



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 02-05

ST PAUL'S HOSPITAL

David Loukidelis, Information and Privacy Commissioner
January 31, 2002

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Summary: The applicants requested correction of their son's medical records and destruction of a medical report about him. The Hospital agreed to correct two factual errors and attached correction correspondence to the son's medical records, but would not destroy the medical report. The Hospital acted appropriately in annotating the records with the correction correspondence and in refusing to destroy the medical report.

Key Words: correction – annotation – accuracy – error.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 29; Hospital Act Regulation, B.C. Reg. 121/97, s. 14(1).

Authorities Considered: B.C.: Order 01-23, [2001] B.C.I.P.C.D. No. 24.

1.0 INTRODUCTION

[1] The applicants sent correspondence in early January 2001 to the public body in this case, St Paul's Hospital ("Hospital"), requesting that it correct a number of items in its files regarding their son. The applicants supplied a number of supporting documents with their correction request. In early February, the Hospital replied by informing the applicants that it had attached the material to their son's medical file.

[2] The applicants requested a review of this decision in early March and asked that the Hospital destroy a particular medical report. This Officer's mediation efforts led to correction of two factual errors in the Hospital's patient information database. The issues were otherwise not resolved, in that the Hospital would not make any other corrections and refused to destroy the medical report. I therefore held an inquiry under s. 56 of the Act regarding that decision.

[3] The Hospital has not raised any issue about the applicants' right to exercise their son's rights under Part 3 of the Act, and I have proceeded – in light of evidence of the son's age – on the basis that they have that right under s. 3(a) of the Freedom of Information and Protection of Privacy Regulation, B.C. Reg. 323/93.

2.0 ISSUES

[4] The only issue here is whether the Hospital applied s. 29 properly in refusing to correct portions of its records and in refusing to destroy the medical report. Previous orders have established that the burden of proof in s. 29 cases is on the public body.

3.0 DISCUSSION

[5] **3.1 Applicants' Requests for Late Submission and Oral Inquiry** – The applicants failed to make any submissions in this inquiry when required by the Notice of Written Inquiry that this Office issued to the parties. After the close of submissions, as stipulated in the Notice of Written Inquiry, the applicants telephoned and then wrote expressing concern about the Hospital's submission and asking that they be allowed to make written submissions and that I conduct an oral inquiry in this matter.

[6] The Notice of Written Inquiry that this Office sent to the parties says that “[w]here a party does not make an initial submission, that party will not be permitted to submit a reply except under extenuating circumstances.” The Notice of Written Inquiry also confirms that this would be a written, not oral, inquiry.

[7] The applicants had an ample opportunity to make written submissions in the inquiry. They offered no extenuating circumstances to justify acceptance of a late written submission. Nor did they advance any circumstances to support their late request for an oral inquiry. I decline to permit the applicants to make late written submissions in this case. Among other things, the facts regarding the correction request are clear and the Hospital has the burden of proof. I also see no basis to conclude that an oral inquiry should be held. The issues in this case are straightforward and easily dealt with through written submissions.

[8] Although the applicants have not made a submission here, I have, in reaching my decision, considered their lengthy correspondence dated March 2, 2001 and April 4, 2001 – and the attachments to their correspondence – setting out their request for review and later clarification.

[9] **3.2 Nature of Requested Corrections** – The applicants' initial correction correspondence requested, in a general way, that the Hospital make corrections to their son's records and asked the Hospital to attach the applicants' correspondence and supporting documents to their son's file. The correspondence included a chronology of events in the son's medical history and the submitted supporting documents included hospital records, doctors' letters and prescriptions. The Hospital attached these items to the son's file as requested.

[10] During mediation, the applicants provided details of the corrections they wanted to attach to a patient information form respecting their son. These included correcting two dates on which certain things had happened, amending certain headings on the form and amending, adding to or replacing entries on the form with wording which they provided. They also again asked that the Hospital destroy a particular report. The Hospital agreed during mediation to correct the two dates and to annotate the file with still other correspondence from the applicants. As I noted above, however, it refused to make other corrections and refused to destroy the medical report.

[11] I discussed the standards for dealing with correction requests in Order 01-23, [2001] B.C.I.P.C.D. No. 24. I will not repeat that discussion. I have taken the same approach here.

[12] Section 29 of the Act reads as follows:

Right to request correction of personal information

29 (1) An applicant who believes there is an error or omission in his or her 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) If no correction is made in response to a request under subsection (1), the head of the public body must annotate the information with the correction that was requested but not made.

(3) On correcting or annotating personal information under this section, the head of the public body must 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 under subsection (3) of a correction or annotation of personal information, a public body must make the correction or annotation on any record of that information in its custody or under its control.

[13] The Hospital argues that some of the requested corrections were not corrections of personal information, but changes to a Hospital form. Further, other requested corrections to information on the form were not relevant to the particular procedure the son underwent. With respect to the medical report the applicants requested be destroyed, the Hospital says the applicants have not provided any reasons for destroying the report. In any case, the Hospital argues that, under s. 14(1) of the Hospital Act Regulation, B.C. Reg. 121/97, it is required to retain such records for 10 years from the date of discharge of the patient. It says, further, that this report may be important in the future for the medical care of the applicants' son.

[14] The Hospital has also provided me with comprehensive affidavit evidence from Hospital staff. The evidence details the steps staff took in dealing with the correction request, why it was considered not appropriate to destroy the medical report, how they determined that it was appropriate to annotate the file instead of correcting it; and how

the original and annotated records have been linked in the Hospital's files. I do not propose to reproduce this evidence in detail here, but have carefully considered it and find the Hospital's response to the applicants' correction requests complies with s. 29 in light of the standards I outlined in Order 01-23. I also consider the Hospital's actions here were entirely reasonable, as the following discussion explains.

[15] Section 29 allows an applicant to request correction of "personal information". It does not allow an applicant to ask that a public body change a form that it uses to record personal information. Nor is the Hospital under any duty, in this case, to revise the entries on the form by adding the wording as submitted by the applicants. The Hospital staff member who filled in the form used his professional judgement to record information that he needed to carry out his duties and it was appropriate, in my view, not to add the extraneous information the applicants requested.

[16] It was also entirely proper for the Hospital to refuse to destroy the medical report. Section 29 speaks to requests to correct personal information. The applicants provided no reason to justify destruction of this report and the Hospital was well within its rights to refuse to destroy it, especially when it might be used in the future for the son's health care.

[17] For reasons similar to those in Order 01-23, I find that the Hospital acted properly in annotating the records by attaching the applicants' correction correspondence to the appropriate record, in linking the corrected and original records and in refusing to destroy the medical report.

4.0 CONCLUSION

[18] Given my findings on this issue, no order under s. 58 is necessary.

January 31, 2002

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia