



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

Order F05-19

MINISTRY OF EMPLOYMENT AND INCOME ASSISTANCE

Celia Francis, Adjudicator

June 30, 2005

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Summary: Applicant requested correction of personal information in two forms by making additions and changes or by removal. Ministry acted appropriately in not correcting personal information in forms, in not removing one form and in annotating files with correction requests. Ministry also complied with its s. 6(1) duty in searching for responsive records.

Key Words: correction of personal information – annotation – duty to assist – respond openly, accurately and completely.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 6(1), 29.

Authorities Considered: B.C.: Order 00-15, [2000] B.C.I.P.C.D. No. 18; Order 00-51, [2000] B.C.I.P.C.D. No. 55; Order 01-23, [2001] B.C.I.P.C.D. No. 24; Order 01-50, [2001] B.C.I.P.C.D. No. 53; Order 02-05, [2002] B.C.I.P.C.D. No. 5; Order 02-16, [2002] B.C.I.P.C.D. No. 16.

1.0 INTRODUCTION

[1] The applicant in this case is a client of the Ministry of Employment and Income Assistance (until recently, the Ministry of Human Resources) (“Ministry”) who, from 1992 to 2003, received benefits, including handicapped or disability benefits, from the Ministry. As a result of legislative changes in 2002, the applicant was asked to complete a Designation Review form, which he declined to do. The Ministry considered the information it had, determined the applicant did not meet the new eligibility requirements and, in May 2003, rescinded his Persons with Disabilities (PWD) designation (which meant a drop in his benefits).

[2] The applicant requested a reconsideration of the Ministry's decision on his PWD designation. The Ministry concluded in July 2003 that the applicant was not eligible for the Persons with Disabilities designation. The applicant appealed this decision to the Employment and Assistance Appeal Tribunal which, in late 2003, rejected his appeal.

[3] The applicant included with his request for reconsideration and appeal correspondence requests for correction of information and for access to specific records in the Ministry's files, to which the Ministry responded in letters of August and September 2003. The Ministry informed the applicant that it had annotated the applicant's files in response to his correction requests and had provided copies of the correction requests to other offices, so that their files could be annotated.

[4] With respect to the applicant's request to correct a Persons with Disabilities (PWD) Review Data Sheet dated July 27, 2002, the Ministry told the applicant that the record in question was a tool for summarizing information from the application form and databases at the Health Assistance Branch and was not intended to "mirror the complete application/database information". Correction of the review sheet was therefore not appropriate, the Ministry said. It also said changes to the review sheet would not change or affect the Ministry's decision.

[5] The applicant also requested correction of a second version of the applicant's 1991 application for handicapped benefits. He did so initially in the form of an unspecified correction and later (apparently in correspondence of August 2003 which I do not appear to have before me) by removal of the form from his files. The Ministry said it would not remove the form as "the life of a record is governed by The Document Disposal Act".

[6] Respecting the applicant's request for his "MIS [Management Information System] & CAT [Care Analysis and Tracking System Report] data as it would have appeared prior to July 2002", the Ministry replied by providing a copy of records it believed responded to this request, severing some information under s. 22 of the Act.

[7] The applicant requested a review of the Ministry's responses to his correction requests and also complained that the Ministry had failed to provide him with the CAT and MIS records he had requested. The applicant did not request a review of the severing of information under s. 22 of the Act and this decision is not in issue here.

[8] Because the matter did not settle in mediation, a written inquiry was held under Part 5 of the Act. 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

[9] The notice for this inquiry states that the issues before me in this case are:

1. Did the Ministry respond appropriately under s. 29 of the Act in declining to make the requested corrections and annotating the affected records with the requested corrections?
2. Did the Ministry fulfil its duty under s. 6(1) of the Act to make every reasonable effort to respond to the applicant openly, accurately and completely in terms of its search for responsive records?

3.0 DISCUSSION

[10] **3.1 Preliminary Matters** – In the months following the issuance of the notice for this inquiry, the submission deadlines were re-scheduled a number of times at the request of one party or the other. Both parties made initial submissions in January 2004. During the extended timeframe for submission of replies, a period of some months, the applicant verbally raised concerns about the accuracy of the issues listed in the notice for this inquiry and the portfolio officer's fact report, as opposed to those he said he had originally raised in his request for review. This Office sent a letter to the applicant asking that he submit his concerns in writing so that the Ministry might comment on them. The applicant initially said verbally that he would do so and later verbally said that he would not.

[11] The Office then wrote to the applicant and said that, since the applicant had declined to put his concerns in writing, the inquiry would proceed on the issues as set out in the December 2003 notice of inquiry and fact report. Only the Ministry submitted a reply in early August 2004. A few weeks after the close of the inquiry, the applicant wrote to the Office about the issues on which he said he had requested reviews and said that those described in the inquiry notice and fact report were inaccurate. He asked that the inquiry deal with the issues he said the Office had dropped and that the inquiry also consider a number of other issues he had raised in what he called his "affidavit" of September 12, 2003 to the Ministry.

[12] Parties to an inquiry prepare their submissions according to the issues set out in the notice and fact report. If a party wishes to raise discrepancies respecting inquiry issues, it should do so, in writing, as early as possible during the inquiry process, to allow the other party an opportunity to comment. In this way, the inquiry proceeds smoothly, in as timely a way as possible, and provides the parties with a final understanding of the issues they must deal with in the inquiry.

[13] The material before me shows that, during the extended timelines for replies in this inquiry, the applicant verbally raised issues respecting possible discrepancies in the issues he believed were in dispute in this inquiry. Although he had ample opportunity to clarify those issues in writing, he specifically declined to do so during the inquiry

process. The Ministry thus prepared its reply submissions based on the issues as described in the notice of inquiry and fact report. The applicant did not provide a reply submission to the inquiry and it was not until some weeks later that he attempted to add, not only issues which he said he had raised in his original requests for review, but also numerous other issues set out in his correspondence of September 12, 2003 to the Ministry. I note that the applicant made further requests in his initial submission of January 2004, to the effect that his disability designation in his MIS and CAT data be “corrected”.

[14] In the face of the applicant’s explicit refusal to clarify in writing the issues he believed should be the subject of this inquiry and then his various attempts to add, not only issues he said he had raised earlier, but still other issues, I have decided not to accede to his request that I consider any issues other than those set out in the notice of inquiry and fact report. Accordingly, I consider here: (1) the Ministry’s responses under s. 29 of the Act to the applicant’s requests for correction of a PWD Review sheet dated July 27, 2002 and a 1991 application for handicapped benefits and (2) the Ministry’s compliance with its duty under s. 6(1) in responding to the applicant’s request for MIS and CAT records.

[15] **3.2 Duty to Assist the applicant** – The Ministry’s efforts to search for records responsive to the applicant’s request relate to its compliance with its duty under s. 6(1) of the Act, which reads as follows:

Duty to assist applicants

- 6(1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

[16] The Information and Privacy Commissioner has considered s. 6(1) in many orders and has set out what he expects from public bodies in searching for records and in accounting for such searches (see, for example, Order 00-15¹). I will apply here, without repeating them, the principles from those orders.

[17] The applicant complains that the Ministry refused to give him the CAT and MIS records he requested. He says, among other things, that the Ministry did not give him the CAT record of July 2002 he requested. He also suggests that MIS records from 1997 to the present exist and that what he had received was “faulty” (pp. 1-3, initial submission). Despite this last comment, I note that the applicant’s request was for MIS records as of July 2002, not from 1997 to present.

[18] The Ministry says the Management Information System or “MIS” is a database of records with names, addresses and other confidential information on clients. It says that, to gain a “comprehensive overview of ministry involvement”, it ordered electronic information on the applicant regarding his “Personal File Involvements”, a file profile for

¹ Order 00-15, [2000] B.C.I.P.C.D. No. 18.

all his files, a prior contact report, a “GA history” and an electronic history from March 1991, previously released to the applicant in April 2003 (paras. 5.06-5.11, initial submission).

[19] The Ministry says that the purpose of the CATS (Care Analysis & Tracking System) is

5.09 ... to record, track, and report on medical supplements and assistance provided to eligible BC Employment and Assistance clients. It also tracks detailed information about clients with a disability designation, communications with applicants and health service providers, schedules follow-ups and records payments.

[20] The Ministry says it approached its systems personnel for assistance in producing the CAT and MIS records from July 2002 and was told that the data as it appeared at that time was the same as it would have appeared in July 2002, as “there were no STOP or START dates between July, 2002 and the present”. The Ministry says it has provided the applicant “with all historical copies of the MIS and the CAT”, it has pursued all reasonable avenues in its search and it has no reason to believe that there are any other records. The Ministry is of the view that it made reasonable efforts to search for the requested records and that it complied with its duty under s. 6(1) (paras. 5.14-5.17, initial submission; paras. 19-37, Hughes affidavit).

[21] Although I have not reproduced in detail here the parties’ submissions on this issue, I have considered them carefully. I accept the Ministry’s explanation of its search efforts and conclude that the Ministry made reasonable efforts to search for and produce to the applicant copies of the requested MIS and CAT records as they would have appeared in July 2002. I find that the Ministry has complied with its duty under s. 6(1) to assist the applicant and to respond without delay to the applicant openly, accurately and completely. No order is therefore necessary respecting this issue.

[22] **3.3 Right to Request Correction of Personal Information** – Under s. 29 of the Act an applicant has the right to request the correction of errors or omissions in the applicant’s personal information. Section 29 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.

[23] The Information and Privacy Commissioner has considered a public body's obligations under s. 29 in numerous orders, for example, Order 00-51², Order 01-23³; Order 01-50⁴; Order 02-05⁵; Order 02-16⁶. I have applied here, without repeating them, the principles set out in those orders.

[24] In Order 02-16, the Commissioner had the following to say about the use of s. 29:

[7] It is well-established that s. 29(1) only addresses factual errors or omissions in personal information. 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. The section does not require a public body to 'correct' opinions or any expressions of judgement based on facts and arrived at applying knowledge, skill and experience. See, for example, Order No. 124-1996, [1996] B.C.I.P.D. No. 51; Order 00-51, [2000] B.C.I.P.D. No. 55; Order 01-23, [2001] B.C.I.P.D. No. 24. As my predecessor said at p. 4 of Order No. 124-1996, a similar case involving the WCB:

I agree with the WCB that section 29 "should not be used as a means of attempting to appeal decisions and opinions of adjudicators with which the worker does not agree. The *Workers' Compensation Act* provides legal avenues of appeal..." (Submission of the WCB, p. 9) In this latest case of requested corrections, the WCB has simply placed the applicant's correction letter in the special red-dot annotation of his claim file.

[25] The applicant requested what he called corrections of information on two Ministry forms, a PWD Review Data sheet of July 27, 2002 and a 1991 application for handicapped benefits. The PWD Review Data sheet is a one-page form with a number of check boxes and a series of headings, such as "primary diagnosis" and "assistance indicated", followed by short spaces for comments. The applicant requested that the Ministry "correct" nine different parts of this record by adding his wording or by substituting his wording for words or phrases that Ministry staff had used. For example, after "Duration Indicated", the applicant asked that the Ministry strike out "perm" and replace it with "permanent handicapped status & handicapped pension, that is, handicapped assistance for life". As another example, after "Assistance Indicated", the applicant asked the Ministry to strike out "shopping/wife support" and replace it with "permanent need for home care to manage normal daily functioning, depends on his wife

² Order 00-51, [2000] B.C.I.P.C.D. No. 55.

³ Order 01-23, [2001] B.C.I.P.C.D. No. 24.

⁴ Order 01-50, [2001] B.C.I.P.C.D. No. 53.

⁵ Order 02-05, [2002] B.C.I.P.C.D. No. 5.

⁶ Order 02-16, [2002] B.C.I.P.C.D. No. 16.

for the more strenuous activities around the house such as vacuuming, washing clothes, and running around”.

[26] The Ministry says that it uses the PWD Review Data Sheet to summarize information from the application form and databases at the Health Assistance Branch and as such it is not required to be changed. It says it has annotated the applicant’s Handicapped Status file by noting his request for changes and has also provided the applicant’s correction request to other offices. It also says that the requested changes to the sheet would not change or affect the May 2003 decision to rescind the applicant’s designation as a person with disabilities, as this decision resulted from the applicant’s failure to complete the “Person with Disabilities Designation Review Form” (paras. 5.25-5.27, initial submission; Hughes, Ferrabee & Mullen affidavits).

[27] Although the applicant has been specific in how he would like the PWD Review Data sheet “corrected”, he has not explained how the existing information is incorrect. Much of what he would have substituted is merely an expansion of the existing information, rather than a “correction” of “incorrect” information. Given the brevity of the form, the proposed additions and revisions are extensive and would render the form almost illegible, detracting from its integrity. The applicant has in any case provided no basis for revising the form as he would wish.

[28] Moreover, I infer from his correction request of June 27, 2003 that his purpose in requesting the corrections is to present a different picture of his disability status and thereby obtain a reversal of the supposedly “unjust decision” by the Ministry regarding his disability benefits. This is not the purpose of s. 29. I accept the Ministry’s statement that the purpose of the PWD Review Data sheet was simply to summarize certain information on the applicant’s file and changes to the form would not result in any changes to the decision to rescind his disability designation. The applicant had avenues through which to pursue his dissatisfaction with the Msitniry’s decision on his disability designation and it is evident that he took advantage of them.

[29] I do not consider that s. 29 is intended to allow applicants to require public bodies to re-write forms or to substitute their versions of file contents for those Ministry staff have created, using their skill and judgement, for the purpose of carrying out their duties. In this case, the Ministry acted appropriately in not annotating or altering the record itself and in attaching the applicant’s correction request to his various files. (See para. 15, Order 02-05 for similar findings in a similar case.)

[30] The 1991 Application for Handicapped Benefits is a two-page form with three parts. The applicant completed the first part, a Financial Assistance Worker (“FAW”) filled in the second part and the applicant’s physician completed the third part. There are apparently two different versions of this form on the applicant’s file, to one copy of which a small amount of information has been added. In a section dealing with the applicant’s job readiness and trainability, the FAW wrote “Clt states he is not” while the other copy has this phrase, followed by the handwritten addition “I have seen this man run very fast uphill, over 2 blks, to catch a bus”. In another part of the form dealing with

whether the applicant has ongoing expenses resulting from a disability, the first copy has no markings in the yes/no section, while the second copy has a handwritten question mark. It appears that the applicant wishes the Ministry to “correct” the second version of this form, either by deleting the additional information or by removing the form from his file.

[31] The Ministry says that the applicant’s FAW added to the second copy of the 1991 application form at some point after November 1991 and before January 1992. The Ministry says that the remark constitutes the FAW’s personal observation of the applicant’s actions and she is certain she was not mistaken in observing the applicant run for the bus. She says she added it to reflect her opinion on the applicant’s physical fitness. The Ministry therefore has no reason to believe the information should be corrected. The Ministry says that the question mark denotes the FAW’s uncertainty as to whether the applicant had any ongoing expenses. The Ministry also explains Ministry practice in completing such application forms in the early 1990s and describes how it annotated the applicant’s various program files regarding this correction request by placing on them a copy of its response to his correction request, attached to copies of the two versions of the 1991 form (paras. 5.28-5.32, initial submission; Menzies, Hughes, Ferrabee, Wilkins & Turner affidavits).

[32] The applicant has not said how the added information in this case is incorrect and has provided no basis on which to “correct” the information in question. The general thrust of this particular correction request, as with others scattered throughout his correspondence, however, appears to be to revise the contents of his files as he would prefer in order to obtain reinstatement of his disability designation. As I have already noted, this is not the purpose of s. 29. (See paras. 18-19 of Order 01-50 and para. 19 of Order 01-23 for similar comments and findings on similar cases.)

[33] The applicant has also not stated clearly how he wishes the Ministry to correct the information on the 1991 form, although he appears to want the Ministry either to delete the added information or to destroy the form which contains it. In either case, I agree with the Ministry that it is not appropriate to “correct” the observation and question mark by deleting them or by destroying the form. I accept that the FAW added the information at the time the applicant was applying for handicapped benefits and that she did so in the course of her employment duties. It also appears the Ministry used the information in its assessment of the applicant’s application for benefits in the past and possibly more recently as well. It would not therefore be appropriate, in my view, to delete the information or destroy the form. The Ministry’s actions in annotating the files were appropriate in this case.

[34] To summarize, I find the Ministry has acted appropriately with respect to the applicant’s correction requests regarding the PWD Review Data sheet and the 1991 handicapped application form in annotating the applicant’s files as it has described.

4.0 CONCLUSION

[35] For the reasons given above, under s. 58(3) of the Act, I confirm that the Ministry performed its duty respecting ss. 6(1) and 29 of the Act and I confirm its decision under s. 29 of the Act not to correct personal information.

June 30, 2005

ORIGINAL SIGNED BY

Celia Francis
Adjudicator