

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2007-018**

April 2, 2008

**EDMONTON POLICE COMMISSION**

Case File Number 3749

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** Under the *Freedom of Information and Protection of Privacy Act* (the “Act”), the Complainant requested that the Edmonton Police Commission (the “Public Body”) correct certain of his personal information contained in a written decision of the Public Body and other records. The Public Body refused to make the requested corrections under section 36 of the Act, but annotated the file with the correction request.

The Adjudicator found that the Public Body properly refused to correct the Complainant’s personal information, as it was contained in records prepared by third parties, and in third party statements that the were not shown to be inaccurately recorded in the decision.

The Adjudicator found that, in making only one overall annotation in the file, the Public Body did not make a proper annotation or linkage. He ordered the Public Body to annotate or link the relevant parts of the Complainant’s correction request to the records in respect of which the Complainant requested his personal information to be corrected.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 10(1), 35(a), 36, 36(1), 36(2), 36(3), 36(4), 57(1), 72, 72(3)(a) and 72(3)(d).

**Authorities Cited:** **AB:** Orders 97-020, 98-002, 98-010, 99-033, 2000-001, 2001-018, 2001-032, F2003-019, F2005-023, F2006-017 and F2006-019. **BC:** Order F05-19.

## **I. BACKGROUND**

[para 1] In 1998, the Complainant expressed a concern to the Edmonton Police Service (the “EPS”) that certain employees of the Workers’ Compensation Board (the “WCB”) had committed fraud and perjury in relation to a WCB decision to discontinue his benefits following its determination that he had misrepresented the extent of his disability. The Complainant then complained that the EPS failed to investigate the WCB employees. In a letter dated December 8, 1998, the Acting Chief of the EPS concluded that the activities of the WCB employees did not constitute criminal offences and therefore the EPS would not pursue the Complainant’s concerns.

[para 2] The Complainant appealed the decision of the Acting Chief of the EPS to the Edmonton Police Commission (the “Public Body”). In “Decision 99-01”, the Public Body dismissed the Complainant’s appeal, concluding that the EPS had not acted improperly in failing to proceed with charges against the WCB employees.

[para 3] In a letter dated April 12, 2006, the Complainant made a request under the *Freedom of Information and Protection of Privacy Act* (the “Act”) that the Public Body correct certain of his personal information contained in Decision 99-01 and other records.

[para 4] The Complainant wrote to this Office on May 15, 2006, as the Public Body had not yet responded to his correction request. However, in a letter dated May 16, 2006, the Public Body responded. It advised that it would not correct the Complainant’s personal information under section 36 of the Act, but that it had annotated the file relating to Decision 99-01 with the Complainant’s request for correction. It further advised that it had not disclosed the Complainant’s personal information in the previous one year, so was not required to notify any other public bodies or third parties of the annotation under section 36(4).

[para 5] By letter dated July 10, 2006, the Complainant requested that this Office review the Public Body’s decision not to correct his personal information. The matter was set down for a written inquiry.

## **II. RECORDS AT ISSUE**

[para 6] As this inquiry involves a request to correct personal information, rather than a request to access information, there are no records directly at issue. For context, however, the Complainant requests the correction of certain of his personal information contained in Decision 99-01 of the Public Body and other records on the related file.

## **III. ISSUE**

[para 7] As set out in the Notice of Inquiry, dated February 8, 2007, the issue in this inquiry is whether the Public Body properly refused to correct the Complainant’s personal information, as authorized by section 36 of the Act.

#### IV. DISCUSSION OF ISSUE

[para 8] The relevant provisions of section 36 of the Act are as follows:

*36(1) An individual who believes there is an error or omission in the individual'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.*

[para 9] Under section 36, the Complainant has the initial burden of proving that the Public Body has personal information about him and that there is an error or omission in that personal information (Order 97-020 at para. 108; Order F2005-023 at para. 10). The Public Body has the burden of showing why it refused to correct the personal information and that it instead properly annotated or linked the personal information with the requested correction (Order 97-020 at para. 109; Order F2005-023 at para. 10).

[para 10] The Complainant believes that wrong conclusions were reached by the WCB in relation to his disability and entitlement to benefits. He also believes that wrong conclusions were reached by the EPS and the Public Body regarding the decision not to lay fraud and perjury charges against employees of the WCB. However, my jurisdiction is limited to determining whether the Complainant's request for the correction of his personal information was refused without justification, and whether the Public Body's decision not to correct his personal information should be confirmed (Order 98-010 at para. 51).

[para 11] Many of the records that the Complainant wants corrected are the same records that he submitted to the Public Body when he requested its review of the decision of the EPS not to lay charges against employees of the WCB. In other words, the Complainant requests the correction of information in records that he, himself, provided to the Public Body – although the records were prepared by the WCB. In this respect, it appears that he would like the Public Body, who has already reviewed the WCB records,

to revisit the records of this other public body in the renewed hope that WCB information will be called into question. To this extent, I question the Complainant's use of section 36 of the Act. Section 36(1) should not be used as a means of attempting to appeal decisions and opinions of a public body, with which an individual does not agree (Order 97-020 at para. 171; Order F2003-019 at para. 41).

[para 12] I am unable to address certain issues raised by the Complainant in his initial letter of April 12, 2006 to the Public Body and/or his submissions in this inquiry. These issues include the failure of the EPS to issue a file number in relation to the Complainant's concerns, the WCB's alleged withholding of information (such as medical reports) from the Complainant, the source of the complaint that gave rise to the WCB's investigation of him, surveillance of a garage, and certain matters involving the Appeals Commission for Alberta Workers' Compensation. These concerns do not involve a request to correct personal information and/or do not involve the Public Body that is party to this inquiry.

**1. What personal information of the Complainant is subject to the correction request?**

[para 13] The Complainant's letter of April 12, 2006 is lengthy, so it is somewhat difficult to determine which specific information he would like corrected. On review of the letter, I find that he not only wants information in Decision 99-01 to be corrected, but also information in other records. At one point, he requests that the claims of a particular WCB employee "be corrected or removed from all of your records and all of your file copy regarding your decision." At another point, he demands that "any use or any appearance of any information regarding myself that has been provided by [a second WCB employee] be stricken from your records."

[para 14] For section 36(1) to apply, there must be personal information about an individual (Order 97-020 at para. 108; Order 98-010 at para. 20). I find that Decision 99-01 and the other records that the Complainant wishes to have corrected contain his personal information, as defined in section 1(n) of the Act. There is recorded information about the Complainant, who is identifiable on the face of each record, either because he is indicated by name or through his WCB claim number. The Public Body acknowledges that its file in relation to Decision 99-01 contains the Complainant's personal information.

[para 15] The personal information about the Complainant in Decision 99-01 consists of references to a meeting, medical reports, a surveillance report, deliberate misrepresentation, riding a bicycle, a surveillance investigation, and a second reference to deliberate misrepresentation.

[para 16] With respect to the other records that the Complainant attached to his correction request, I first note that some of them are inadmissible in evidence in this inquiry as a result of section 57(1) of the Act, which reads as follows:

*57(1) A statement made or an answer given by a person during an investigation or inquiry by the Commissioner is inadmissible in evidence in court or in any other proceeding, except*

*(a) in a prosecution for perjury in respect of sworn testimony,*

*(b) in a prosecution for an offence under this Act, or*

*(c) in an application for judicial review or an appeal from a decision with respect to that application.*

[para 17] I find that four of the documents that the Complainant attached to his correction request – being four affidavits – consist of statements made by persons during a previous inquiry before this Office. Those statements cannot now be used in the present inquiry, as the present inquiry is “any other proceeding” within the meaning of section 57(1) of the Act (Order 2001-032 at para. 45). Moreover, this inquiry does not fall under one of the exceptions listed in paragraphs (a), (b) or (c) above. Although the Complainant’s representations to the EPS and the Public Body were to the effect that certain individuals had committed perjury, the present inquiry is not a prosecution for perjury, nor does it fall within either of the other two proceedings for which there is an exception to the general rule that the previous statements are inadmissible.

[para 18] As I find that the four affidavits are inadmissible in this inquiry, I will disregard them. I will still consider other documents that were submitted as records in a previous inquiry, as I do not find that the records themselves are “statements made or answers given” during an inquiry. Records may be the subject of an access or correction request in more than one inquiry, particularly where, as here, there is a different public body involved.

[para 19] The admissible documents that the Complainant wishes to have corrected are as follows (with the personal information that I find subject to the correction request in parentheses):

- WCB memo of April 28, 1994 (“the worker was fit for work”);
- WCB memo of July 20, 1994 (references indicating that the Complainant attended a meeting on a certain date);
- WCB memo of October 10, 1996 (indication of the WCB’s right to speak to the Complainant’s union)
- WCB letter of April 7, 1997 (“you agree with their conclusion that no such alteration took place”);
- first version of a WCB memo dated December 1, 1994 (“fraud”); and
- second version of a WCB memo dated December 1, 1994 (“deliberate misrepresentation”).

[para 20] There is one other record that I find the Complainant wishes to have corrected, which is a WCB memo of September 23, 1994 (the personal information that I

find subject to the correction request is the reference to the results of the surveillance investigation). Although he did not attach the memo to his correction request, it is referenced in Decision 99-01 and he expresses concerns about it.

[para 21] I conclude that the additional (admissible) records attached to the Complainant's correction request are not those that he wanted to have corrected, but instead records supporting his view that the other records should be corrected.

## **2. Did the Public Body properly refuse to correct the Complainant's personal information?**

[para 22] Under section 36(1), there must be an error or omission in an individual's personal information. Here, the Complainant states that he wants a correction of his personal information that the Public Body has "referred to, used and written about." In other words, he not only alleges errors or omissions in personal information found or reproduced in Decision 99-01 itself; he is also concerned that the Public Body improperly relied on, or implicitly accepted, errors or omissions in records that are not referenced in the decision.

[para 23] The Complainant believes that there are errors or omissions in the WCB records because they contain false information about his fitness for work (memo of April 28, 1994), the results of a surveillance investigation (memo of September 23, 1994), the editing of a surveillance videotape (letter of April 7, 1997), the occurrence of a meeting (memo of July 20, 1994), the WCB's right to speak to the Complainant's union (memo of October 10, 1996), and the Complainant's alleged misconduct in relation to his WCB benefits (two versions of a memo of December 1, 1994 – the first refers to "fraud" and the second refers to "deliberate misrepresentation").

[para 24] Given his view that information in the records prepared by WCB employees or lawyers was false or inaccurate, the Complainant requested that the information be corrected or removed from the Public Body's records. The Complainant is further concerned that video evidence of the WCB was edited by the WCB. The Complainant believes that editing the videotape amounted to tampering with evidence. He accordingly suggests that the Public Body should correct or alter a reference to a surveillance report in Decision 99-01.

[para 25] The Complainant makes a broad request that virtually any information supplied by two particular WCB employees be removed or stricken from the Public Body's records. However, I do not find that this aspect of his correction request is specific enough. Except to the extent that his correction request is directed toward particular information in a particular (admissible) record, the broad request to remove or strike information does not refer to any specific errors or omissions to be corrected under section 36 of the Act.

a) *Records other than Decision 99-01*

[para 26] The Public Body submitted a copy of its file in relation to Decision 99-01 *in camera*. The file contains, among other things, records prepared by or for employees and lawyers of the WCB. These records appear to have been provided by the Complainant at the time of his complaint to the Public Body about the failure of the EPS to lay charges against the WCB employees.

[para 27] On the file submitted by the Public Body, I was able to locate all of the records that the Complainant asked to have corrected, with the exception of the memo of July 20, 1994, the memo of October 10, 1996, and the letter of April 7, 1997. If the Public Body does not have copies of these records, they cannot be subject to correction by the Public Body, as they are not in its custody or under its control, as required by section 36(1) of the Act. I cannot conclude that these records are, in fact, not held by the Public Body, as the file submitted *in camera* may not be complete and the Public Body may possibly have records elsewhere.

[para 28] For clarity, I do not believe that any of the records attached to the Complainant's correction request of April 12, 2006 are in the custody of the Public Body – for the purpose of section 36(1) of the Act – by reason *only* that they were provided to the Public Body at the time of the correction request. They must be in the custody or under the control of the Public Body for some other purpose besides the correction request (and usually prior to it). It would be nonsensical to require public bodies to correct personal information that individuals submit themselves at the time of, and for the very purpose of, a correction request.

[para 29] Decision 99-01 is the only document that the Complainant wishes to have corrected in this inquiry that was prepared by the Public Body itself. All of the other records are documents prepared by third parties, namely employees and lawyers representing the WCB. In Order 97-020 (at para. 127), the former Commissioner provided the following explanation for not correcting a third party statement:

That reason involves maintaining the integrity of the record in certain situations, such as investigations in which a third party's statements have been recorded. In investigations, there is a need to record statements accurately, in order later to make a decision relating to what was said, and to understand the basis on which a decision was made. Accordingly, a third party's statement of fact cannot be corrected, even if that statement of fact is in error. The statement does not appear for the truth of it; it appears for the fact that it is what was said, truthful or not.

[para 30] If information is a record of a statement by a third party about an individual, it cannot be concluded that the information is inaccurate unless there is evidence that the third party's statement was not accurately recorded (Order 97-020 at para. 128; Order F2003-019 at para. 37). This is so whether the third party statement is a

fact or an opinion (Order 97-020 at para. 133), and whether a recorded statement is right or wrong (Order 97-020 at paras. 122 and 127; Order 2000-001 at para. 16).

[para 31] As the Public Body's file contains copies of the third party documents, those copies are necessarily an accurate recording of what is conveyed in them. I therefore find that the Complainant has not established an inaccurate recording of the third party statements. I conclude that the Public Body properly refused to correct the Complainant's personal information in the documents that were prepared by representatives of the WCB.

[para 32] My conclusion that the Public Body justifiably refused to correct accurately recorded third party information holds even though the Complainant has established that some information cannot be correct. For instance, he attached to his correction request a surveillance photograph that indicates it was taken at 10:39 a.m. on July 20, 1994. The photograph shows the Complainant on a street corner. The Complainant also attached a WCB memo recounting a meeting with the Complainant on July 20, 1994, which states that he was still in the meeting at 10:40 a.m. The Complainant appears to dispute that he attended the meeting. While he justifiably asserts that he could not be in two places at the same time, I believe it more probable that one of the times recorded is incorrect, rather than that the Complainant was not at the meeting. Regardless, the statements and recorded time – according to which the Complainant was in attendance at a meeting on July 20, 1994 – are information recorded by a third party and are not subject to correction by the Public Body.

b) *Decision 99-01*

[para 33] Based on the concerns of the Complainant, I find that his request for correction is directed at the last three paragraphs on the first page of Decision 99-01 (which are the third, fourth and fifth paragraphs under "THE EVIDENCE"). In the three paragraphs, the Public Body reproduces various statements made by WCB employees.

[para 34] As discussed above, a Public Body justifiably refuses to correct an individual's personal information where it is found in third party statements that are accurately recorded. The Complainant has not shown that the third party statements in Decision 99-01 were inaccurately recorded. Even if a third party statement is wrong, a public body properly refuses to correct it in order to maintain the integrity of the information that has been relied on, and to permit a reader to understand the basis of a decision (Order 97-020 at paras. 126 and 127).

[para 35] I acknowledge the frustration of an individual who finds that one public body has relied on information supplied by another public body, which the individual believes to be untrue. However, it must be within the reasonable administrative resources (including financial considerations and time factors) of a public body to make the decision that the information on record is indeed incorrect and that the individual's version is the correct one; if the public body acts in good faith, it should not be required



to expend an unreasonable amount of time, financial and other resources deciding where the truth lies (Order 97-020 at para. 120).

[para 36] As I have found that the Public Body properly refused to correct the Complainant's personal information in Decision 99-01, on the basis that it is contained in third party statements that the Complainant has not proven to be inaccurately recorded, it is not necessary for me to determine whether any of the third party statements are also an "opinion", which cannot be corrected under section 36(2) of the Act. Although the Public Body's primary submission was that the Complainant's personal information was contained in opinions that could not be corrected, it also indicated that it considered relevant factors articulated in Order 97-020. That Order indicates, among other things, that a public body properly refuses to correct personal information contained in third party statements that are accurately recorded.

[para 37] I should clarify that the foregoing discussion does not mean that information conveyed by or learned from third parties is *never* subject to correction. There will be times when a third party's view is not merely copied or reproduced to indicate that the view was held by that third party. Where a public body instead repeats or incorporates the content of a third party's view in order to convey the truth of it, a correction may be warranted, depending on whether the information is a fact or opinion.

[para 38] In his correction request, the Complainant suggests that the Public Body did not properly convey all of the relevant information and evidence in Decision 99-01. In other words, he believes that there are omissions in his personal information that require correction under section 36 of the Act. For example, he suggests that inconsistencies in the WCB records (such as regarding the time of the meeting discussed earlier, which would mean that he was in two places at the same time) should have at least been noted by the Public Body in Decision 99-01.

[para 39] I do not believe that there are omissions in the Complainant's personal information if the Public Body failed to include other possibly relevant information in Decision 99-01. An "omission" has been defined as "something missing, left out or overlooked" (Order 97-020 at para. 146). Because all or most of the alleged inaccuracies and inconsistencies pointed out by the Complainant – and other of his personal information that was used to make Decision 99-01 – are contained in the file that accompanies the decision, I find that there are no omissions that require correction under section 36 of the Act. The Complainant has not established that any information is missing, has been left out or has been overlooked for the purpose of Decision 99-01.

[para 40] It appears that three records – the WCB memo of July 20, 1994, the WCB letter of April 7, 1997, and the WCB memo of October 10, 1996 – may have been given to the Public Body by the Complainant for the first time when making his correction request. Even if the Public Body did not have certain information when reaching its conclusions in Decision 99-01, I do not believe that section 36 of the Act should be used by the Complainant to submit fresh evidence to a public body that made a decision affecting him – particularly where that decision was made at his request, and based on

information originally provided by him. More importantly, I do not believe that there are omissions in the Complainant's personal information in Decision 99-01 as a result of the Public Body not having these three additional records.

[para 41] I find that the Complainant has not established that there are errors or omissions in his personal information contained in Decision 99-01. I therefore conclude that the Public Body properly refused to make a correction under section 36 of the Act.

### **3. Did the Public Body properly annotate or link the Complainant's personal information with the requested correction?**

[para 42] On refusing to correct an individual's personal information, a public body must show that it properly annotated or linked the personal information with the requested correction. I do not find that the Public Body has done so in this inquiry.

[para 43] The Public Body indicates that it included a copy of the Complainant's correction request and its response in the file containing Decision 99-01, and made an annotation in the file. The reference to "annotation" in the singular leads me to believe that the Public Body made only one annotation in the file as a whole. I cannot ascertain the nature and extent of the annotation from the copy of the file submitted *in camera*, as the last document on that file is from 2004 (i.e. prior to the correction request and response that is the subject of this inquiry).

[para 44] In his rebuttal submissions, the Complainant expresses a concern that "if no correction is made at this time, [the Public Body is] still able to release the same damaging and factually false information for whatever purpose, at a later date with or without my knowledge." Although I have found that the Public Body properly refused to correct the Complainant's personal information, the foregoing statement raises the possibility of the Public Body later disclosing the Complainant's personal information to other public bodies or third parties without them being aware of his correction request regarding that information.

[para 45] Previous orders of this Office have indicated that it is usually insufficient to simply place an individual's correction request on a file and make one overall annotation. The correction that was requested should be attached to, joined or connected with the original record containing the particular information under challenge by an individual (Order 97-020 at paras. 179 and 192). It should not be necessary for someone to read an entire file in order to be aware of an annotation or linkage (Order 97-020 at para. 200; Order F2003-019 at para. 51). I add that, here, the file in relation to Decision 99-01 is relatively long.

[para 46] While it may have been difficult to discern from the Complainant's lengthy letter containing his correction request, he requested the correction of his personal information contained in specific records that the Public Body has – or might have – in its custody or under its control. These records are described in paras. 19 and 20 of this Order, with the personal information that I find subject to the correction request in

parentheses. The Complainant attached these records to his correction request, or otherwise referred to one of them (the September 23, 1994 memo).

