

**ALBERTA**  
**OFFICE OF THE INFORMATION AND PRIVACY**  
**COMMISSIONER**

**ORDER F2005-023**

May 11, 2006

**ALBERTA INSURANCE COUNCIL**

Review Number 3183

**Office URL:** <http://www.oipc.ab.ca>

**Summary:** The Applicant made a request under the *Freedom of Information and Protection of Privacy Act* for correction of her personal information held by the Public Body. She wanted the Public Body to write a letter to two parties updating them about subsequent developments in disciplinary proceedings against her, and make note of those developments on its website and in its next two Annual Reports. The Public Body refused, claiming that the personal information about the Applicant was correct and complete, and that its decision to refuse the correction request was properly made. The Public Body said that the information was sufficiently annotated and linked prior to the Applicant's request, and that it should not have to take further action.

The Adjudicator confirmed the Public Body's decision to refuse to correct under section 36(1). He found the Public Body had not properly met its duties under sections 36(3) and 36(7) to annotate or link the request for correction and to notify the Applicant. He found that the Public Body was not required to take action to communicate with others, as requested by the Applicant.

**Statutes Cited:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000 c. F-25, s. 2(a), 10, 35(a), 36, 36(1), 36(3), 36(3)(a), 36(3)(d), 36(4), 36(7), 37(7)(b), 53(2)(d), 72(3)(a) and 72(3)(d).

**Orders Cited:** 97-020, 98-010, F2003-019

## **I. BACKGROUND**

[para 1] The Applicant is a general insurance agent holding the required certificate of authority to conduct that business. The Alberta Insurance Council (the “Public Body”) has regulatory powers over certification of general insurance agents. After lengthy attempts to reach resolution of an issue between the Applicant and the Public Body, the Applicant requested that the Public Body correct and annotate certain of her personal information under the *Freedom of Information and Protection of Privacy Act* R.S.A. 2000 c. F-25 (the “Act”). The Applicant’s formal request was dated November 11, 2004. The Public Body declined to make the requested correction. The Public Body’s response to the Applicant did not specifically address annotation and linking. The Public Body stated that it had complied with the Act in all respects. The Applicant brought the matter to the Commissioner.

[para 2] When mediation was not successful, the matter was set down for a written inquiry. Both parties provided initial and rebuttal submissions. The Public Body disputed some of the facts submitted by the Applicant. Counsel for the Public Body questioned whether an oral inquiry ought to be held to address the point. An oral inquiry is not needed. The disputed evidence is not material to my decision on the three issues set out in the Notice of Inquiry.

## **II. RECORDS AT ISSUE**

[para 3] The existing records at issue in this inquiry are:

- a letter from the Public Body directed to the Applicant, and copied to a number of parties, dated November 16, 1998;
- Annual Reports of the Public Body for 1999 and 2000; and
- two “Review Result” entries in the Public Body’s database.

[para 4] The Applicant wants the Public Body to create records:

- a letter directed to two insurance companies informing them of the final outcome of the disciplinary proceedings taken against her by the Public Body;
- an entry on the Public Body’s website; separately or as text in the next two Annual Reports it must produce, which it puts on the website.

## **III. ISSUES**

[para 5] There three issues in this inquiry:

A. Did the Public Body meet its duty to the Applicant, as provided by section 10(1) of the Act?

B. Did the Public Body make every reasonable effort to ensure that the Applicant's personal information was accurate and complete, as required by section 35(a) of the Act?

C. Did the Public Body properly refuse to correct the Applicant's personal information as authorized by section 36 of the Act?

#### **IV. DISCUSSION OF THE ISSUES**

##### **Issue C: Did the Public Body properly refuse to correct the Applicant's personal information as authorized by section 36 of the Act?**

[para 6] This issue bears on the outcome of the other two. I will address it first.

[para 7] The parties disagree on exactly how the issue before me ought to be framed and what it includes. I must consider whether the Public Body's refusal to correct personal information complied with the Act and that its exercise of discretion in making that decision was within the law. If it was, did a consequent duty to annotate or link the correction with the personal information arise and if so, did the Public Body meet that duty?

[para 8] Section 36 of the Act states:

36(1) An applicant who believes there is an error or omission in the applicant's 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) Despite subsection (1), the head of a public body must not correct an opinion, including a professional or expert opinion.

(3) If no correction is made in response to a request under subsection (1), or if because of subsection (2) no correction may be made, the head of the public body must annotate or link the personal information with that part of the requested correction that is relevant and material to the record in question.

(4) On correcting, annotating or linking 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 before the correction was requested that a correction, annotation or linkage has been made.

(5) Despite subsection (4), the head of a public body may dispense with notifying any other public body or third party that a correction, annotation or linkage has been made if

- (a) in the opinion of the head of the public body, the correction, annotation or linkage is not material, and
- (b) the individual who requested the correction is advised and agrees in writing that notification is not necessary.

(6) On being notified under subsection (4) of a correction, annotation or linkage of personal information, a public body must make the correction, annotation or linkage on any record of that information in its custody or under its control.

(7) Within 30 days after the request under subsection (1) is received, the head of the public body must give written notice to the individual that

(a) the correction has been made, or

(b) an annotation or linkage has been made pursuant to subsection (3).

(8) Section 14 applies to the period set out in subsection (7).

[para 9] I appreciate that the Applicant's request for action by the Public Body is longstanding. However, my ability to review the Public Body's response to the correction request under section 36 commences with the formal request for correction from the Applicant to the Public Body on November 11, 2004.

[para 10] The burden of proof under section 36 falls first to the Applicant. She must show that the Public Body has her personal information and that there is an error or omission in it. The Public Body must show me why it did not correct as requested, and instead what it did to annotate or link (Orders 97-020, 98-010).

[para 11] The circumstances that resulted in the request for correction got their start in mid-1998. At that time, the Alberta Insurance Council, acting on its statutory mandate under the *Insurance Act*, R.S.A. 2000 C. I-3, Regulations and Ministerial Directives, called into question the Applicant's compliance with standards of practice required for her certificate. It sent the matter to the General Insurance Council for a hearing. The General Insurance Council, acting in a quasi-judicial capacity, found that the Applicant had acted "incompetently, was untrustworthy, and was guilty of misrepresentation and deceit", all those terms being language from the *Insurance Act*.

[para 12] The Applicant exercised her right to appeal from that finding to the Insurance Council's Appeal Board of Alberta. That Board decided the appeal in the Applicant's favour. The General Insurance Council appealed that decision to the Court of Queen's Bench of Alberta. The Court supported the Insurance Council's Appeal Board decision and dismissed the appeal. The end result in law was that the Applicant was exonerated of the alleged misconduct through the appeal system available to her.

[para 13] The parties brought before me information about the conduct of the Public Body, the appeals of the disciplinary proceedings, and their attempts at resolving this dispute through the years. Some of the facts are in dispute. The rhetoric between them reveals animosity.

[para 14] In this case, there is no dispute that the information in issue is the Applicant's personal information. The parties do not dispute that the facts as recorded were correct when recorded.

[para 15] The Applicant is concerned that when people access the Public Body's Annual Reports, through the website or paper copies, her name appears in the lists recording the status of disciplinary actions taken that year. The eventual outcome exonerated her, but the terms used in those sections of the Annual Reports do not explain well enough what her role was in the different stages of the proceedings. The Applicant is concerned that someone reading them might think that since her name is on that list she is in trouble, instead of understanding that because her name is there she is out of trouble. A person could be left with the impression that she is disreputable. The Applicant says that has happened and it affects her personally and professionally. She wants the entries corrected by annotation on the Public Body's website and a statement of clarification in the next two Annual Reports.

[para 16] The Applicant is also concerned about what the Public Body did when it received the decision of the General Insurance Council that found against her. The Public Body sent the decision, on its letterhead, to two large insurance companies with whom the Applicant did business. She says the Public Body is being unfair to her by not reporting back to those two companies and officially acknowledging the final outcome that cleared her name. She wants the Public Body to write a letter to the two companies informing them of the final outcome of the disciplinary proceeding appeals.

[para 17] The decision of the Insurance Council's Appeal Board of Alberta confirms that reputation is vital in the insurance industry. The Applicant wants to repair and maintain her personal and business reputation. She says a letter from the office of the government regulator that accused her in the first place, and circulated the decision of the General Insurance Council, to companies with whom she does business, will be more effective than her writing the companies herself. The Public Body replies that "this assertion is groundless and unsupported by any evidence or logic." The Public Body claims that the appellate decisions speak for themselves and the companies will know enough by receiving copies from her.

[para 18] The Public Body argues that the records were correct and complete at the time they were made and that is sufficient. The two Annual Reports only contain information, in the format the Public Body usually uses, that the Applicant appealed a disciplinary decision and was successful at two levels of appeal. It correctly recorded the outcomes of the appeals in its database entries and there is nothing to correct. As to updating the two insurance companies, the Public Body says that the Applicant's only remedy for vindicating herself is by using the appeal process, which she has done. The Public Body's position is that the Applicant should write to the insurance companies herself with the results of the appeal process. The Public Body says that neither the FOIP Act nor the *Insurance Act* impose an affirmative duty on the Public Body to write the letter.

[para 19] The Applicant sees in the Act a method of regulating the conduct of the Public Body. She finds in the Act a principle that allows a person to control the disclosure and truth of their personal information held in the public domain. From that principle she finds a duty on this Public Body to correct what she sees as its wrongful

behavior in writing the two insurance companies in the first place, by writing them again. She wants the Public Body to inform the public about her status in the disciplinary proceedings differently than it did.

[para 20] The Act does regulate the conduct of a Public Body in its treatment of information in many ways, including requiring affirmative action to fulfill certain statutory duties. But even with a liberal interpretation of the legislation, the correction remedy does not extend as far as the Applicant would like. Even if there is an error or omission, in some circumstances the Public Body may not be required to correct at all (see Order 97-020). One circumstance is where, as here, there is a dispute about whether there is an error or omission. The Public Body must have justifiable reason for not correcting, and must exercise its discretion within legally recognized bounds.

[para 21] None of the decisions from the adjudicators in the disciplinary process and appeals can be corrected to say something other than what they do. It is not within my authority to pass judgment on the merits of those decisions or the procedures that led to them. Section 36 is not an appeal mechanism nor may it be used to alter an opinion (Orders 97-020, 98-010, F2003-019). Contrary to the assertions of the Public Body, the Applicant does not ask for this as a remedy. She does not seek to change the General Insurance Council decision. She asks the Public Body to follow up on previous action that it took using that decision.

[para 22] The terms used by the Public Body in its Annual Reports to describe the parties' status in the disciplinary proceedings are sufficiently cryptic that without a good grasp of legal proceedings and terms, people may not know where the Applicant stood; only that she was involved in disciplinary action. However, the lack of plain language terms does not, in my view, amount to an omission in the Applicant's personal information. Her personal information in each Annual Report was correct in fact at the time it was published. Sequential reporting is the nature of Annual Reports. A reader can follow up and find out the eventual outcome.

[para 23] Regarding the letter to the insurance companies, I do not find in the correction remedy the power to order the Public Body to update the insurance companies with the subsequent developments in the disciplinary appeals. The personal information about the Applicant that the Public Body provided to the third parties in November 1998 was correct and complete at the time. The Act does not make the Public Body speak in these circumstances.

[para 24] The Public Body has chosen not to defend the Applicant in the industry in the way the Applicant would like. Whether the Public Body's conduct as regulator under the *Insurance Act* is fair or unfair or meets that statutory mandate is not for me to decide. I can only assess its conduct in meeting its duties under the FOIP Act.

[para 25] The Applicant wants to control the Public Body's use of her personal information and refers to the purpose of the Act set out in section 2(b). It reads

2 The purposes of this Act are

(b) to control the manner in which a public body may collect personal information from individuals, to control the use that a public body may make of that information and to control the disclosure by a public body of that information,

[para 26] The control referred to is qualified by the subsequent sections of the Act. I do not read sections 36(1), 53(2)(d), 72(3)(a) and (d) as intending the Commissioner to direct the communication activities of the Public Body as the Applicant requests. The intent of the sections is to ensure that the Public Body has accurate and complete personal information for its future use, and that disputed information is brought to subsequent users' attention. The Applicant in this case has control over the accuracy and completeness of her personal information that the Public Body holds.

[para 27] The personal information about the Applicant that the Public Body holds is correct. There are no omissions in it. Other than complying with its duty under section 36(4), the Public Body in this case is not required by section 36 to proactively inform certain third parties or the public of the outcome of events subsequent to the prior communication.

[para 28] On the facts before me, the request for correction under the Act was made beyond one year of the letter to the insurance companies. The Public Body is not required under section 36(4) to notify those two parties of the annotating or linking of the request that is discussed below.

[para 29] I have given careful consideration to the Public Body's exercise of its discretion in making its decision to correct or not under section 36(1). I am aware that matters between the parties have been sometimes litigious and continuously contentious for a number of years, which raises for me the issue of good faith. Because the Applicant's personal information is correct and complete in the records held by the Public Body, I find that its discretionary decision not to correct as requested is justifiable under the Act. I must separate the Applicant's displeasure with the Public Body's action or inaction, from its assessment of the need to correct in response to the request. On the evidence before me I find no error in the Public Body's exercise of that discretion.

### Annotating and Linking

[para 30] I have found that the Public Body properly decided not to correct the Applicant's personal information. What did it do then? The Public Body did not inform the Applicant in its November 16, 2004 response to her November 11, 2004 request that it annotated or linked her request, pursuant to sections 36(3) and 36(7) of the Act. It revealed in its submissions in this inquiry that all the decisions related to the disciplinary proceedings and the November 1998 letter, have been physically filed in one place and electronically linked, since some time prior to the Applicant's request. It says that reference to one document, physically or electronically, will reveal the others. It says it cannot update the Annual Reports and that the 1999 and 2000 reports are no longer on the website. It points to the guidance given by Order 97-020 and says it has fulfilled any duty it has under section 36(3).

[para 31] Section 36(3), set out above, puts a mandatory duty on the Public Body when it refuses a request for correction of personal information. Clearly the Applicant “believes there is an error or omission” in her personal information held by the Public Body. I have confirmed the Public Body’s decision not to correct. That does not negate its duty under section 36(3).

[para 32] The Applicant did not dispute the Public Body’s assertion that the physical documents are all filed in the same place and I accept that they are. However, there is no indication that they are physically connected, nor anything written on them that alerts the reader to the other documents. The Public Body, unlike a court, does not have large volumes of these decisions to contend with, as shown in the Annual Reports. I find that the Public Body has not met its duty to annotate or link the physical copies of the decisions and the November 1998 letter with the information contained in the Applicant's request.

[para 33] I have reviewed the printouts of the two electronic records of the disciplinary proceedings called “Review Results”, submitted by the Public Body at tab 10 in its initial submission. They do not clearly bear out the Public Body's assertion that they are linked and annotated. The printout of the Review Result marked as being from the “Council” has an entry under the heading “Code” that reads “Not substantiated.” That code is not explained to the reader and, given the importance of the true meaning of the information, I do not accept that it is self explanatory. The “Review Result Summary” text entry sets out only the result of the General Insurance Council decision and does not refer to the subsequent appeals. That is in contrast to the Review Result marked as being from the “Minister.” Its Review Result Summary entry contains text that specifically updates the matter to the result of the Court of Queen’s Bench decision. The Public Body has not explained to me how the two Review Results are linked to one another. I find that the Public Body has not met its duty to annotate or link the two electronic records with the relevant information from the Applicant's request.

[para 34] The Public Body stated that it cannot update Annual Reports. It has not addressed how those could be annotated or linked to the relevant information about the Applicant’s subsequent exoneration.

[para 35] I have considered the Applicant’s contention that accessing her information in the 1999 and 2000 Annual Reports through the website could mislead people, albeit the information is in fact exculpatory. Replacing those Reports on the website therefore seems counterproductive. The next Annual Report would, in the normal course, have nothing to say about the Applicant. There is no other reference to her on the website. The Public Body may still have paper copies of those two Annual Reports available in its office that could be annotated or linked efficiently. I make these comments to give the Public Body some guidance, but without restricting its decision about how to fulfill its statutory duty.



[para 36] I find the Public Body did not meet its duty to annotate or link under section 36(3) and to give the requisite written notice to the Applicant under section 36(7)(b). Therefore, I intend to order the Public Body to fulfill its duties under these sections.

**Issue B: Did the Public Body make every reasonable effort to ensure that the Applicant's personal information was accurate and complete, as required by section 35(a) of the Act?**

[para 37] The issue between the parties is not so much whether the Applicant's personal information is accurate, as whether it is complete. The Applicant argues that the lack of completeness amounts to inaccuracy. I disagree with the Public Body that section 35(a) is not triggered or that it applies only to the November 1998 letter. The Public Body continues to be the regulator over the Applicant's certification.

[para 38] However, I take the Public Body's point that with all of the specific records it holds related to the Applicant, the Public Body has complete and accurate personal information about the Applicant, in the event it uses that information to make a decision about her. That is what section 35(a) of the Act requires. It does not speak to the Public Body disclosing that information to third parties. The Public Body has met its duty under this section.

**Issue A: Did the Public Body meet its duty to the Applicant, as provided by section 10(1) of the Act?**

[para 39] I appreciate that the substance of the dispute between these parties has been outstanding for years, and the Applicant takes the position that the Public Body has not assisted her adequately through that time. I remind the parties that my jurisdiction to consider the Public Body's response to a request for correction under the Act commences with that request. I disagree with the Public Body's assertion that its duty under this section is not an issue – it is, from the time of the request.

[para 40] I have found that the Public Body failed to properly meet its duty to annotate or link and to advise the Applicant once it refused the request. Having found that failure of a specific duty, and now requiring the Public Body to address that deficiency, I do not find it necessary to decide whether the Public Body met its general duty under section 10 of the Act.

**V. ORDER**

[para 41] I make this Order under section 72(3)(a) and 72(3)(d) of the Act.

[para 42] I find that the Public Body has met its duty to assist the Applicant, as required by section 10 of the Act.

[para 43] I find that the Public Body made every reasonable effort to ensure that the Applicant's personal information was complete and accurate, as required by section 35(a) of the Act.

[para 44] I confirm the Public Body's decision not to correct the Applicant's personal information as requested.

[para 45] I find that the Public Body did not meet its duty to annotate or link the records. I order the Public Body comply with its duty to annotate or link under section 36(3) and to give written notice to the Applicant under section 36(7)(b).

[para 46] I further order the Public Body to notify me, in writing, within 50 days of being given a copy of the Order that it has complied with this Order.

Dave Bell  
Adjudicator