of documents. You are refused access to this information under section 69 of the *Act respecting the Ministère du Revenu* (R.S.Q., c. M-31, hereinafter referred to as the "Act") and under sections 53, 54, 59 and 88 of the *Act respecting Access*.

According to section 69 of the Act, "All information obtained in the application of a fiscal law is confidential. No public servant shall use this information for any purpose not provided for by law, communicate such information or allow it to be communicated to a person not legally entitled thereto or allow such a person to examine a document containing such information or have access to it."

The second paragraph of the same section continues: "However, such confidential information may, on the written application of the person who provided the information or of his authorized representative, be communicated to a person designated in the application. In addition, a public servant may communicate confidential information to the taxpayer to whom the information relates. A public servant may not, however, reveal to a taxpayer the existence of information relating to the taxpayer provided by a third person or communicate such information to the taxpayer if this would allow the third person to be identified, unless the third person has given written consent to the information and its origin being disclosed to the taxpayer".

Under sections 53, 54, 59 and 88 of the *Act respecting Access*, personal information is confidential and cannot be

disclosed without the authorization of the person concerned by the information. Section 88 of the *Act respecting Access* specifies that a public body must refuse to release personal information to the person concerned if its release would likely disclose nominative information concerning another natural person, unless the latter person gives written consent.

2. Pertaining to the second point of your request, the list of person who have consulted information which concerns yourself: (sic)

You will find enclosed hereafter the list of the ministère du Revenu's employees who have consulted information about you.

We found no other documents or information pertaining to that second point.

3. Pertaining to the third point of your request, the list of categories of persons who were exempted from registering when they consulted information which concerns yourself:

We found no document or information pertaining to that third point.

[5] In answer to the Commission's request for the reasons motivating this position, the Ministère replied at length on August 9, 2002. The Ministère's reasons can be summarized as follows: Article 69 of the *Act respecting the Ministère du Revenu*¹ sets forth the fundamental principle of the confidentiality of information obtained in the application of a fiscal law. A taxpayer may obtain confidential information as it relates to himself but not information provided by a third person.

[6] The Ministère sent an affidavit of M^e Daniel Bourassa, dated August, 15, 2002, which stated :

1. I am the Assistant Director of the Direction centrale de l'accès à l'information et de la protection des renseignements confidentiels and I have first-hand knowledge of the processing of the request for access to information submitted by Applicant on March 6,

¹ R.S.Q., c. M-31.

2002, regarding which the public body rendered a decision on April 5, 2002, which decision is the subject of an application for review in the present case;

2. The highlighted portions of text in **Exhibit O-3 – Confidential** (attached to the letter dated August 9, 2002, sent to you by the attorney for the public body, Alain-François Meunier, a copy of which I also received) contain information respecting third parties that they did not consent to release to Applicant;
3. It was for this reason that these portions of text were deleted when the public body made its decision dated April 5, 2002;
4. All the facts alleged in this affidavit are true.

[7] On November 15, 2002, at the Commission's request, the applicant commented on the Ministère's position, stating that he felt he had the right to all the information compiled which was in his files without exception. The following except summarizes his views:

[...] The information was compiled by the individual as part of his or her professional or official governmental capacity: Section 69 of the MR Act and section 53, 54 et 59 is improperly applied. Section 56, 58 and 57 of the Act further supported my position that information compiled by the individual as part of his or her professional or official governmental capacity is not considered as the individual's personal. (sic)

DECISION

[8] Section 69 of the Act concerning the Ministère du Revenu has been properly applied. The Commission has examined exhibit O-3 submitted to it confidentially and accepts the sworn testimony of the Ministère's witness that this is, in fact, information supplied by a third party. As such, it is inaccessible to the applicant.

[9] The applicant does not accept the principle that all information is his personal file is not necessarily available to him. However, the Commission must apply the existing legislation which provides for exceptions as stated above.

[10] **FOR THESE REASONS, THE COMMISSION:**

[11] **REJECTS** the request for review and **CLOSES** the file.

JENNIFER STODDART
Commissioner

M^e Alain-François Meunier
Attorney for the Respondent