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

Order 01-50

MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

David Loukidelis, Information and Privacy Commissioner
November 27, 2001

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Summary: Applicant sought correction of information provided by police and recorded in Ministry files. Applicant provided some documentary evidence to back up his correction request. Ministry annotated file. No basis for intervention in Ministry's refusal to make correction. Commissioner finds Ministry's annotation of files, and not "records", did not meet s. 23 and recommends annotation of records.

Key Words: error – accuracy – correction – annotation.

Statutes Considered: *Child, Family and Community Services Act*, ss. 89(1) & (5); Child, Family and Community Services Regulation, B.C. Reg. 527/95, s. 23.

Authorities Considered: B.C.: Order No. 126-1996, [1996] B.C.I.P.C.D. No. 53; Order 01-23, [2001] B.C.I.P.C.D. No. 24. **Ontario:** Order P-382, [1992] O.I.P.C.D. No. 188.

1.0 INTRODUCTION

[1] In August of last year, the applicant sent a 17-page handwritten letter to the public body – at the time called the Ministry for Children and Families and now the Ministry of Children and Family Development ("Ministry") – requesting the correction of personal information in its records. He referred to three sets of records, which he said were attached to his correction request: a Ministry letter of October 20, 1999; nine pages of exhibits from a municipal police department listing 93 items seized from the applicant's home in mid-April 1998; and a Ministry investigation report of April 21, 1998.

[2] His correction request said that the letter of October 20, 1999 – which said the police told the Ministry that, among other things, they had found "one hundred clothing articles of young girls" at the applicant's home – was incorrect. He also says the Ministry's investigation report is incorrect, in that it says the police told the Ministry that they seized "one hundred articles of little girls' clothing". The police list set out 93 exhibits seized, he said. In addition, he said, not all items seized were young girls' clothing. His correction request also listed the seized items, each of which he said was either not an article of "young girls clothing" or not an article of "little girls clothing".

[3] He did not explicitly state what he wanted corrected, but it appears he was asking the Ministry to correct the letter of October 20, 1999 and the Ministry investigation report to accurately reflect the number and description of items seized. He also appeared to ask the Ministry, having made the correction, to revise its decision with respect to certain child protection matters that related to him. He said he had been in possession of a large number of women's clothing, as he was about to open a boutique. He also said he was also enclosing photos of another boutique that he currently operated.

[4] The Ministry replied, on September 7, 2000, by informing the applicant that its child protection decision had been based on information provided by the RCMP. The Ministry also said it was satisfied that the information in its file accurately reflected the information provided by the RCMP and that the information justified its decision. It said that it would not change its decision or correct anything in its files.

[5] The applicant then wrote to this Office and asked for a review of the Ministry's refusal to "even consider correction of records". Mediation was not successful in resolving the matter, so I held an inquiry under s. 89 of the *Child, Family and Community Services Act* ("CFCSA"), which has a separate scheme for correction requests involving records of a "Ministry" under the CFCSA. Section 89 of the CFCSA says that, among others, ss. 54-57 and 58(1), (2) (3)(d), (4) and (5) of the *Freedom of Information and Protection of Privacy Act* ("Act") apply to an inquiry under s. 89 of the CFCSA. Further, s. 23 of the Child, Family and Community Services Regulation, B.C. Reg. 527/95, ("CFCS Regulation"), made under the CFCSA, is relevant. That section reads as follows:

> 23(1) If an applicant who is given access to a record in the custody or control of a Ministry requests that the record be corrected, the Ministry must
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> (a) review the request, and
> (b) determine whether there is an error in the record or whether information has been omitted.
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> (2) On complying with subsection (1), the Ministry may correct the record by doing either or both of the following:
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> (a) removing any error;
> (b) adding any information that is new or has not previously been included in the record.

> (3) If no correction is made in response to the applicant's request, the Ministry must annotate the record with the correction that was requested but not made.

[6] I discussed my jurisdiction to deal with such matters at paras. 5 and 6 of Order 01-23, [2001] B.C.I.P.C.D. No. 24, and will not repeat that discussion here.

2.0 ISSUE

[7] The only issue in this case concerns the application of s. 23 of the CFCS Regulation to the applicant's request for correction. Section 57 of the Act establishes the burden of proof on the parties in an inquiry and it applies to an inquiry under the CFCSA. Section 57 is, however, silent on the burden of proof regarding requests for correction of personal information. Consistent with Order No. 126-1996, [1996] B.C.I.P.C.D. No. 53, I consider that the burden of proof lies with the Ministry on this issue.

[8] I note here that the Ministry argues, at para. 3.02 of its initial submission, that the applicant should have the burden of proof, in that he should be required to establish that there is an error or omission in the information. The Ministry derives this argument from Ontario Order P-382, [1992] O.I.P.C.D. No. 188, and says it would be unfair for it to have the burden of proof in all correction inquiries. It does not explain why this would be unfair and, in any case, I see no reason to depart from previous British Columbia orders on this point. I decline to shift the burden in this inquiry.

3.0 DISCUSSION

[9] **3.1 The Applicant's Evidence** – The Ministry provided me with a copy of the applicant's correction request as part of the Ministry's initial submission in this inquiry. As it did not include the applicant's attachments, I later requested copies of these items. The Ministry provided them to me, saying that it appeared only the investigation report was attached to the applicant's correction request. The investigation report appeared in the Ministry's district file immediately after the correction request. The Ministry's staff had, however, found the other two items elsewhere in the same file. In addition, the Ministry said, the list of exhibits seized was only eight pages long, not nine, as stated in the applicant's correction request. I note that the list of exhibits itself runs from page "1 of 10" to page "8 of 10", listing a total of approximately 80 items. It seems, therefore, that the Ministry's copy of the list is, for some reason, incomplete.

[10] **3.2 Correction of Factual Information** – I discussed the standards for dealing with correction requests at paras. 13 and 14 of Order 01-23 and will not repeat them here.

[11] In this case, the applicant's initial and reply submissions essentially consist of criticism of the Ministry's decisions and actions regarding him and others, as well as criticism of the significance the Ministry placed both on information about the items seized from the applicant's home and on other information provided by the police. He also says the information provided by the police to the Ministry was wrong, although he

provides little to support this contention. He also says he has tried to draw the Ministry's attention to the allegedly "false information" provided to it by the police.

[12] The Ministry interpreted the applicant's correction request as applying to information that appeared in the October 20, 1999 letter and in the Ministry's own investigation report. The Ministry says the applicant also objected to this same information being repeated in the Ministry's response of September 7, 2000. The Ministry correctly points out that the September 7, 2000 letter is outside the scope of this inquiry, as it post-dates the applicant's correction request. (The Ministry says, however, that it annotated this letter with the correction request.)

[13] The Ministry points out that, as is the case with s. 29 of the Act, s. 23 of the CFCS Regulation does not *require* a public body to correct personal information. Rather, an individual can *request* correction. The Ministry admits it did not initially deal with the applicant's correction request. It does not explain its failure to do so. It argues, however that, despite its refusal to correct the records, it has since annotated the files containing the records in dispute. (I note that the annotations the Ministry provided are dated March 29, 2001, the date of the Ministry's initial submission to this inquiry.) The Ministry contends, therefore, that it has complied with s. 23 of the CFCS Regulation (paras. 1.04, 5.02 and 5.05, initial submission).

[14] Although the Ministry's September 7, 2000 response letter refers to the RCMP as having provided the information regarding the items seized from the applicant's home, the Ministry's submission in this inquiry explains that a municipal police department, not the RCMP, provided this information in 1998. With support from affidavit evidence of the Ministry worker who received and recorded the information, the Ministry says the worker confirmed that the "statement challenged by the Applicant is an accurate representation of what [the municipal police officer] advised her of." The worker also deposed that she would have child protection concerns in the applicant's case, regardless of the number of items of little girls' clothing found at his residence. The Ministry says it "refused to correct such information on the basis that it reflected an accurate record of what had been reported to a social worker by a police officer" (para. 5.10, initial submission; paras. 6-7, Robertson affidavit).

[15] The Ministry argues that, even if the information in its files is incorrect, this is not an appropriate case for me to order correction of records. This is because the Ministry has used the information in a way that affected the applicant in a particular matter and, for accountability reasons, it would not be appropriate to alter it or remove it from the files. Ministry staff must record all reports they receive to assess them for any further action and cannot normally assess the veracity of reports before recording them, the Ministry argues. The Ministry comes under heavy public scrutiny for its decisions, it goes on to say, and it "must be able to explain and defend any actions, if any, that were taken in response to such reports." The Ministry also cites a number of orders it says support its position (paras. 5.12-5.17, initial submission).

[16] Supported by affidavit evidence, the Ministry has described for me what Ministry staff did to annotate the two Ministry files that contain the records at issue. They have

apparently stapled to the inside left cover of each file an "Annotation to File" which "clearly states" the applicant's objections. Each statement refers to the applicant's request for correction, a copy of which is attached under the statement, and also refers to all records in the file that contain the disputed information, including the letter of October 1999 and the April 1998 investigation report. This means, the Ministry argues, at para. 5.20 of its initial submission, that

> … the annotation required by the *Child, Family and Community Services Act* has been made on all Ministry files containing the records at issue. That annotation and the Request for Correction have been placed in the front of each file and are as visible to someone looking at those files as the records challenged by the applicant.

[17] This case has some similarities to the situation addressed in Order 01-23. In that case, I said the following about this same Ministry's arguments about correction of factual information:

> Further, the Ministry's argument apparently assumes that a correction must be made by physically changing a record produced by someone else or by the Ministry, *i.e.*, by deleting or altering incorrect personal information in a way that impairs or destroys the integrity or accuracy of the record. Correction does not by definition require the physical alteration of an existing record. It is easy to conjure a number of ways in which the Ministry could correct an error or omission as contemplated by s. 23(2) of the CFCSA Regulation or under s. 29 of the Act. Handwritten corrections could, for example, be made on a copy of the original record, with a note being attached to the original to alert readers to the existence of the corrections on the copy. An attached note to the original could, alternatively, contain (or merely repeat) the actual corrections. Such approaches preserve the integrity of original records while ensuring that the incorrect personal information is actually corrected.
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> The Ministry also argues that it is not appropriate to correct information provided by others – such as telephone callers – where that information has been accurately recorded, even if the information so provided turns out not to be true. Nothing in s. 23 of the CFCSA Regulation supports this. In my view, consistent with what I have said about records prepared by third parties, the source of personal information found in records of a public body does not dictate whether s. 23 of the CFCSA Regulation (or s. 29 of the Act) is available. Public bodies are not omniscient. They routinely rely on outsiders for personal information about others. If a caller to the Ministry, for example, has provided personal information about someone else and the information turns out to be patently false, it cannot be correct that the right to request correction is not available because the public body is not the source of the information.
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> In this case, however, I am satisfied that the applicants failed to provide the Ministry with any basis on which the Ministry could decide whether the alleged errors were, in fact, errors. There is no basis on which I can or should interfere with the Ministry's refusal to correct.

[18] As I indicated in Order 01-23, an individual cannot expect a public body to correct information simply by asserting that it is incorrect. Neither s. 23 of the CFCS Regulation nor s. 29 of the Act requires a public body, faced only with a bald assertion of error, to expend resources to determine if there is an error. On the other hand, if an

individual provides credible evidence of factual error in a record created by the public body, the public body should, generally speaking, make inquiries in order to test that evidence and determine, using reasonable efforts, if there is an error as alleged. If the public body determines there is an error, it should be corrected. The public body should engage in this process unless it would be unreasonable to expect it to do so.

[19] Where disputed information has been collected or created by another public body or organization, the evidence of factual error provided by an applicant will have to be clear and persuasive, not merely credible, before the public body should test the evidence, as contemplated by the preceding paragraph. Moreover, in such cases there will be circumstances that make it reasonable for the public body to annotate, and not correct, without making inquiries. One such case may be where the applicant has not first attempted to have the allegedly incorrect personal information corrected by the public body or other organization that collected or created the information in the first place. Another case is where the disputed personal information was provided from a source outside British Columbia and it would be unreasonable to expect the public body to make inquiries.

[20] In this case, the applicant's correction request asserted, in relation to each item on the list of 93 items seized, that "This is not an article of young girls' clothing!" (original emphasis) or "This is not an article of little girls' clothing". Beyond this, however, the only support the applicant gave for his correction request was his statement that, at the time the police seized the items, he had a large amount of women's clothing on consignment at a consignment store and that he was then "liquidating" a vintage clothing store. The applicant also said, in his correction request and in this inquiry, that the list includes a .22 calibre rifle and some photographs. Both of these pieces of information undercut the information given to the Ministry by the police that 93 items of young girls' clothing were seized from the applicant.

[21] This is not, however, a case in which information created by the Ministry's own employees is alleged to be incorrect. The Ministry collected personal information from another source and, I accept, accurately recorded the information provided to it. I consider that it would be unreasonable to expect the Ministry to inquire as to the accuracy of the information provided to it by the police, or to require it to correct the information, based on the applicant's statements and supporting information as to the true nature of the items. Among other things, I note that the applicant confined himself largely to saying the various clothing items are not girls' clothing, without offering arm's-length evidence to support that characterization. The Ministry's decision to annotate, and not correct, was reasonable in the circumstances.

[22] I will note here, in passing, that the applicant's real dispute, it seems to me, is with the Ministry's child protection decision. It is apparent from the material before me that, even if the Ministry had corrected the personal information as requested by the applicant, it would likely not have revisited its child protection decision. The Act's processes are certainly not designed to achieve that result indirectly.

[23] As was the case in Order 01-23, the Ministry annotated the file, and not the relevant records themselves, even though s. 23 of the CFCS Regulation provides that the Ministry must annotate the record. Although the Ministry's annotation may be obvious to anyone reading the file – as long as the annotation remains stapled to all file covers – it is possible that the annotations could later be removed and destroyed. Further, in cases where a file occupies more than one folder or volume, a file annotation may not be apparent to users of the record itself. For these reasons alone, it is important that public bodies annotate records, not files. In my view, the Ministry has not complied with s. 23 in annotating the file and not the record itself.

4.0 CONCLUSION

[24] For the reasons given above, no order is called for respecting the applicant's requested factual corrections. The commissioner's remedial powers under s. 89(5) of the CFCSA include the power given under s. 58(3)(d) of the Act, but not s. 58(3)(a). This means I cannot require the Ministry to perform its duty, under s. 23 of the CFCS Regulation, to annotate the "record" and not the file. I can only strongly recommend that the Ministry annotate the disputed record itself, in light of the suggestions in Order 01-23 as to how this can be done.

November 27, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia