

File: 02 13 05

Date: 20030711

Commissioner: M^e Jennifer Stoddart

X

Applicant

v.

**VILLE DE MONTRÉAL
(POINTE-CLAIRE BOROUGH)**

Respondent

DECISION

THE APPLICATION FOR REVIEW

[1] On July 12, 2002, the applicant requested:

I hereby request a full copy of my file and all documents concerning me whether it be Public Security or MUC Police (including 911 calls) from 1997 until the present date as [...]. All documents that originate from [specified address] and [specified persons] in regards to reports & complaints against [the applicant, the applicant's spouse] of [their address].

[2] On August 19, 2002, the applicant, who stated that he had not received information from the person responsible for access, requested the Commission d'accès à l'information (« the Commission ») to review this decision.

[3] A hearing took place on December 19, 2002, at the Commission's office in Montreal.

THE ISSUES TO BE DETERMINED

[4] Can the applicant have access and if so, in what measure, to documents held by the Ville de Montréal, Pointe-Claire Borough (hereinafter referred to as the Borough) and referring to complaints on 911 phone calls emanating from a specified address, and concerning the applicant's own address?

A) THE PROOF OF THE PARTIES

i) the applicant

[5] The applicant testified having made several unsuccessful requests in 2001 to obtain the same information. The applicant further testified having made the request in 2002 because it was needed for his defense in an upcoming trial.

[6] The applicant referred to a document had just received from the person responsible for access in the borough, M^e Jean-Denis Jacob, the previous day. Five documents were missing from those already released by the borough. The applicant still wished to obtain access to them and identified them as follows:

1. A partial report dated June 16 2001, from a Public Security officer responding to a complaint. On Dec 16, 2001, an additional report was produced, probably an addendum to this document, he believed.
2. A second report he believed existed because he had identified it when it was produced in court, by a second Public Security officer, in a previous proceeding in which he was involved.
3. A report of a call to Public Security made on January 15, 2002 placed from another address to his address concerning snow shovelling.
4. A report of a call made on January 31, 2002 in the same circumstances.
5. A report of a call made on March 27, 2002 in the same circumstances.

[7] The applicant reiterated wishing to obtain any other personal information and especially records or cassettes of calls placed to Public Security concerning the applicant's address in the last few years.

ii) the respondent

[8] M^e Jacob testified as to the position taken by the respondent and deposited some seven documents:

O-1 an incident report by Public Security of the borough dated June 16, 2002 and a statement of offence dated June 16, 2000 (sic).

O-2 an incident report by Public Security of the borough dated August 28, 2000 with another two pages document attached.

O-3 an incident report by Public Security of the borough dated May 5, 2001.

O-4 a covering letter written by M^e Jacob to the applicant on Dec 5, 2002.

O-5 a letter written by M^e Jacob to M^e Brigitte Belair, a Crown Attorney.

O-6 an internal memo of the Public Security force.

O-7 an incident report etc dated March 27, 2002, accompanied by two photographs.

[9] At the request of the Commission, Documents O-1, O-2, O-3, O-4 and O-7 were deposited confidentially, pending the Commission's final decision on their accessibility.

[10] M^e Jacob testified as to the administrative difficulties experienced by the borough in 2001 which he felt explained why some access requests had not received an answer.

[11] M^e Jacob stated that, in an attempt to answer a previous request of the applicant on May 1, 2001, he had consulted the Public Security services. He was informed that the Documents O-1, O-2 and O-3 were the only information which they possessed. He made several subsequent verbal requests and was always informed that these were the only existing documents.

[12] On December 18, 2002 he had once again checked to see if there were any other documents to which access had been requested. On the morning of the hearing, December 19, 2002, he had been given another document, dated March 27, 2002. He testified that the applicant already had obtained the report number of this document.

[13] M^e Jacob testified that he had made a verbal follow-up after having written to the Public Security department in July 2002. He had replied that the Public Security department had given the applicant everything they could. During the summer of 2002, he had discussed the release of information with the Crown

Attorney to whom Documents O-1, O-2 and O-3 had been given and had understood that the Crown would give information to the applicant's attorney in the context of ongoing legal proceedings.

[14] M^e Jacob testified that the day before the hearing at the Commission, December 18, 2002, he gave the applicant all the information he had, including Documents O-1, O-2 and O-3. However, he specified that he had never given the applicant a cassette because he had never had one.

[15] M^e Jacob believed that all existing information had been given to the applicant in the course of a trial which had taken place in the autumn of 2002 and was surprised to learn of the existence of the document of March 27, 2002. The events the documents refer to are public knowledge, he stated, and he is willing to make them accessible to the extent possible.

[16] He further stated that he thought that it was possible that other documents existed and offered to make a search through the archives of the borough and to send any other information to the Commission

Additional information identified

[17] On January 20, 2003 the Commission received a lengthy letter from M^e Jacob, accompanied by some six further attachments which included some 29 additional documents. These documents were not sent to the applicant.

[18] For the purposes of deciding their accessibility, these documents will be identified as follows:

Attachment #1

These are documents submitted by the assistant registrar of the municipal court of Montreal at Pointe-Claire and identified by her as "...produites par la poursuite émanant de la sécurité publique "

P-1 Rapport d'infraction

P-6 Two photographs

Attachment #2

These are also identified by the public body as copies of documents "produites par la poursuite"

P-1 constat et rapport d'infraction

P-2 photos et croquis

P-3 photos (2)

P-4 «spikes» objet non inclus

P-5 photos (2)

P-6 photos

P-7 lettre du demandeur

Attachment #3

A letter from M^e Jacob dated December 27, 2002, to the chief of the Fire protection services, region 12, of the City of Montreal

Attachment # 4

3 pages of forms authorizing the destruction of documents
1 page – calendar for the preservation of documents

Attachment #5-1

2 pages. Registre des communications. Public Security, Pointe-Claire

Attachment #5-2

Public Security report dated January 31, 2001

Attachment #5-3

Photograph

Attachment #5-4

2 pages, each entitled, registres des communications

Attachment #5-5

1 page rapport de patrouille

Attachment #5-6

1 page, registre des communications

Attachment #5-7

1 page entitled rapport d'événement général

Attachment #5-8

Photograph

Attachment # 5-9

1page registre des communications

Attachment #5-10

2 pages rapport d'événement général

Attachment #5-11

Photograph

Attachment #5-12

1 page registre des communications

Attachment #5-13
2 pages rapport d'événement général

Attachment #5-14
1 page registre des communications

Attachment #5-15
2 pages rapport d'événement général

Attachment #5-16
1 page registre des communications

Attachment #5-17
3 pages rapport d'événement général
11 photographs

Attachment #5-18
2 pages rapport d'événement général

Attachment #5-19
2 photographs

Attachment #5-20
1 page registre des communications

Attachment #5-21
2 pages rapport d'événement général

Attachment #5-22
6 photographs

Attachment #6
Letter from M^e Jacob to the chief of the division, Public Security,
dated January 30, 2002.

[19] M^e Jacob commented, in his covering letter, on the administrative origins of each group of documents submitted and the position of the Borough as to its release. He took the position in this letter that documents deposited in evidence in a public trial were also public. However, documents containing personal information concerning third parties or information, which could reveal investigation or communication techniques of security forces, were not accessible.

Further clarification

[20] On March 20, 2003, the hearing continued via a conference call in order to further explain the nature of the documents submitted to the Commission in January 2003 and to allow the applicant an opportunity to make comments.

[21] Following this, at the request of the Commission, M^e Jacob sent it an additional letter giving further information, with a copy to the applicant.

[22] In this letter, received by the Commission on April 25, 2003, M^e Jacob provided information which can be summarized as follows:

1. None of the information contained in Documents 0-5 (a letter written by M^e Jacob to M^e Brigitte Belair, a Crown Attorney) to 0-7 (an incident report etc dated March 27, 2002) inclusively or any of the information from the Public Security division of Borough of Pointe-Claire was produced in evidence in the criminal trial concerning the applicant. A letter from M^e Isabelle Gélinas, Substitut du Procureur-Général, dated April 8, 2003 and stating this was attached to M^e Jacob's response.

2. An additional document referring to event TSP 00 016 16-016, originating from the Public Security Division, was located and submitted to the Commission.

M^e Jacob took the position that the Borough opposed disclosure of this document because it contained personal information (section 53) and because it would likely cause prejudice to the person who was the source of the information (section 28(5)).

3. Records of calls to the Fire Department for the years 1997, 1998 and 1999 were no longer kept by the public archives, because such records were only to be preserved for two years. A search of Public Security "Rapports d'événements" for the year 1999 yielded no further information in relation to the applicant's address or the other address specified.

4. Finally, M^e Jacob stated the Borough's position on the disclosure of Attachments 5-1 to 5-11 and 5-14 to 5-19.

[23] He divided these documents into three classes:

- 1) Excerpts of the "registre des communications" deposited as Attachments 5-1, 5-4, 5-6, 5-9, 5-14 and 5-16

[24] He stated that these documents should not be disclosed because they would a) reveal a confidential source of information in the terms of section 28(3) of the Act; b) reveal the components of a law enforcement communication system in the terms of section 28(6) of the Act and c) subsidiarily, reveal confidential personal information under the terms of section 53 of the Act.

2) Rapport d'événements généraux

[25] M^e Jacob generally felt that these documents should not be revealed for the same reasons as above. The “defendant” in these documents is also the applicant here. However, generally accessible material is part of a document of which the rest of the information forms the substance of the document in the meaning of section 14. Disclosure of the “details de l'événement” would also cause prejudice to the person who is the source of the information under section 28(5) of the Act.

3) Photographs

[26] Photographs are accessories to the “details de l'événement” section of the “Rapport d'événement” and should not be released for the same reasons, stated above, according to M^e Jacob.

[27] M^e Jacob further stated that Attachment 5-5 “Rapport de patrouille” should not be divulged, according to M^e Jacob because it would reveal a program or a plan of action to prevent or detect crime under the terms of section 28(3) of the law.

[28] The Borough does not object to the disclosure of Attachments 5-12, 5-13, 5-20, 5-21, 5-22.

[29] On April 25, 2003, the search for documents and the proof necessary for the Commission to come to a decision were completed in the present file.

THE DECISION

[30] The relevant principles to guide the Commission in deciding if there are limits to the request of the applicant for all information on the applicant's file and all documents or records of calls originating from another address concerning the applicant's address are the following:

[31] First of all, is the information of a public nature within the meaning of section 55 of the *Act respecting Access to documents held by public bodies and the Protection of personal information*¹:

55. Personal information which, by law, is public is not nominative information.

[32] Secondly, are there any particular reasons justifying the refusal to disclose information on file, such as considerations affecting the administration of justice:

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;
- (3) reveal a method of investigation, a confidential source of information, or a program or plan of action designed to prevent, detect or repress crime or statutory offences;
- (4) endanger the safety of a person;
- (5) cause prejudice to the person who is the source or the subject of the information;
- (6) reveal the components of a communications system intended for the use of a person responsible for law enforcement;
- (7) reveal information transmitted in confidence by a police force having jurisdiction outside Québec;
- (8) facilitate the escape of a prisoner; or
- (9) prejudice the fair hearing of a person's case.

[33] Thirdly, if not, does it contain personal information within the meaning of section 53:

53. Nominative information is confidential, except in the following cases:

- (1) where its disclosure is authorized by the person concerned by the information; in the case of a minor, the authorization may also be given by the person having parental authority;
- (2) where it relates to information obtained in the performance of an adjudicative function by a public body performing quasi-judicial functions; the information remains confidential, however, if the body obtained it when holding a sitting in camera or if the information is contemplated by an order not to disclose, publish or distribute.

¹ R.S.Q., c. A-2.1.

[34] Fourthly, is there any information which could be considered nominative information because it is associated with a physical person and allows the identification of that person:

54. In any document, information concerning a natural person which allows the person to be identified is nominative information.

[35] Fifthly, does it contain personal information concerning a third party within the meaning of section 88:

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.

[36] Finally, is there accessible information which can be severed from the confidential part or does it form an indivisible whole?:

14. No public body may deny access to a document for the sole reason that it contains certain information that, according to this Act, it must or may refuse to release.

Restricted information.

Where a request pertains to a document containing such information, the public body may deny access thereto where the information forms the substance of the document. In other cases, the public body must give access to the requested document after deleting only the information to which access is not authorized.²

[37] In applying these principles, the documents can be analyzed and divided into the following categories:

- 1) fully accessible because they are public information or contain no nominative information;
- 2) inaccessible as information affecting the administration of justice or for other reasons provided for in the Act.

² Ibid, note 1.

3) partially accessible with third party nominative information blocked off;

4) inaccessible because they would reveal the identity of a third party without the latter's consent;

5) inaccessible as nominative information;

[38] Clarification of the type and nature of the documents held by the Borough took place, at the request of the Commission, over a period of four months after the initial hearing dates.

[39] One of the most remarkable results of this exercise was to determine, contrary to what the Borough had asserted in December 2002 and had acted upon in giving copies to the applicant, that none of the documents held by Public Security of the Borough of Pointe-Claire had been introduced in evidence at criminal proceedings.

[40] None of the documents are therefore accessible because they have been deposited as evidence in criminal proceedings. The documents must therefore be analysed individually in the light of the principles of the Act and the relevant jurisprudence.

DOCUMENT 0-1 An incident report by Public Security and a statement of offence

[41] This document includes an incident report of the Public Security services of the Borough, which is inaccessible because it could cause prejudice to the person who is the source of the information according to section 28(5) of the Act.

[42] The Commission notes the various legal proceedings, past or yet to come, mentioned by the applicant or the public body. It cannot exclude the possibility that the divulging of such reports would prejudice the person or persons named therein other than the applicant. The contents of the report cannot be severed because the protected information forms the substance (section 14).

[43] However, the statement of offence, made out to the applicant, is public by nature and is accessible.

[44] In coming to this conclusion, the Commission has taken into account two different, and in the present circumstances, contradictory principles in access to information legislation.

[45] An individual generally has a right to information concerning himself. This information may be crucial for that individual, especially in circumstances where he may be prosecuted by the State for an alleged criminal offence or other violations of the law or by a third party in civil proceedings. In the present case, both the applicant and the person responsible for access for the Borough have testified as to the highly adversarial context in which this request for access has taken place. The applicant has repeatedly told the Commission that his wish to have full access to any information concerning him is to better defend himself in a future action which will be taken against him by a public body.

[46] Having knowledge of information given to a municipality concerning oneself by a third party may not only be crucial for the right to a fair hearing or a fair trial, but may be even more important at initial stages of various adjudication processes, whether they be in the work place or the neighborhood setting.

[47] The present request for access is made for information about the applicant and his spouse and for information emanating from another address and other persons. In this context, the identity of any third parties is already known to the applicant. This factual context is difficult to reconcile with the application of the Act. Here the revelation of the information held by the Borough would not reveal an unknown identity or confirm mere suspicions. Revelation of the information could however allow the applicant to link known persons with the contents of documents in which both the applicant and that person or persons may figure.

[48] Revelation of the contents of documents which concern oneself and a third party would, in many circumstances, allow individuals to know exactly what information is held by a public body concerning them and who is responsible for creating this information.

[49] However, the Commission, in deciding on the application of the Act must rely on the interpretation already established by the Quebec Court. In the recent decision of Quebec (*Procureur général v. Allaire*)³, the Court examined a case where two individuals requested access to declarations made to the police concerning them. The applicants already appeared to be aware of the identity of the witnesses who had testified against them and of the contents of their declarations.

[50] Although the Commission initially granted access, stating the applicants would not learn anything they did not already know, the Quebec Court stated that even in such a case, the exception in section 28 concerning information given to the police or security forces must be applied if the necessary conditions exist.

³ [2002] C.A.I. 443.

[51] In another decision, *Ville de Montréal v. Daniel Chevalier*⁴, the Court examined the accessibility of documents created by municipal employees. These documents contained reports on complaints made by workers about a co-worker.

[52] The Court in that case held that these documents were inaccessible to that co-worker, the person who was the object of the complaints, who applied for them. They were inaccessible because they revealed personal information about another person, the complainant, (unless that person consented) (section 88 of the Act) and because the law makes no exception for different types of nominative information (section 53). The only information accessible, even if it is written by an employee in the course of his duties, is factual information, narrated without a personal evaluation, and in a manner which does not identify the complainant. However, this case did not deal with information given to the police and with the application of section 28 in such circumstances.

[53] The Commission therefore concludes that it is unable to take into account the context or the identity of the persons or the objects concerned, even where these identities are presumably already known to the applicant.

DOCUMENT 0-2, 0-3 Incident reports

[54] These documents are similar to 0-1 and the same principles apply. They are not accessible for the same reasons.

DOCUMENT 0-4 Letter from M^e Jacob to the applicant

[55] This letter concerning the administration of the applicant's request is accessible.

DOCUMENT 0-5 Letter written by M^e Jacob to M^e Belair

[56] A covering letter dated September 23, 2002, forwarding information and incident reports and addressed by M^e Jean-Denis Jacob to M^e Brigitte Belair, Crown Attorney. This letter is accessible as the individuals named are acting in their public capacity (section 57(2)).

⁴ [1998] C.A.I. 501.

DOCUMENT 0-6 An internal memo of the Public Security force

[57] This letter, between various public officials passing on the request of the applicant, is accessible.

DOCUMENT 0-7 An incident report and photographs

[58] This incident report and the photographs are not accessible for the same reasons as explained for Document 0-1.

ATTACHMENT #1 Rapport d'infraction and photographs

[59] These documents are accessible because deposited in proof in a civil suit brought against the applicant by the Public Security division of the Borough as attested by the assistant registrar. They now have a public character under section 55 of the Act.

ATTACHMENT #2 P-1 statement of offence and report
P-2 photographs and sketches
P-3 two photos
P-4 objects not included
P-5 two photographs
P-6 photographs
P-7 letter from the applicant

[60] All of these documents have been identified as having already been deposited as proof in civil proceedings. They are also accessible under section 55 of the Act.

