



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-FOURTH LEGISLATURE

Bill 62

**An Act to amend the Act respecting
Access to documents held by public
bodies and the Protection of
personal information and other
legislation**

Introduction

**Introduced by
Madam Liza Frulla-Hébert
Minister of Communications**



**Québec Official Publisher
1990**

EXPLANATORY NOTES

This bill proposes various amendments to the Act respecting Access to documents held by public bodies and the Protection of personal information.

It clarifies certain provisions regarding agencies subject to the Act.

It provides that no reproduction or distribution of a data bank obtained from a public body may be made without the authorization of that body.

It allows the Government to designate public bodies which must refuse to disclose certain information obtained through their internal security services.

The bill also provides that a person involved in an incident that has been the subject of a report of incident by a police force will be able to obtain information concerning the identity of other persons involved in that incident.

It provides, in addition, that persons employed by public bodies with which files respecting adoption are deposited need not indicate the use to which information they obtain for the purposes of a file respecting adoption will be put or the categories of persons who will have access to this information.

Another amendment is introduced for the object of ensuring that every person is entitled to receive communication of an opinion or recommendation concerning him which is held by a public body, from the moment that that body has rendered a final decision on the matter being the subject of the opinion or recommendation.

Other provisions of this bill regard the execution of decisions of the Commission d'accès à l'information and the rules concerning appeal from such decisions.

The bill makes further amendments respecting, in particular, the procedure of registration of examination of information files and the release of information required for carrying out a mandate received from a public body.

Lastly, the bill amends other Acts. In particular, it allows exceptions to the Act respecting Access to documents held by public bodies and the Protection of personal information, with respect to the confidentiality of certain opinions and recommendations held by educational institutions at the university level, and with respect to the confidentiality of the identity of a person receiving a benefit granted at the discretion of the Minister of Manpower, Income Security and Skills Development.

OTHER ACTS AMENDED BY THIS BILL:

- Workmen’s Compensation Act (R.S.Q., chapter A-3);
- An Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001);
- An Act to promote the advancement of science and technology in Québec (R.S.Q., chapter D-9.1);
- An Act respecting the Régie de l’assurance-maladie du Québec (R.S.Q., chapter R-5);
- An Act respecting income security (R.S.Q., chapter S-3.1.1);
- An Act respecting educational institutions at the university level (1989, chapter 18).

Bill 62

An Act to amend the Act respecting Access to documents held by public bodies and the Protection of personal information and other legislation

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING ACCESS TO DOCUMENTS HELD BY PUBLIC BODIES AND THE PROTECTION OF PERSONAL INFORMATION

1. Section 4 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1) is amended by adding, at the end, the following paragraph:

“For the purposes of this Act, a person appointed by the Government or a minister, together with the personnel he manages, is deemed, in respect of the exercise of the functions assigned to him by law, by the Government or by the Minister, to be a Government agency.”

2. Section 5 of the said Act is replaced by the following section:

“5. Municipal bodies include

(1) a municipality, and any body declared by law to be the mandatary or agent of a municipality, and any body whose board of directors is composed in the majority of members of the council of a municipality;

(2) an urban or regional community, an intermunicipal board, an intermunicipal transit corporation, an intermunicipal board of transport, the Kativik Regional Government and any other body whose board of directors is composed in the majority of elected municipal officers, except a private body.”

3. Section 7 of the said Act is amended by inserting the words “the private establishments referred to in the said Act which operate with sums of money taken out of the consolidated revenue fund,” after the comma in the third line and by striking out the words “the hospital centres that are private establishments under agreement within the meaning of this Act,” in the fifth and sixth lines.

4. Section 10 of the said Act is amended by replacing the words “The right may also be exercised by obtaining” in the first line of the second paragraph by the words “The applicant may also obtain”.

5. Section 12 of the said Act is replaced by the following section :

“12. In no case may a data bank or part thereof, created by or for a public body, be reproduced or distributed, in whole or in part or in any form whatever, unless the body authorizes the reproduction or distribution on such conditions as it determines.”

6. Section 13 of the said Act is replaced by the following section :

“13. The right of access to a document produced by or for a public body and having been published or distributed can only be exercised by examining the document on the premises during regular working hours or by procuring enough information to enable the applicant to examine or obtain the document where it is available.

Furthermore, the right of access to a document produced by or for a public body and that is to be published or distributed six months or less after the request for access can only be exercised by examining the document on the premises during regular working hours or by procuring enough information to enable the applicant to examine the document where it is available and to obtain it at the time of its publication or distribution.”

7. Section 17 of the said Act is amended by replacing the words “Minister of Communications” in the first line by the word “Commission” and by adding the words “and of the person in charge of the protection of personal information” after the word “documents” in the fourth line.

8. Section 28 of the said Act is amended by adding, at the end, the following paragraph :

“The same applies to a public body that may be designated by regulation of the Government in accordance with the standards provided for therein, in respect of information obtained by the body through its internal security service in the course of an investigation

conducted by such service held to prevent, detect or repress crime or statutory offences that may be or have been committed within that body by its members, the members of its board of directors or the members of its personnel, if the disclosure of such information would likely entail one of the consequences set out in subparagraphs 1 to 9 of the first paragraph.”

9. Section 29.1 of the said Act is replaced by the following section:

“29.1 A public body performing quasi-judicial functions must refuse to release information obtained in the performance of an adjudicative function if obtained when the body was holding a sitting *in camera* or if contemplated by an order not to disclose, publish or distribute.

The public body may refuse to release information obtained in the performance of an adjudicative function if such release may reveal information the release or the confirmation of the existence of which must or may be refused under a provision of this Act.”

10. Section 44 of the said Act is amended by inserting the words “and identifying the document requested” after the word “request” in the first line.

11. The said Act is amended by inserting, after section 52, the following section:

“52.1 The person in charge must see to it that every document that has been the subject of a request for access be kept for as long as is required to enable the applicant to exhaust the recourses provided in this Act.”

12. Section 53 of the said Act is replaced by the following section:

“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.”

13. Section 57 of the said Act is amended

(1) by inserting the words “of the personnel” after the word “member” in the third line of subparagraph 2 of the first paragraph;

(2) by inserting the words “and address” after the word “name” in the first line of subparagraph 4 of the first paragraph;

(3) by adding, after subparagraph 4 of the first paragraph, the following subparagraph:

“(5) the name and business address of the holder of a permit issued by a public body and which is required by law to be held for the carrying on of an activity, the practice of a profession or the operation of a business.”

14. Section 59 of the said Act is amended by adding, after subparagraph 8 of the second paragraph, the following subparagraph:

“(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 or informer.”

15. Section 62 of the said Act is replaced by the following section:

“62. Every person qualified to receive nominative information within a public body has access to nominative information without the consent of the person concerned where such information is necessary for the discharge of his duties.

Moreover, the person must belong to one of the categories of persons referred to in subparagraph 4 of the second paragraph of section 76 or in subparagraph 5 of the first paragraph of section 81.”

16. Section 65 of the said Act is amended by inserting, after the first paragraph, the following paragraph:

“Notwithstanding the foregoing, a person duly authorized by a public body which holds files respecting the adoption of persons and collects nominative information for the purposes of one of such files is not required to inform the person concerned or the third person of

the use to which the information will be put nor the categories of persons who will have access to it.”

17. Section 67.2 of the said Act is amended

(1) by striking out the words “administrative management” in the third and fourth lines;

(2) by adding, at the end, the following paragraphs:

“In that case, the public body shall

(1) entrust the duties by a mandate in writing;

(2) specify, in the mandate, which provisions of this Act apply to the information which has been released to the person or body and the measures to be taken by the person or body to ensure that the information is not used except for the carrying out of the mandate and that it is not kept by the person or body after the expiry of the mandate.

The second paragraph does not apply to the members of the professional corporations listed in Schedule I to the Professional Code (R.S.Q., chapter C-26) who are bound by professional secrecy.”

18. Section 67.3 of the said Act is amended

(1) by inserting the words “, except the release of nominative information required by a person or body for charging to the account of a member of a public body, or to a member of its board of directors or of its personnel, an amount required by law to be withheld or paid” after the figure “67.2” in the fourth line of the first paragraph;

(2) by striking out paragraph 5.

19. Section 68.1 of the said Act is replaced by the following section:

“68.1 A public body may, without the consent of the person concerned, release a personal information file or an extract therefrom for the purposes of constituting a file containing information on persons likely to have contravened an Act or regulation or to have obtained benefits without being entitled thereto.

Such a release shall be carried out under the terms of a written agreement.”

20. Section 70 of the said Act is amended

(1) by replacing the words “government approval” in the third line of the first paragraph by the words “the favourable opinion of the Commission”;

(2) by replacing the second paragraph by the following paragraphs:

“Should the Commission give an unfavourable opinion, the agreement may be submitted to the Government for approval; the agreement comes into force on the day of its approval.

The agreement and the favourable opinion of the Commission or the approval of the Government, as the case may be, shall be tabled in the National Assembly within thirty days of the opinion or approval if the Assembly is sitting or, if it is not sitting, within thirty days of the opening of the next session, or of resumption.

The agreement must, in addition, be published in the *Gazette officielle du Québec* within thirty days of its tabling in the National Assembly.”

21. Sections 74 and 75 of the said Act are repealed.

22. Section 76 of the said Act is amended by replacing the words “, the method by which the file is maintained and, where such is the case, the identification of the computer programs used” in the second and third lines of subparagraph 1 of the second paragraph by the words “and the method by which the file is maintained”.

23. Section 83 of the said Act is amended by striking out the third paragraph.

24. Section 84 of the said Act is amended by replacing the word “or” in the third line of the first paragraph by the word “and” and by striking out the words “, at his option” in the third and fourth lines of the same paragraph.

25. The said Act is amended by inserting, after section 86, the following section:

“86.1 A public body may refuse to release to a person nominative information concerning him where such information is contained in an opinion or recommendation given by one of its members or a member of its personnel, or a member of another public body or a member of its personnel, in the performance of his duties, or given at the request of the body by a consultant or adviser on a

matter within his competence and where the body has not rendered its final decision on the matter which is the subject of the opinion or recommendation.”

26. Section 96 of the said Act is amended by inserting the words “and identifying the information requested” after the word “request” in the first line.

27. Section 99 of the said Act is repealed.

28. The said Act is amended by inserting, after section 102, the following section:

“**102.1** The person in charge must see to it that any information that has been the subject of a request for access be kept for as long as is required to enable the applicant to exhaust the recourses provided in this Act.”

29. Section 124 of the said Act is amended by striking out the words “, the persons who are exempted from registering pursuant to paragraph 3 of section 75,” in the second and third lines of paragraph 4.

30. Section 126 of the said Act is amended by adding, after the second paragraph, the following paragraph:

“A member of the Commission may, in the name of the Commission, exercise by himself the powers conferred on the Commission by this section.”

31. Section 132 of the said Act is replaced by the following section:

“**132.** The Commission must, at least every two years, publish and distribute in all regions of Québec an index of all the personal information files held by public bodies.”

32. Section 144 of the said Act is amended

(1) by striking out the words “, unless an appeal is brought under section 147” in the third line of the first paragraph;

(2) by adding, after the second paragraph, the following paragraphs:

“From the time a decision becomes executory, a certified copy thereof may be filed by the Commission or a party in the office of the

prothonotary of the Superior Court of the district of Montréal or Québec or of the district where the head office, place of business or residence of a party is situated.

The filing of a decision grants thereupon to the decision the force and effect of a judgment of the Superior Court.”

33. Section 147 of the said Act is amended by replacing the words “three judges” in the second line of the first paragraph by the words “a judge”.

34. Section 148 of the said Act is amended by replacing the words “one or more judges” in the first and second lines by the words “a judge”.