[para 47] As the Complainant requested that his personal information be corrected in the aforementioned records, the Public Body should have annotated or linked the relevant part of the Complainant's correction request to all copies, if any, of these records. This would ensure that if only one of those records, rather than the entire file, were viewed by or disclosed to a third party, the third party would be aware of the requested correction in relation to the specific item of personal information. Given the limited number of records in respect of which the Complainant requested his personal information to be corrected, I do not believe an annotation or link for each of those records is unreasonable.

[para 48] I add, however, that the Public Body is only required to annotate or link a record if it has that record in its custody or control. I could not locate some of the records subject to correction in the file submitted by the Public Body *in camera*, although it may have copies of them elsewhere. Again, for clarification, I do not believe that the Public Body is required to link or annotate records that were provided to it for the first time with the Complainant's correction request. Because the newly submitted records are attached to and referenced in the correction request, a third party would be aware of the Complainant's concerns in relation to them, even if the correction request and newly submitted records are retained by the Public Body.

[para 49] The Complainant also requested the correction of his personal information in Decision 99-01. The personal information that is subject to the correction request consists of various statements about the Complainant made by WCB employees and reproduced in the last three paragraphs on the first page of the decision. Having said this, I do not believe that the Public Body is required to annotate or alter Decision 99-01 itself. It is sufficient to link the Complainant's correction request to the decision by placing that part of the correction request – that is relevant and material to the decision – next to the copy or copies of it.

[para 50] “Link” has been defined to mean “connect or join two things or one thing to another”, “attach to”, or “combine” (Order 97-020 at para. 174; Order F2006-017 at para. 82). In other words, it is not always necessary to add an explanatory note directly on the record – that is, “annotate” – although that may be the fair and appropriate recourse in certain situations. Here, Decision 99-01 is a quasi-judicial record whose physical integrity and substantive content is justifiably preserved if the Public Body chooses not to alter it. The type of record involved is a factor in determining a fair way to annotate or link (Order 97-020 at para. 185; Order 98-010 at para. 49). Moreover, section 36(3) of the Act should be interpreted sensibly, so that a public body has some administrative leeway in deciding the manner in which annotation or linking will occur (Order 97-020 at para. 184).

[para 51] I also adopt reasoning in a B.C. Order, in which it was found that, because the purpose of a correction request was to appeal or change a perceived unjust decision,

the public body acted appropriately in not annotating or altering the record itself (B.C. Order F05-19 at paras. 28 and 29). Instead, it was appropriate to attach the correction request to the individual's various files. In this inquiry, I construe the Complainant's request to correct Decision 99-01 as an attempt, in many ways, to persuade the Public Body to modify its conclusions regarding the failure of the EPS to lay charges against the WCB employees. I find that the Public Body would act appropriately if it chose not to physically alter the record of its decision.

[para 52] Given the foregoing, I find that the Public Body did not properly annotate or link the Complainant's personal information in certain records with the relevant and material part of his correction request. I therefore intend to order the Public Body to comply with its duty under section 36(3) of the Act. At the same time, the Public Body is not required to annotate or alter Decision 99-01 itself, as it would be appropriate to make a linkage.

#### **4. Application of other sections of the Act**

[para 53] In his submissions, the Complainant argues that, in refusing to correct his personal information, the Public Body failed in its duty to assist him under section 10(1) of the Act. I do not find it necessary to consider section 10(1), given my findings in relation to section 36. Section 36 is the applicable section with respect to correction of the Complainant's personal information.

[para 54] In his submissions, the Complainant also raises section 35(a) of the Act, which reads as follows:

*35 If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must*

*(a) make every reasonable effort to ensure that the information is accurate and complete...*

[para 55] The application of section 35(a) of the Act was not raised as an issue in the Notice of Inquiry. However, the Complainant's initial letter of April 12, 2006 to the Public Body raised concerns about the accuracy of his personal information contained in Decision 99-01 and in records used to make that decision. I believe that the Complainant meant to engage section 35(a), even though he did not expressly do so.

