OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
British Columbia

Order 03-38

MINISTRY OF HUMAN RESOURCES

James Burrows, Adjudicator
October 23, 2003

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Summary: The applicant requested the removal of computer entries which were incorrectly placed on his file. The Ministry annotated the entries but did not remove them. Under ss. 29 and 58(3)(d), the Ministry is required to delete the entries.

Key Words: accuracy – correction of personal information – annotation of personal information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 29.

Authorities Considered: B.C.: Order 00-51, [2000] B.C.I.P.C.D. No. 55; Order 01-23, [2001] B.C.I.P.C.D. No. 24; **Ont.**: Order PO-1881-I, [2001] O.I.P.C. No. 55.

1.0 INTRODUCTION

[1] On July 10, 2002, the applicant wrote to the Ministry of Human Resources ("Ministry") and requested that the Ministry remove three computer entries from his disability file, which he believed the Ministry had entered in error. On January 15, 2003, the Ministry responded by stating that it had annotated the computer entries. The Ministry deleted a portion of each of the entries and added a comment to the remainder. It also added a fourth entry to explain that the comments on the first entries were placed on the wrong file.

[2] On January 31, 2003, the applicant requested a review of the Ministry's decision to annotate rather than remove the entries. Mediation was unsuccessful and a written inquiry was held on July 24, 2003.

[3] I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

2.0 ISSUE

[4] The only issue in this inquiry is whether the Ministry acted appropriately under s. 29 of the Act in declining to remove the computer entries as requested by the applicant. Consistent with previous orders, the Ministry has the burden of proving that it has complied with s. 29.

3.0 DISCUSSION

[5] **3.1 Background** – The issue before me is whether the actions taken by the Ministry to annotate the three computer entries mistakenly placed into the applicant's electronic client file were sufficient to fulfill its duty under s. 29 of the Act. That section 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.

[6] In his original request, the applicant states that he became aware of the inaccurate entries in his computer file when he received records that he had requested from the Ministry. He asked the Ministry to remove the incorrect entries from the file.

[7] In its submission, the Ministry acknowledges that the computer entries were placed on the applicant's computer file in error. It also agrees with the view of the applicant "that the Entries did not relate to [the applicant] but presumably related to some other Public Body client" (Ministry's initial submission, p. 4). Further, the Ministry has agreed the entries should be corrected. However, it argues that by removing a portion of the original entries and by placing an additional entry following the three computer entries as an annotation to the file, it has fulfilled its duty under s. 29 of the Act. The

question that remains is whether the actions taken by the Ministry in correcting the entries were sufficient to fulfill its duty under s. 29.

[8] **3.2 Correction or Annotation** – The Ministry argues, at p. 6 of its initial submission, that the term "correction" as used in s. 29 of the Act means the following:

> 'Correction' is the term used to describe steps taken by a public body, when it agrees with an applicant's assertions, to reflect that agreement with those assertions.

[9] It says the following about the term "annotation":

> 'Annotation' is the term used to describe steps taken by a public body, when it does not necessarily agree with an applicant's assertions, to reflect that the applicant made those assertions.

[10] In its initial submission, the Ministry has also referred to the Policy and Procedures Manual ("Manual") published by the Corporate Privacy and Information Access Branch of the Ministry of Management Services. The Manual's discussion of s. 29 states the following:

> To '**correct' (also correcting and correction)** the information means to change or clearly mark the original information. A public body may sometimes 'correct' a record by physically changing the record to destroy the original, incorrect, information. This type of correction is appropriate only where the public body has not used or disclosed the incorrect information in any way that affects the individual the information is about. More often, a public body corrects a record by clearly marking the original information as incorrect and attaching the correct information to the record.

This Manual is not binding on me.

[11] The Ministry has stated that it "did not disclose the Entries to anyone other than its staff who accessed the Record as appropriate to their jobs" (Ministry's initial submission, p. 8). There is no indication here that the Ministry made any decision based on the incorrect information, so there is no apparent need to retain the errors on file. Finally, if the Ministry has concerns about a loss of information if all three entries are deleted, it has provided me with no evidence of those concerns. There is no support in the evidence before me that the Ministry needs to preserve the original errors on the basis that, for example, other portions of the three entries were accurate or were needed to carry out a function or activity. Rather, the material supports the conclusion that the complete entries can be removed without causing any loss of information about the client or otherwise negatively affecting the Ministry's information holdings or its operational needs.

[12] The Ministry argues that its partial deletion of the records and later annotation is sufficient to show the error that was made. I disagree. The computer entries related to another person and were entered into the applicant's client file by mistake.

[13] It seems sensible to me that, if a paper record about one individual was found mis-filed in another individual's file, its discovery would result in it being moved to the correct file. No one would leave the record in the file and simply add an additional record which noted that the original record had been incorrectly filed and its contents were not about the individual in whose file the record was found. It is far from clear why the Ministry resists this approach in the case of the computerized records at hand.

[14] The Commissioner has examined the duty which s. 29 imposes on a public body in Order 00-51, [2000] B.C.I.P.C.D. No. 55, at p. 17-18:

> … I agree with UBC's view that, although s. 29, strictly speaking, imposes no legal duty to correct an error or omission in personal information when a correction is requested, the correction "should", in UBC's words, be made when the error or omission is brought to the public body's attention through a s. 29(1) request. Again, a public body's decisions often have significant financial and other consequences for any citizen who is subject to its authority. The public interest in good government and in sound decision-making suggests that, wherever 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 obligation to make every reasonable effort to ensure that personal information that will be used in decisions is accurate and complete.

[15] In Order 01-23, [2001] B.C.I.P.C.D. No. 24, the Commissioner noted that, under s. 58(3)(d) of the Act, he has the authority to compel the correction of personal information:

> [14] In Order 00-51, [2000] B.C.I.P.C.D. No. 55, I cited Order No. 124-1996 with approval. It is true that s. 29 does not – as I noted in Order 00-51 – say that a public body "must" make a requested correction. That would be absurd. It is equally true, however, that s. 58(3)(d) of the Act provides that the commissioner may "confirm a decision not to correct personal information or specify how personal information is to be corrected". If a public body declines to correct an actual error or omission in someone's personal information, the commissioner may order that error or omission to be corrected …

[16] As I read Order 01-23, the Commissioner's view of his role in overseeing public body compliance with s. 29 now involves, in light of s. 58(3)(d), a recognition of the authority to specify correction where appropriate.

[17] Section 47 of Ontario's *Freedom of Information and Protection of Privacy Act* says that an individual may "request" correction of incorrect personal information. In Order PO-1881-I, [2001] O.I.P.C. No. 55, Ontario's Information and Privacy Commissioner, Ann Cavoukian, ordered the Ministry of Health & Long-Term Care to correct certain untrue health information in files of the Ontario Health Insurance Plan. At para. 60, she noted that in many, if not all, cases, annotation of the correction requested, but not made, may suffice. She also noted that both the Ministry and the applicant agreed that, because the information was used for accounting purposes, it was not appropriate to

correct it by deleting inaccurate claim entries. She instead ordered the Ministry to delete the fraudulent and inaccurate entries and store them in an entirely separate database.

[18] The Ministry has not persuaded me that its refusal to correct the information that it admits is simply dead wrong should be respected. In the circumstances, it is appropriate to order the Ministry to correct the error in the applicant's personal information.

4.0 CONCLUSION

[19] For the reasons given above, under s. 58(3) of the Act, I specify that the Ministry must correct the applicant's personal information by deleting the errors in that information that the Ministry has conceded exist.

October 23, 2003

ORIGINAL SIGNED BY

James Burrows
Adjudicator