

File: 02 10 96

Date: 20030313

Commissioner: M^e Jennifer Stoddart

LLOYD GLASSPOLE ENNIS

Applicant

v.

**CITY OF MONTREAL (POLICE
DEPARTMENT)**

Respondent

DECISION

THE REQUEST FOR ACCESS

[1] On June 6, 2002, RAB made a request for the following information from what was then the Montreal Urban Community Police Department concerning the applicant. He explained that he wished:

[...] all personal information which concerns the SUBJECT,
- a list of all persons who have consulted information which concerns the SUBJECT,
- a list of categories of persons who were exempted from registering when they consulted information which concerns the SUBJECT. [...]

[2] On July 3, 2002, the lawyer in charge of access for the public body replied that it could not comply with the request.

[3] On July 11, 2002, RAB asked the Commission d'accès à l'information (« the Commission ») to review this decision.

THE PROOF AND ARGUMENTS SUBMITTED

[4] On October 2, 2002, the Commission wrote to the public body, requesting the reasons for refusing to grant access to the documents requested. On October 8th, the lawyer for the City of Montreal replied. The relevant parts of his response are as follows:

[...] Les motifs au soutien de notre réponse tiennent, selon nous, à l'invalidité des consentements transmis et ce, pour les raisons suivantes : un consentement, pour être valide, doit être libre, éclairé, spécifique, limité dans le temps et écrit.

Les consentements transmis par Monsieur B. ne rencontrent pas ces critères. D'abord ils ne sont certainement pas spécifiques puisqu'ils visent tous les renseignements concernant ces personnes et n'indiquent aucunement les fins pour lesquelles ils auraient été consentis.

Ensuite les consentements ne sont certainement pas limités dans le temps puisqu'ils auraient été consentis pour l'équivalent d'un siècle (cent ans).

Mais qui plus est, le responsable de l'accès de l'organisme doit s'assurer que les consentements de ces « tiers » sont bien les leurs puisque les renseignements demandés par Monsieur B. ne le concernent pas.

Toutefois, ces consentements auraient été consentis par des gens demeurant en [un autre pays] pour lesquels nous n'avons aucune façon de nous assurer de l'authenticité du consentement, ni même de leur existence véritable.

Conformément à l'article 53 de la Loi sur l'accès qui oblige l'organisme à assurer la protection de renseignements nominatifs qu'il possède nous ne pouvions en conséquence, sur la base de consentements déficients, transmettre au demandeur des renseignements qui ne le concernaient pas.

[5] On November 21, 2002, the Commission wrote to RAB, stating the reasons for the public body's refusal to grant his access request and asking for comments by January 10, 2003.

[6] Having received no further comments from RAB, the Commission has dealt with the request for revision on the basis of the evidence on file.

DECISION

[7] The *Act respecting Access to documents held by public bodies and the Protection of personal information*¹ states:

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:

[...]

94. No request for release or correction may be considered unless it is made in writing by a natural person who proves that he is the person concerned or the representative, heir or successor of that person, or the administrator of the succession, a beneficiary of life insurance or the person having parental authority.

The request is addressed to the person in charge of protection of personal information within the public body.

[8] A photocopy of the consent form is included in the file. The Commission notes that it authorizes any one having information on the applicant to disclose it to RAB. It specifies that the authorization lasts for a hundred years, even after the subject's death. It also authorizes disclosure of the information to any of the applicants « off-springs »(sic) regardless of any laws which could restrict access to the applicant's information. A date, which may be the birth date of the applicant is provided, as well as several fingerprints. The full address in another country is provided and the authorization is signed.

[9] The objections raised by the public body which must apply sections 59 and 94 of the law are significant ones and have not received a response from RAB who wishes to obtain personal information on the applicant and who states that he does so on the applicant's behalf.

¹ R.S.Q., c. A-2.1.

[10] The Commission notes the public body's objection to giving access to the personal file of a third party. Personal information is confidential under section 53 of the Act, unless the person concerned has given his or her consent to its release. The person responsible for access at the public body has not been able to satisfy himself that RAB is the legally authorized representative of the applicant. That person must do so in order to allow the eventual release of confidential information.²

[11] **CONSEQUENTLY, the Commission:**

[12] **REJECTS** the request for review.

JENNIFER STODDART
Commissioner

M^e Paul Quézel
Attorney of the respondent

² *Corporation Credit-Gestion c. CSST*, [2001] C.A.I. 399, 405.