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**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 189-1997  
September 12, 1997**

**INQUIRY RE: A decision by the Ministry for Children and Families to annotate a record under section 89(1) of the *Child, Family and Community Service Act* rather than to correct it**

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**1. Description of the review**

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on July 16, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act*. This inquiry arose out of a request for review of a decision by the Ministry for Children and Families (the Ministry) to annotate a record rather than correct it by removing information. Section 89(1) of the *Child, Family and Community Service Act* (CFCSA) establishes the right to request a review of a decision of a Director not to correct a record.

**2. Documentation of the inquiry process**

On February 14, 1997 the applicant submitted a request for correction of personal information to the Ministry. The information to be corrected is one line of information referring to the applicant contained within another individual's file. On February 27, 1997 the Ministry responded to the applicant advising that, in accordance with section 29(1) of the *Freedom of Information and Protection of Privacy Act*, the information provided by the applicant would be added to the record and notification of this annotation would be provided to all relevant parties.

On March 26, 1997 the applicant's representative wrote to my Office to request a review of the Ministry's decision. The time frame for review was extended from July 9, 1997 to July 16, 1997 with the consent of all the parties. On June 23, 1997 the applicant decided to proceed to an inquiry; the Notice of Inquiry was issued on June 24, 1997.

The Ministry processed the applicant's request for correction of personal information under section 29 of the *Freedom of Information and Protection of Privacy Act*. On July 4, 1997 the Ministry notified my Office that the appropriate section was section 89(1) of the *Child, Family and Community Service Act*. The notice to my Office also stated that the Director, as required by the CFCSA, made the decision to annotate the record on the basis of records provided to the Ministry by the applicant.

### **3. Issue under review and the burden of proof**

The issue under review is the decision by the Director to annotate the record in dispute rather than to correct it as requested by the applicant. The relevant portions of the *Child, Family and Community Service Act* are:

#### ***Right of access and right to consent to disclosure***

76(1) A person has the right

- (a) to be given access to a record containing information about the person, and

....

- (5) A person who is given access to a record under this section has the following rights:

...

- (b) to request that the record be corrected.

#### ***Accuracy, protection and retention of information***

80 Sections 28, 30 and 31 of the *Freedom of Information and Protection of Privacy Act* apply to a director.

#### ***Review by Information and Privacy Commissioner***

89(1) A person who requests access to a record or correction of a record may ask the Information and Privacy Commissioner to review any decision, act or omission of a director that relates to the request.

...

- (3) To ask for a review, a written request must be delivered to the Information and Privacy Commissioner.

...

- (5) Sections 44 to 49, 54 to 57, 58(1), (2), and (3)(d), and 59 of the *Freedom of Information and Protection of Privacy Act* apply in respect of a review requested under this section except that a reference to a public body is to be read as a reference to a director.

Section 89(5) of the CFCSA incorporates section 57 of the *Freedom of Information and Protection of Privacy Act* for the purposes of establishing the burden of proof. Section 57 of the Act is silent with respect to a request for review about a request for correction of personal information. I decided in Order No. 124-1996, September 12, 1996, that the burden of proof is on the public body, in this case the Ministry, in such circumstances. The Ministry has accepted that it bears the burden of proof in the present inquiry. (Submission of the Ministry, paragraph 3.02)

#### **4. The record in dispute**

The record in dispute is one sentence in a note of a telephone report made on May 14, 1996 concerning an accident which occurred in 1963.

#### **5. The applicant's case**

The applicant states, through her daughter as her representative, that she objects to a "false statement" in a written record that alleges that she was responsible for the death of her own young child in a driving accident in 1963. This report alleges that she was responsible for the death by running over her child while drunk. The applicant's daughter states: "My mother was not the driver of the vehicle nor was she drunk. It was an accident, no accusations made, no blame." The applicant is "appalled that a statement like this can be written in a file with no attempt to check that indeed it is true."

The applicant objects to the fact that an annotation to this report appears to be the only possible solution in this case:

... someone can bring up a situation of so long ago and its etched in stone to remain forever (not even verified). As to where this most devastating accusation came from, we will never know, because this person is protected. All this adds up to a very unfair system in my eyes. Please don't insult me or my family any further.

...

I feel that as well as this statement being removed from the file that at least my mother and father deserve an apology. (Submission of the Applicant, p. 2)

#### **6. The Ministry for Children and Families' case**

Under section 89(1) of the CFCSA, a person who requests the correction of a record may ask my Office to review any decision, act, or omission of a Director that relates to the request. (Submission of the Ministry, paragraph 1.01) The right to request a correction of such a record is governed by section 76(5)(b) of the CFCSA and not section 29 of the *Freedom of Information and Protection of Privacy Act*. (Submission of the Ministry, paragraph 1.05) Again according to the Ministry, my remedial jurisdiction under section 89(5) of the CFCSA is to "confirm a decision not to correct personal

information or specify how personal information is to be corrected.” (Submission of the Ministry, paragraph 1.05)

The District Supervisor of the particular Child, Family and Community Service District Office made the decision in this case not to delete the reported information but rather to annotate the record. (Submission of the Ministry, paragraph 1.08)

The record in dispute formed part of a complaint made by an anonymous caller to an intake social worker in the District Office on May 14, 1996. Social workers are available twenty-four hours a day to receive complaints related to child protection. (Submission of the Ministry, paragraph 1.04)

The Ministry submits that under section 76(5)(b) of the CFCSA, a person has the right to request correction of his or her personal information, but there is no requirement that the correction be made. Although the Director is not required by statute to annotate, as is required under section 29(2)(b) of the *Freedom of Information and Protection of Privacy Act*, he has chosen to do so in this case. (Submission of the Applicant, paragraph 4.01) According to the Ministry:

The Director has refused to correct the Reported Information by deleting the Reported Information because it reflects an accurate record of what a caller reported. The Director does not take the position that the Reported Information reflects the truth. The Reported Information, however, was accurately recorded. (Submission of the Ministry, paragraph 4.02)

## **7. Discussion**

This episode of a false report is obviously of great concern to the applicant and her family. The applicant has even gone so far as to publish the contested excerpt in her local newspaper in the form of a letter to the editor published earlier this year. The applicant’s submission in this inquiry also contains a number of personal testimonials about her and her family from friends and acquaintances.

The circumstances of this inquiry are thus unfortunate. For whatever reason, a family accesses its Ministry for Children and Families records and finds one sentence very upsetting, because it reminds them of a tragedy in the history of the family. The Ministry, for its part, takes a position of principle to the effect that reports of child protection must be recorded as received, because the “steps taken by the Public Body to protect children come under heavy scrutiny.” (Submission of the Ministry, paragraph 4.02) Residents of the province are well aware of this fact in the second half of the 1990s.

The Director recognizes “that the disclosure of this information to [the applicant’s daughter] and the subsequent disclosure by [the applicant’s daughter] to her family and friends has understandably caused a great amount of grief for the Applicant and her

family.” (Reply Submission of the Ministry, paragraph 1) There are assertions in this particular case that the report was false. The applicant has even offered to submit a signed and notarized statement from the person responsible for the original accidental death. (Submission of the Applicant, p. 1) The Ministry has also offered to place a statement from the “gentleman responsible” on the file in dispute. (Reply Submission of the Ministry, paragraph 3)

I fully agree that the Ministry “needs to record all information provided by a caller and then assess this information to determine if further action is needed.” (Submission of the Ministry, paragraph 4.04) If someone later makes a plausible argument that the original report was false, especially in a non-trivial matter, then common sense dictates a practical solution, such as the one adopted by the Ministry in this case. This approach is also in accordance with the decision of Inquiry Officer Holly Big Canoe in Ontario Order M-440, January 6, 1995. (Submission of the Ministry, paragraph 4.03)

The Ministry submits that the “fact that a caller makes a particular allegation to a social worker cannot be corrected or deleted.” (Submission of the Ministry, paragraph 4.05) In principle, that is true and especially relevant to such reports that have any possible relevance to ongoing child protection issues. The Director cannot correct an accurate report of a telephone conversation regardless of whether or not there was any substance to the allegation made in that conversation. Although the applicant and her family wish to remove a record that is upsetting to them, the determination on an appropriate course of action must lie with child protection officials in the Ministry, subject to my review.

I find that the Ministry has met its burden of proof in this case to establish that the record should only be annotated because of its relevance to child protection issues.

## **8. Order**

I find that the Director has properly exercised his discretion in response to a request made under section 76(5)(b) of the *Child, Family and Community Service Act*. Under section 89(5) of the *Child, Family and Community Service Act*, I have the authority to confirm a decision not to correct personal information under section 58(3)(d) of the *Freedom of Information and Protection of Privacy Act*. I, therefore, confirm the decision of the Director of the Ministry for Children and Families not to correct personal information as requested by the applicant.

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David H. Flaherty  
Commissioner

September 12, 1997