35. Section 149 of the said Act is amended

(1) by replacing the first paragraph by the following paragraph :

“149. The motion for leave to appeal must specify the questions of law or jurisdiction which ought to be examined in appeal and, after notice to the parties and to the Commission, must be filed in the office of the Court of Québec, at Montréal or at Québec, within thirty days after the date of receipt of the decision of the Commission by the parties.”;

(2) by adding, after the second paragraph, the following paragraph:

“The decision authorizing the appeal must mention only the questions of law or jurisdiction that will be examined in appeal.”

36. The said Act is amended by inserting, after section 149, the following section:

“149.1 The filing of the motion for leave to appeal suspends the execution of the decision of the Commission until the decision referred to in section 154 is rendered, except in the case of an appeal from a decision ordering a public body to abstain from doing something.”

37. Section 151 of the said Act is amended by replacing the words “and every other relevant document,” in the second line of the second paragraph by the words “the documents related to the contestation and the decision authorizing the appeal”.

38. Section 152 of the said Act is amended by replacing the second sentence by the following sentence: “The parties are not required, however, to file a statement of their claims.”

39. Section 154 of the said Act is amended by replacing the words “three judges” in the first line by the word “judge”.

40. Section 155 of the said Act is amended by inserting, after subparagraph 6 of the first paragraph, the following subparagraph:

“(7) designating, according to the standards provided for in the regulation and for the purposes of the second paragraph of section 28, the public bodies that must refuse to release or to confirm the existence of information obtained through their internal security service.”

41. The said Act is amended by inserting, after section 159.1, the following section:

“**159.2** Every person who knowingly reproduces or distributes a data bank or part thereof in contravention of the provisions of section 12 is guilty of an offence and is liable to a fine of \$200 to \$1 000 and, for a second or any subsequent offence, to a fine of \$500 to \$2 500.”

WORKMEN'S COMPENSATION ACT

42. Section 34.1 of the Workmen's Compensation Act (R.S.Q., chapter A-3) is amended by striking out the second paragraph.

ACT RESPECTING INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

43. Section 42 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) is amended by striking out the second paragraph.

ACT TO PROMOTE THE ADVANCEMENT OF SCIENCE AND TECHNOLOGY IN QUÉBEC

44. The Act to promote the advancement of science and technology in Québec (R.S.Q., chapter D-9.1) is amended by inserting, after section 93, the following section:

“**93.1** Notwithstanding sections 83 and 86.1 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1), a Fonds may refuse to confirm the existence or to release, to a person who has addressed an application for financial support, nominative information contained in an opinion or recommendation concerning him.

The first paragraph shall not be interpreted as preventing the person concerned from having access to the final decision, which must give reasons and be detailed, that the Fonds must make on the basis of the opinion or recommendation.”

ACT RESPECTING THE RÉGIE DE L'ASSURANCE-MALADIE DU QUÉBEC

45. Section 22.1 of the Act respecting the Régie de l'assurance-maladie du Québec (R.S.Q., chapter R-5) is amended by striking out the second paragraph.

ACT RESPECTING INCOME SECURITY

46. Section 25 of the Act respecting income security (R.S.Q., chapter S-3.1.1) is amended by adding, at the end of the first paragraph, the following sentence: “Notwithstanding subparagraph 4 of the first paragraph of section 57 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1), the name and address of a person who is granted such benefits is not public information.”

ACT RESPECTING EDUCATIONAL INSTITUTIONS AT THE UNIVERSITY LEVEL

47. The Act respecting educational institutions at the university level (1989, chapter 18) is amended by inserting, after section 5, the following section:

“5.1 Notwithstanding sections 83 and 86.1 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1), an educational institution at the university level mentioned in paragraphs 1 to 11 of section 1 may refuse to release to the person concerned nominative information contained in an opinion or recommendation of an academic nature concerning him.

The first paragraph shall not be interpreted as preventing the person concerned from having access to the final decision, which must give reasons and be detailed, that the institution must give on the basis of the opinion or recommendation.”

48. This Act comes into force on (*insert here the date of assent to this Act*).