[para 56] Section 35(a) addresses the accuracy and completeness of an individual's personal information and section 36(1) addresses errors and omissions in an individual's personal information. As a result, many of the considerations under section 35(a) are similar to those under section 36(1). Because I do not believe that the Public Body is prejudiced by my consideration of section 35(a) in this inquiry, I have decided to consider it. The Notice of Inquiry does not limit my ability to consider other issues (Order 99-033 at para. 44).

[para 57] At the same time, I do not intend to make any order or formal finding, under section 72 of the Act, regarding the application of section 35(a) in this inquiry. I only undertake the following discussion to assure the Complainant that I considered his concerns in relation to that section.

[para 58] In order to find that section 35(a) of the Act applies, an individual must say what personal information was inaccurate or incomplete and what decisions the public body made using inaccurate and incomplete personal information (Order 2001-018 at para. 54). The Complainant has the burden of proving the existence of inaccurate or incomplete personal information (Order F2006-019 at para. 9).

[para 59] The Complainant has indicated what decision he believes was made by the Public Body using inaccurate or incomplete information – namely Decision 99-01. I find that Decision 99-01 directly affected the Complainant, as it was a response to a concern that he directed to the Public Body regarding his past dealings with the WCB.

[para 60] As alluded to earlier regarding certain aspects of the Complainant's correction request, I find it somewhat odd for him to allege that there is inaccurate or incomplete information in records that he, himself, submitted to the Public Body in order for it to make its decision. I recognize, on the other hand, that the records originated from the WCB and the Complainant believes that they contain false information – which is precisely the point he originally wished to prove to the Public Body. Having said all of this, I believe that section 35(a) of the Act – like section 36 – should not be used as a means of attempting to revisit decisions and opinions of a public body, with which an individual does not agree.

[para 61] I do not find that the Complainant has proven the existence of inaccurate personal information. Although he points to inaccuracies and inconsistencies in certain WCB documentation, and disagrees with certain of the conclusions reached in relation to his WCB file, he does not provide sufficient evidence to demonstrate the true facts or the accurate version of events. For example, although he has shown that a reference in a WCB memo of December 1, 1994 was changed from “fraud” to “deliberate misrepresentation,” I am unable to conclude whether the Complainant did or did not conduct himself inappropriately, whether by fraud *or* deliberate misrepresentation.

[para 62] Section 35(a) does not require all of the information used by a public body to be apparent on the face of its decision. One way of ensuring that an individual's personal information is available to the decision-maker, and therefore complete, is to ensure that it is on the file at the time the file is reviewed and the decision is made (Order 98-002 at para. 99). Here, the Public Body had on its file the information provided by the Complainant, himself, at the time of his complaint to the Public Body. To the extent that the Public Body did not have certain records at the time of reaching its decision, I find that the Complainant has not shown that it used incomplete information in making Decision 99-01. The points that I made in paras. 39 and 40 of this Order, in the context of section 36, extend to section 35(a).

[para 63] As I find that the Complainant has not established that the Public Body used inaccurate or incomplete information when making Decision 99-01, I conclude that section 35(a) does not apply in this inquiry. I remind the Complainant that he is the party who has the burden – under both sections 35(a) and 36(1) of the Act – of proving the existence of inaccurate or incomplete personal information [section 35(a)], or errors or omissions in his personal information [section 36(1)]. It is not sufficient to allege that information is wrong or missing, without establishing the correct or complete facts or the true version of events.

## **V. ORDER**

[para 64] I make this Order under section 72 of the Act.

[para 65] Under section 72(3)(d) of the Act, I confirm the Public Body’s decision under section 36 not to correct the personal information of the Complainant contained in Decision 99-01 and in the other records subject to the Complainant’s correction request.

[para 66] Under section 72(3)(a) of the Act, I order the Public Body to comply with its duty under section 36(3) by annotating or linking the Complainant’s personal information – contained in Decision 99-01 and the records described in paras. 19 and 20 of this Order that are in its custody or under its control – with that part of the Complainant’s requested correction that is relevant and material to the record in question. For clarity, the Public Body is not required to annotate or alter Decision 99-01 itself, as it is sufficient to “link” the relevant parts of the correction request to the decision.

[para 67] I further order the Public Body to notify me and the Complainant, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

Wade Riordan Raaflaub  
Adjudicator