

Québec court issues key decision on public access to...access to information requests

JULY 21, 2025 6 MIN READ



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On March 20, 2025, in the landmark decision *Centre d'acquisitions gouvernementales c. Teva Canada limitée*,^[1] the Court of Québec held that access to information requests themselves are not immune from access under the province's access to information legislation. Teva Canada Limited had been successful before the Québec Access to Information Commission (the Commission), whose decision was appealed by the *Centre d'acquisitions gouvernementales* (the CAG), a public body responsible for the procurement of provincial government agencies. The Court dismissed the appeal and vindicated Teva's position.

Over three years ago, the CAG had refused to disclose documents sought by Teva Canada Limited (Teva) under the *Act respecting Access to documents held by public bodies and the Protection of personal information* (the Access Act).^[2] The documents sought were third parties' access requests that the CAG had previously received as a public body, with responsibilities under the Access Act. The specific question was whether Teva had a right of access to these access requests. The broader question was whether the public's right of access applied to documents held by public bodies in application of the Access Act. The Court of Québec answered both questions in the affirmative.

Background

In 2021, the CAG issued a call for tenders for the government acquisition of pharmaceutical products, in which Teva participated. Teva's bid was successful and a contract was entered into. In March 2022, the CAG received two access to information requests (the access requests) from third parties (the requesters) seeking, among other documents, the contract between Teva and the CAG. The access requests were made under the Access Act, pursuant to which the public has a right of access to documents held by a public body in the exercise of its duties.

Having been notified of the access requests, Teva objected to the release of its contract on the basis that it contained highly confidential commercial and proprietary information. Considering the highly competitive nature of the pharmaceutical market, the disclosure of the information sought could reasonably cause harm to Teva's competitive position, weaken its bargaining power, inflict loss on it or enable its competitors to gain an advantage at its expense. Ultimately, the CAG did not disclose Teva's contract and the requesters did not

pursue their access requests further. In parallel, Teva submitted its own access to information request to the CAG, to obtain a copy of the access requests. The CAG denied Teva's request.

Teva sought a review of the CAG's denial before the Commission. In February 2024, the Commission granted Teva's request.^[3] The CAG subsequently appealed the Commission's decision before the Court of Québec.

Reasons and conclusions

Access requests are held by a public body in the exercise of its duties

The CAG's main (and novel) argument was that, as a matter of law, access requests are not documents "held" by a public body in the exercise of its duties, and therefore do not fall within the scope of the Access Act. The Court dismissed this argument. Applying the standard of correctness, it found that the Commission had not committed any reviewable error in finding that access requests were documents held by a public body in the exercise of its duties. Rather, the Commission was right in concluding that the access requests were so held by the CAG.

The Court ruled that the duties of a public body, for the purposes of the Access Act, must be interpreted liberally. The fact that the public body's enabling statute does not specifically provide for its duty to comply with the Access Act or other statutes of general application does not mean that the documents it holds to comply with these statutes are not held in the exercise of its duties. To conclude otherwise would mean that a public body could exercise its duties within the meaning of the Access Act without complying with any statute other than its enabling statute. According to the Court, the duties of a public body extend not only to all its main duties set out in its enabling statute, but also to all ancillary tasks arising from these duties, duties assumed voluntarily and duties incumbent upon it by virtue of any statute of general application, such as the Access Act.

No requirement to preserve the anonymity of certain access requesters

Under the Access Act, the public's right of access does not extend to personal information, which must remain confidential unless the person to whom it pertains consents to the disclosure. Here, however, the Court agreed with Teva that the name of a natural person acting as representative of a legal person is not in itself confidential personal information. Because, as a matter of fact, the requesters were acting for legal persons, the Court ruled that the access requests did not contain any confidential personal information preventing public access.^[4] The Court decided that the Access Act does not require public bodies to preserve the anonymity of access requesters beyond their obligation to protect confidential personal information, despite the CAG raising alleged policy arguments in favour of this position. The Court reiterated the Commission's view that it is not its place to create a new exception to the public's right to access nor to rewrite the Access Act in order to preserve the anonymity of access requesters.

In its arguments, the CAG also relied on the *Regulation respecting the distribution of information and the protection of personal information* (the Regulation).^[5] Subject to some exceptions, the Regulation requires a public body to disseminate on its website documents it discloses in response to an access request, together with the anonymized decision of the person in charge of access to documents. According to the CAG, the need to anonymize the decision of the person in charge of access to documents implied a broader requirement for public bodies to preserve the anonymity of access requesters. However, the Court determined the Regulation to be irrelevant to the appeal. The appeal concerned the public's

right of access, not public bodies' regulatory obligations to publicly disseminate certain information.

Motives of access requesters are irrelevant

Finally, the Court rejected various assertions by the CAG, not grounded in any evidence tendered before the Commission, that Teva's access requests had an improper purpose or could somehow lead to improper behaviour. The Court concluded that the right of access exists regardless of the requester's motives. The purpose or reason for the request for information is therefore completely irrelevant in the decision to communicate a document or not. In any event, the CAG's arguments based on Teva's motives were mere speculation.

Key takeaways

The decision is likely to set an important precedent. The decision confirms the public's broad right of access to documents held by public bodies in the exercise of their duties, which include all the tasks they perform to comply with statutes of general application, such as the Access Act. That decision reinforces the public's right of access to verify public bodies' compliance with the Access Act and other statutes to which they are subject.

The decision also confirms that there is no requirement to preserve the anonymity of access requesters beyond the rules protecting confidential personal information. The public can thus have access to access requests received by a public body and the identity of the access requesters, provided they do not include any confidential personal information, such as when the requesters act in their professional capacity.

[1] The authors were counsel for Teva Canada in the case.

[2] CQLR, c A-2.1.

[3] *Teva Canada limitée c. Centre d'acquisitions gouvernementales*, 2024 QCCA 58.

[4] This is consistent with section 55 of the Access Act, as recently amended.

[5] CQLR, c A-2.1, r. 2.