



**Nova Scotia Freedom of Information**

**and Protection of Privacy**

**Report of Review Officer**

**Catherine Tully**

**REVIEW REPORT FI-09-79**

**December 11, 2014**

**Department of Community Services**

**Summary:** An applicant requested correction of three risk assessments and an investigation summary created by the Department of Community Services (the “Department”). The Department refused to make the corrections stating that its case notes were accurate. Instead, the Department annotated the file by placing a copy of the applicant’s request and its response on the applicant’s files and by placing a notation in its case management system.

The Review Officer found that the Department properly refused to make the requested corrections as the requested changes are not corrections of personal information as contemplated by s. 25(1) of the *Act*. The Review Officer also found that the Department’s response to the applicant was confusing as it references the accuracy of case notes and not that of the three risk assessments and investigation summary to which the applicant sought correction.

The Review Officer recommended that the Department confirm the basis for its decision as the findings relating to the three risk assessments and one investigation report; ensure that a copy of the original request for correction and the Department’s response is placed on any hard copy file containing the disputed reports; and amend the notation in the case management system indicating that there was a dispute as to the accuracy of the three risk assessments and the investigation summary and identifying the location of the correction request.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993, c. 5, s. 25; and *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, s. 29.

**Authorities Considered:** BC Order 02-16; BC Order 03-18; Ontario Order P-947; and BC Order 00-5.

## **INTRODUCTION:**

[1] In a letter to the Department dated October 22, 2008 the applicant requested that four documents created by the Department be “corrected, omitted, and or added to”. The four documents were an investigative summary and three risk assessments. By way of a letter dated August 20, 2009 the Department advised the applicant that his request for correction was not granted but that the Department would annotate his file. The applicant was dissatisfied with this response and so filed a request for review with this office. The applicant expressed the view that he has a right to the correction of his personal information and he further objected to the length of time it took for the Department to respond to his request for correction. In subsequent correspondence with this office the applicant withdrew his objection to the length of time it took the Department to respond.

## **ISSUE:**

[2] The issue in this matter is whether the Department is required under s. 25 of the *Freedom of Information and Protection of Privacy Act* (“Act”) to make the corrections requested by the applicant. Encompassed in that issue is whether the Department has complied with its s. 25(2) obligation to annotate the applicant’s personal information with the requested correction.

## **DISCUSSION:**

### **Background**

[3] In his letter dated October 22, 2008, the applicant made 32 requests for correction. In his communications with this office the applicant characterized his requests as 32 requests for correction and 5 “statements of dispute”. With each request, he provided references to other documents (usually case notes) or recommended that contact be made with potential witnesses he said could prove factual errors in the identified document.

[4] In response to the applicant’s request, the Department contacted its Digby and Yarmouth district offices. The Department’s Manager of Information Services and FOIPOP (“the Manager”) advised the applicant in the Department’s response letter dated August 20, 2009 that the two offices had been contacted to “confirm whether or not the case notes are an accurate recording of the events. The offices have confirmed that each of the case notes for each date represent an accurate recording of the professional assessment and investigation carried out by the social workers”. Based on this consultation the Manager concluded, “in making our decision, this office has taken into consideration your request and your opinion that the notes are inaccurate and has followed process and asked from the professionals the confirmation of their professional opinion. We have concluded that we don’t have the authority to make the changes as you requested”. This process took 10 months and in the end resulted in no corrections to the documents.

[5] However, the Department annotated the documents by placing a copy of the applicant’s letter and the Department’s response letter in the Digby District Office protection file and by making a notation in the case management system stating that a correction to the information was requested but was not granted. Further, the Department stated that in order to comply with s. 25(3) it would place a copy of their letter on the applicant’s foster parent file in the Yarmouth District Office.

## Correction Obligations

[6] Section 25 of the *Act* sets out the correction obligations of public bodies:

### Correction of errors and omissions

25 (1) An applicant who believes there is an error or omission in the applicant's personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

(2) Where no correction is made in response to a request pursuant to subsection (1), the head of the public body shall annotate the information with the correction that was requested but not made.

(3) On correcting or annotating personal information pursuant to this Section, the head of the public body shall notify any other public body or any third party to whom that information has been disclosed during the one-year period before the correction was requested.

(4) On being notified pursuant to subsection (3) of a correction or annotation of personal information, a public body shall make the correction or annotation on any record of that information in its custody or under its control.

[7] The right to request correction of personal information is common across a number of other freedom of information statutes including s. 29 of the *Freedom of Information and Protection of Privacy Act* in British Columbia. In discussing section 29 of that *Act* the Commissioner stated,

It is well-established that s. 29(1) only addresses factual errors or omissions in personal information. Section 29(1) is not intended to function as an avenue of appeal, or redress, for an individual who is disappointed by a decision or disagrees with it. The section does not require a public body to 'correct' opinions or any expressions of judgment based on facts and arrived at applying knowledge, skill and experience.<sup>1</sup>

[8] The scope of the right to request correction under the British Columbia legislation was summarized by an adjudicator as follows:

- S. 29 applies only to personal information;
- The right to request correction (s. 29(1)) is distinct from the duty to annotate (s. 29(2));
- The right to request correction applies only to factual errors or omissions, not to opinions or expressions of judgement (sic); and
- The right to request correction does not entail a duty for the public body to correct, including by adding particular information requested by the applicant.<sup>2</sup>

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<sup>1</sup> BC Order 02-16 at para. 7; *Workers' Compensation Board, Re*, 2002 CanLII 42441 (BC IPC).

<sup>2</sup> BC Order 03-18 at para. 70; *BC Human Rights Commission, Re*, BC OIPC 2003 CanLII 49191 (BC IPC).

[9] In Ontario, the Information and Privacy Commissioner has identified three requirements that must be met in order for an institution to grant a request for correction of personal information:

1. The information must be personal and private information; and
2. The information must be inexact, incomplete or ambiguous; and
3. The correction cannot be a substitution of opinion.<sup>3</sup>

[10] In the Ontario case the applicant sought to update/correct information she herself originally provided. The adjudicator states,

The information in the original portfolio was recorded by the appellant and reflects what she thought was accurate at the time. Although the appellant has now changed her position, it does not undermine the validity of the original record.<sup>4</sup>

[11] It is also important to note that the *Act* states, only that the applicant “may request” a correction. There is no requirement that the public body correct the information under s. 25. However, I agree with former Commissioner Loukidelis when he stated:

The public interest in good government and in sound decision-making suggests that, where ever possible, a public body should – even though it is not legally required to do so – correct actual errors or omissions in personal information when requested. This is consistent with the s. 28 obligations to make every reasonable effort to ensure that personal information that will be used in decisions is accurate and complete.<sup>5</sup>

[12] The *Act* is silent as to the burden of proof. However, because it is the applicant alleging an error he must initially provide some argument and evidence to support his request for correction.

[13] What is clear from decisions across other Canadian jurisdictions and from the wording of Nova Scotia’s *Act* is that a request for correction must, at a minimum:

1. Identify the personal information the applicant believes is in error. That personal information must be the personal information of the applicant and not that of a third party;
2. The alleged error must be a factual error or omission;
3. The request must include some evidence to support the allegation of error or omission. Mere assertions will not suffice; and
4. The proposed correction must be clearly stated and cannot be a substitution of opinion.

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<sup>3</sup> Ontario Order P-947 at page 1; *Ontario (Community and Social Services) (Re)*, 1995 CanLII 6478 (ON IPC).

<sup>4</sup> *Ibid* at p. 2.

<sup>5</sup> BC Order 00-51 at page 18; *University of British Columbia Law Faculty Records, Re*, 2000 CanLII 14416 (BC IPC). Section 28 of British Columbia’s *Act* is equivalent to s. 24(2) of Nova Scotia’s *Act* which requires that public bodies ensure that personal information used to make a decision that directly affects an individual must make every reasonable effort to ensure that the information is accurate and complete.

[14] In response to a request for correction a public body must properly assess the request by:

1. Considering each requested correction;
2. Providing a response to the applicant that addresses the request made with reasons for the public body's decision; and otherwise
3. Making corrections where warranted.

[15] In this case the response from the public body was extremely confusing. The applicant's request for correction related to four documents: three risk assessments and an investigative summary. His extensive arguments relied on case notes and he based many of his arguments on the fact that he viewed the case notes as accurate and the risk assessments and investigative summary as inaccurate. However, in response to his request to correct the four documents the Department advised him that it had confirmed that "each of the case notes for each date represent an accurate recording of the professional assessment and investigation carried out by the social workers".<sup>6</sup> On that basis the Department said it would not make the changes requested. Naturally this confused the applicant since his position was that the case notes were accurate and on that basis corrections to the four documents were required.

[16] During the course of our investigation into this complaint, the Department confirmed that it had reviewed the four documents in question and had determined that a correction of those four documents was not warranted. Unfortunately the Department never clearly communicated this conclusion to the applicant.

[17] I have reviewed the applicant's correction request in light of the considerations noted above. I have compared each request for correction against the case notes and each of the four documents at issue. In this case the applicant has made 32 requests for correction that can be placed into four broad categories:

1. Request to correct information that is either not the applicant's personal information or is not anyone's personal information. For example, requests relating to observations about the children's behavior.
2. Requests to correct information without evidence to support the alleged error or where the case notes support the Department's recorded version of events or are a reflection of the caseworker's judgment.
3. Requests to add context. On a number of occasions the applicant made statements about his children or his position on certain issues to which he now seeks to add context. He does not allege that the original statements are necessarily incorrect but rather, that the additional context he wishes to add makes them clearer.
4. Requests to make grammatical change. I include in this category requests to change words such as "has" to "had been".

[18] I understand that the applicant has significant concerns with the accuracy of the three risk assessments and investigative summary. He clearly took a great deal of time to review the case notes looking for evidence of inaccuracies or inconsistencies. However, it is important to

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<sup>6</sup> Department's letter to applicant dated Aug. 20, 2009.

emphasize that the right to request correction under s. 25 only addresses factual errors and of course, only relates to the personal information of the applicant. The right to request a correction does not include the right to have information updated, or to have context added that was not originally provided at the time the record was created, particularly when the source of the information was the applicant himself.

[19] In addition, both the risk assessments and the investigation report required professional judgment by the authors. That judgment was reflected in part, by the adjectives they used to describe the events. The applicant's recollection of what he said may well be accurate, but that does not change the fact that the reports reflect the professional judgment of the authors.

[20] The applicant also raises repeated concerns about a statement he made with respect to one of his children. He asks that additional context be added to show that his child was doing much better or that his frustration was with the agency not with his child. Neither request is a request for correction that fits within s. 25 of the *Act* because it is either the personal information of a third party (his child) or because it is not a request to correct an error but rather a request to add context not provided at the time of the original collection of the information.

[21] Some of the requests relate to grammatical changes the applicant believes will more accurately communicate his intended meaning. In my view, such a request is not a request for correction of personal information. In addition, much like the use of adjectives by caseworkers, the selection of tenses also reflects the judgment of the caseworker and is not therefore open to correction request under s. 25.

[22] For the reasons set out above I conclude that the Department properly refused to make the corrections requested by the applicant.

### **Annotation Obligations**

[23] When a public body declines to make a correction requested, s. 25(2) and s. 25(3) of the *Act* require the public body to annotate the information with the correction that was requested. In addition, the public body must notify any other public body or third party to whom the information has been disclosed during the one-year period before the correction was requested.

[24] Generally speaking an annotation should be placed on the original record at issue. So, for example, if the applicant seeks a correction of a database record, the annotation must be placed on the database record so that any reader of the original document is made aware of the request for correction. That is not to say that the entire correction request must necessarily be inserted into the database record. It may be that technical limitations or business requirements mean that only a short note may be inserted. So long as a reader is effectively notified of the requested correction and so long as the full correction request is readily available to the reader, in my view the obligation to annotate has been met. Likewise, if the request is for the correction of a paper document, the paper file should contain the requested correction so that any reader of the original paper document is made aware that concerns had been raised regarding the accuracy of the specific document. Usually this will mean attaching a notice of the correction request directly to the document at issue.

[25] Where the most common means of accessing records is via a database, whether or not the original record was a paper document, the public body should include a notation in the database indicating that a request for correction has been made and further indicating the location of the correction request.

[26] In this case, the Department indicated in its letter dated August 20, 2009 that it would place a copy of the applicant's letter and the Department's decision letter in the Digby District Office protection file, make a notation in the case management system stating that a correction to the information was requested but was not granted, and place a copy of the Department's decision letter on the foster parent file in the Yarmouth District Office.

[27] I have two concerns with this. First, placing only a copy of the Department's response letter on the applicant's file is not sufficient. As noted above, annotations should always include a copy of the original request for correction. At the very least, there must be clear direction on the location of the original request for correction so that it is easily accessible to anyone making reference to the disputed record. Secondly, the case management system notation is likewise inadequate because it also does not provide clear direction to the location of the original request for correction.

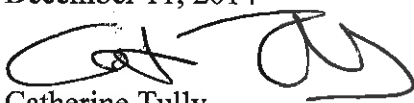
## **FINDINGS & RECOMMENDATIONS**

[28] I find that the applicant's requested changes are not corrections of personal information as contemplated by s. 25(1) of the *Act*. Therefore, the Department properly refused to make the requested corrections. However I find that in response to the correction request the Department failed to adequately consider the request when it wrote to the applicant on August 20, 2009 in that it failed to clearly indicate its decision that the three risk assessments and the one investigation report in dispute were accurate. Further, I find that the Department has not fully satisfied its obligation to annotate the disputed records under s. 25(2) of the *Act*.

[29] Therefore, I recommend that the Department:

1. Write to the applicant to confirm that its decision to not complete a correction of personal information was based on its findings relating to the three risk assessments and one investigation report.
2. Ensure that a copy of the original request for correction is placed on any hard copy file containing the disputed reports along with a copy of the August 20, 2009 decision letter and a copy of the letter written in response to recommendation 1.
3. Amend the notation in the case management system to indicate that there is a dispute as to the accuracy of the three risk assessments and the investigation summary and identifying the location of the correction request.

December 11, 2014



Catherine Tully

Freedom of Information and Protection of Privacy Review Officer for Nova Scotia