Date: October 18, 2019
Place: Vancouver, BC

In the Matter of

The *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 (the "*Act*")

And in the Matter of:

An Adjudication under Section 62 of the *Act,*

Requested by M.O. on August 18, 2018

Reasons for Decision

of the

Honourable Madam Justice Sharma

Counsel for Commissioner:	Catherine Boies Parker, QC, David Wu
The Applicant:	Self-represented

[1] This adjudication is conducted pursuant to Section 62 of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 (the "*Act*"). Chief Justice Hinkson assigned this file to me on October 17, 2018. After receiving confirmation from the parties that I had all relevant material, I issued a decision dated June 26, 2019 (the "Preliminary Decision"). In the Preliminary Decision I requested that the parties address a number of issues. After receiving responses from both parties on August 20, 2019, I asked them to provide their written submissions on the following two issues:

a. Did the [Office of the Information and Privacy Commissioner (the "Office")] fail in its duty as a public body to comply with s. 28 of the *Act* and if so, how?

b. If the Office failed in its duty, what remedy, if any, is available and should it be granted?

[2] I have now received those written submissions. As explained in this decision, I dismiss the Applicant's complaints and grant an order declaring that the Office has performed its duties under section 28 of *the Act*.

DISCUSSION

[3] At paragraphs 6 to 52 of the Preliminary Decision, I set out the extensive background and history to this matter, which the Applicant contended was relevant to the adjudication. I agree with the submissions of the Office that most of that information is irrelevant to the issues before me.

[4] The Applicant was injured at work in June 2009 and received benefits from WorkSafeBC. A dispute arose over the continuation of those benefits. Apart from the substantive dispute the Applicant had with WorkSafeBC's decisions about entitlement to benefits, he also complained in July 2017 that WorkSafeBC had failed in its duty under section 28 of the *Act* to ensure the accuracy and completeness of his personal information with regard to a decision that directly affected him.

[5] He challenged what he thought was WorkSafeBC's unsatisfactory response to his complaint regarding s. 28 by filing a request for review with the Office. The

Applicant's interaction with the Office regarding that review is set out in paragraphs 21 to 51 of the Preliminary Decision, and I will not repeat that history here.

[6] I do note, however, that the Applicant's communication with the Office was prolix. He sent many unsolicited communications to the Office.

[7] Section 28 of the *Act* states the following:

> **Accuracy of personal information**
>
> **28** If
>
> (a) an individual's personal information is in the custody or under the control of a public body, and
>
> (b) the personal information will be used by or on behalf of the public body to make a decision that directly affects the individual,
>
> the public body must make every reasonable effort to ensure that the personal information is accurate and complete.

[8] As permitted under section 58(3) of the *Act*, the Office made its decision regarding the Applicant's complaint. Briefly, it decided that the Applicant's complaint was not about "personal information". Therefore, there was nothing to correct and the Office could not conclude that WorkSafeBC had not complied with its duties.

[9] At that point Mr. The Applicant's option if he disagreed with the Office's decision about whether WorkSafeBC had complied with the *Act* was to file an application for judicial review. He did not do so.

[10] Instead, the Applicant launched this adjudication pursuant to section 62 and 63 of the *Act,* which state the following:

> **Right to ask for a review**
>
> **62** (1) A person who makes a request to the commissioner as head of a public body for access to a record or for correction of personal information may ask an adjudicator to review any decision, act or failure to act of the commissioner as head of a public body that relates to the request, including any matter that could be the subject of a complaint under section 42 (2) (a) to (d).
>
> (2) A third party notified under section 24 of a decision to give access may ask an adjudicator to review any decision made about the request by the commissioner as head of a public body.

> **How to ask for a review**
>
> **63** (1) To ask for a review under this Division, a written request must be delivered to the minister responsible for this Act.
>
> (2) A request for a review of a decision of the commissioner as head of a public body must be delivered within
>
> (a) 30 days after the person asking for the review is notified of the decision, or
>
> (b) a longer period allowed by the adjudicator.
>
> (3) Section 53 (3) applies if the commissioner as head of a public body fails to respond in time to a request for access to a record.

[11] The keywords of section 62(1) are that the adjudicator is reviewing **a decision, act or failure to act of the commissioner as head of a public body**.

[12] This is not a provision that allows a person to review, for substantive reasons, the Office's decision regarding another public bodies' duties under the *Act*. Nor is it a mechanism to appeal such decisions.

[13] Instead, the adjudication process is a necessary provision for people who want to challenge the Office when it is acting as a public body, not as a decision maker about some other public body. Since complaints that a public body subject to the *Act* has not complied with the legislation go to the Office, it would be absurd for the Office to have the power to investigate itself. It must be for that reason that the Legislature set up a system whereby adjudicators are appointed to conduct inquiries to address complaints that the Office has failed to comply with the *Act*. The adjudicator's role is to examine whether, in responding to requests made to it for disclosure of a record, or correction of personal information, the Office fulfilled its duties under the *Act*.

[14] In this case, the Applicant complained that WorkSafeBC had not complied with the *Act*. As was his right, he sought a review from the Office. That review was dismissed and upon reconsideration, dismissed again.

[15] The Applicant had the ability to seek a judicial review of the decision to dismiss his complaint about WorkSafeBC's duties under the *Act*. Rather than do

that, he treated his complaint about the Office's substantive decision about WorkSafeBC's performance of its duty as if it represented a separate and distinct request to the Office about correction to his personal information.

[16] That fundamentally misconceives both what an adjudication is, and what powers an adjudicator has. In prior decisions, the Commissioner has explained the difference between adjudications and substantive reviews of decision by the Office:

> The primary focus of section 28, and the examples, is clarification of personal information though its comparison with other records or sources or by contacting the individual to the personal information relates. Quite properly, the examples do not deal with the altering of an administrative decision or policy simply because an individual affected by that decision or policy believes it is flawed in some sense.
>
> *University of British Columbia Law Faculty Records, Re*:, 2000 CanLII 14416

[17] And further in *Worker's Compensation Board*, 2002 CanLII 42441 at paragraph 7, the Commissioner stated:

> 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. This section does not require a public body to correct opinions or any expressions of judgment based on facts and arrived at of applying knowledge, skill and experience [cites omitted].

[18] Having reviewed the Applicant's voluminous material, it is clear that his complaint at all times has been his disagreement with the conclusion that a medical diagnosis is not "personal information". He disagreed with WorkSafeBC's treating his complaint in that fashion. When the Office agreed with WorkSafeBC's approach, he reiterated his disagreement. His consistent complaint has been that his WorkSafeBC file contains an erroneous "diagnosis" that must be corrected. He also submits that both agencies fundamentally misconceived and/or altered the nature of his complaint.

[19] The Office decided that a medical diagnosis is not "personal information". The Applicant cannot in this adjudication challenge that decision. Even if I were to accept that WorkSafeBC's recording of a medical diagnosis was erroneous (I make no

finding on that), that would not transform the recorded information into personal information, subject to correction.

[20] One can understand that a person would be concerned if an agency making an important decision about benefits has incorrectly recorded a doctor's medical diagnosis in it's file about that person. The remedy, of course, is to challenge any decision made that relies on that error. That challenge however is separate and apart from the agency's duties under the *Act* for the retention or disclosure of personal information.

[21] The Applicant was initially denied a continuation of his benefits, he believed, based on an either an erroneous medical diagnosis, or an inaccurately recorded medical diagnosis (or both). He challenged the decision, and was successful in having that decision reversed (see paras. 12 and 13 of Preliminary Decision). That success, however, does not impact whether duties under the *Act* have been fulfilled.

[22] At some points in his voluminous material, it appears that the Applicant also complains about how the Office handled his complaints, characterizing some actions as not being in accordance with the principles of natural justice. However, I have no jurisdiction to review that type of complaint because it must be pursued by judicial review: *Adjudication of Jane Doe*, January 6, 2015 at paragraph 19.

[23] I also note that it appears that the Applicant understood that the avenue of judicial review was available to him, but he stated at one point it would be "burdensome and unfair" to require him to take that route.

[24] To the extent unfairness would arise because he would be limited to the record before the Commissioner, that is not necessarily true. Breaches of procedural fairness against a decision-maker may legitimately require adding information to the record since the complaint is about procedure, and not the actual decision made. In any event, having to follow the correct legal procedure is not burdensome nor unfair.

CONCLUSION

[25] In summary, nothing in the Applicant's request raises an issue that is properly the subject of an adjudication under the *Act*. That is because I find the Applicant's complaint is not about how the Office conducted itself as the head of a public body. His complaint has at all times been about the substance and result of the decisions made by the Office. He does not agree that a medical diagnosis is not personal information, or that an erroneously recorded medical diagnosis is not personal information. The only route available to him to challenge that basic conclusion was to seek judicial review, which he chose not to do.

[26] For all those reasons, his adjudication is dismissed. I grant an order declaring that the Office complied with its duties under section 28 of the *Act*.

"Sharma J."