[61] These documents are accessible for the same reasons as those concerning Attachment #1, explained above.

ATTACHMENT #3 A letter from the person responsible for access

[62] This letter, written by M^e Jacob to another public official to try to locate more information after the first day of hearings of the Commission, is accessible for reasons explained under Document 0-5 above. Any nominative or personal information therein relates to the identity of a public official or the contents of the access-to-information request.

ATTACHMENT #4 Form for document destruction and conservation calendar

[63] This document is accessible as it is of a purely administrative nature. Individuals named therein are acting in their public capacity (section 57(2)).

ATTACHMENT #5-1 Public Security communication log

[64] This document is constituted of nominative information concerning third parties and is not accessible in application of section 28(6) of the Act protecting police communication methods from disclosure.

ATTACHMENT #5-2 Public Security report

[65] This document is not accessible for reasons explained in the case of Document 0-1 above.

ATTACHMENT #5-3 Photograph

[66] This photograph is not accessible for reasons explained under Document 0-1 above.

ATTACHMENT #5-4 Public Security report

[67] This document is not accessible for reasons explained under Attachment 5-1 above.

ATTACHMENT #5-5 Public Security report

[68] This internal report of the patrol by the Public Security is not accessible under section 28(3) as it is the reflection of daily activities designed to prevent, detect or repress crime or statutory offences. Moreover, it contains nominative information concerning third parties for which no consent for release has been given (section 88).

ATTACHMENT #5-6 Public Security communication log

[69] This document is inaccessible for reasons explained under Attachment 5-1 above.

ATTACHMENT #5-7 Incident report

[70] This document is not accessible for reasons given under Document 0-1 above.

ATTACHMENT #5-8 Photograph

[71] This photograph is not accessible for reasons explained under Document 0-1 above.

ATTACHMENT #5-9 Public Security communication log

[72] This document is not accessible for the reasons explained under Attachment #5-1 above.

ATTACHMENT #5-10 Incident report

[73] This document is not accessible for reasons explained under Attachment #5-7 above.

ATTACHMENT #5-11 Photograph

[74] This photograph is not accessible for reasons explained under Document 0-1 above.

ATTACHMENT #5-12 Public Security communication log

[75] The Borough consents to make this document accessible. However, the Commission is of the opinion that it should not be made accessible, as it is a register of nominative information of third parties who have not consented to its release.

ATTACHMENT #5-13 Incident report

[76] An examination of the document leads to the conclusion section 28(5) should apply. The document is not accessible.

ATTACHMENT #5-14 Public Security communication log

[77] This document is not accessible for reasons explained under Attachment #5-12 above.

ATTACHMENT #5-15 Incident report

[78] This document is inaccessible for reasons explained under Document 0-1 above.

ATTACHMENT #5-16 Public Security communication log

[79] This document is not accessible for reasons explained under Attachment #5-12 above.

ATTACHMENT #5-17 Incident report and photographs

[80] This document and these photographs are inaccessible for reasons explained under Document 0-1 above.

ATTACHMENT #5-18 Incident report

[81] This document is inaccessible for the reasons stated under Document 0-1 above.

ATTACHMENT #5-19 Photographs

[82] These photographs are not accessible for the same reasons discussed in Document 0-1 above.

ATTACHMENT #5-20 Public Security communication logs

[83] This document is inaccessible for reasons given under Attachment #5-12 above.

ATTACHMENT #5-21 Incident report

[84] This document is inaccessible for reasons given under Attachment #5-13 above.

ATTACHMENT #5-22 Photographs

[85] These photographs are not accessible for the reasons explained in Document 0-1 above.

ATTACHMENT #6 Letter from the person responsible for access

[86] This letter between two public officials discussing the administrative response to the access-to-information request, is accessible.

[87] In rendering this decision, the Commission is aware that the Act may not provide detailed guidance for situations such as the one described by the parties in the present case.

[88] However, the Commission notes that in the case of eventual legal proceedings, both civil⁵ and criminal⁶ procedures recognize the right of persons involved as a party or as the accused to examine the proof to be used against them.

[89] The Commission further notes the difficulties faced by citizens where a public body, as in the present case, does not comply with the time limits for responding to access to information legislation as is the case here.

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

[91] **GRANTS** the present application in part for the reasons stated above;

[92] **ORDERS** the Borough to give access to the applicant according to the present decision.

JENNIFER STODDART
Commissioner

⁵ Code of Civil Procedure of Quebec, R.S.Q., c. C-25, Titre V.

⁶ *R. v. Stinchcombe* [1991] 3 R.C.S. 326.