ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2011-017

November 10, 2011

UNIVERSITY OF CALGARY

Case File Number F5486

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Summary: Under section 36 of the *Freedom of Information and Protection of Privacy Act* (the "Act"), the Applicant asked the University of Calgary (the "Public Body") to correct errors that she believed to exist in her personal information. She requested a review of the Public Body's response, and complained that it had not made every reasonable effort to ensure that her personal information was accurate and complete.

The Adjudicator found that the Public Body did not have to consider making any corrections in response to the Applicant's correction request, as the information that she wanted to have corrected was not in the custody or under the control of the Public Body, as required by section 36(1) of the Act.

Under section 35(a) of the Act, a public body must make every reasonable effort to ensure that an individual's information is accurate and complete before using it to make a decision that directly affects the individual. The Applicant submitted that she had been affected by a decision by which she was denied long term disability benefits, but the Adjudicator found that the Public Body had not made that decision. Section 35(a) therefore did not apply. The Applicant also submitted that the Public Body had made a decision that resulted in her having to leave Qatar for Canada, but the Adjudicator found that the Public Body had made every reasonable effort to ensure that her personal information was accurate and complete before using it to make that decision. The Public Body had therefore complied with section 35(a).

Statute Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(e), 1(n), 35(a), 36, 36(1), 36(2), 36(3), 36(4), 65(1), 65(3) and 72.

Authorities Cited: AB: Orders 97-002, 97-020, 98-002, 99-032, 2001-018, F2005-023, F2006-019, F2010-022 and F2011-007; Investigation Report F2007-IR-005.

I. BACKGROUND

[para 1] An individual (the "Applicant") was employed by the University of Calgary (the "Public Body") at its campus in Doha, Qatar. In a letter dated October 3, 2008, an occupational health consultant of the Staff Wellness Centre of the University of Calgary provided information to a doctor for the purpose of obtaining an independent medical examination ("IME") of the Applicant.

[para 2] In correspondence dated June 17, 2010, the Applicant alleged that the Public Body had provided inaccurate information to the doctor in five instances set out in the letter of October 3, 2008. As contemplated by the *Freedom of Information and Protection of Privacy Act* (the "Act"), she asked that the information be corrected.

[para 3] By letter dated July 27, 2010, the Public Body agreed to make one of the requested corrections, stating that it was working with Shepell-fgi, the contractor who operates the Staff Wellness Centre, to have the change made to its records. The Public Body refused to make the other four requested corrections, but indicated that a form would be placed on the Applicant's file with Shepell-fgi, and on her personnel file with the Public Body, setting out the requested corrections and the fact that they had not been made.

[para 4] In correspondence dated August 12, 2010, the Applicant requested a review of the Public Body's response to her correction requests as well as whether it had made every reasonable effort to ensure that her personal information was accurate and complete. The Commissioner authorized a portfolio officer to investigate and try to settle the matter. This was not successful, and the Applicant requested an inquiry in correspondence dated November 1, 2010. A written inquiry was set down.

II. INFORMATION AT ISSUE

[para 5] For the purpose of the issue under section 36 of the Act, the information at issue is certain information that the Applicant wants to have corrected. It consists of five items of information discovered by her in the letter of October 3, 2008 from the Staff Wellness Centre to the doctor conducting the IME (found at Tab 6 of the Applicant's initial submissions, as well as at Tab 2 of the Public Body's initial submissions).

[para 6] For the purpose of the issue under section 35(a), the information at issue is certain information that the Applicant believes to be inaccurate or incomplete and to have been used by the Public Body to make a decision that directly affected her.

[para 7] The Applicant referred to only five items of information in her correction request of June 17, 2010. In her submissions, she refers to four additional items of information, including three other statements from the letter of October 3, 2008, which she alleges to be inaccurate and wants to have corrected. She says that all of the items should be addressed, as they relate to sections 35(a) and 36, and the Notice of Inquiry indicates that I can address any further issues during the inquiry that I deem appropriate. The Public Body objects to addressing the four additional items, submitting that they were not raised in the Applicant's initial correction request. It says that no order in relation to the four additional items can be made by me.

[para 8] I can only address additional matters insofar as they fall within my jurisdiction. With respect to the issue of whether the Public Body properly refused to correct the Applicant's personal information under section 36, I have no jurisdiction to address anything other than the five correction requests set out in the Applicant's correspondence of June 17, 2010. Under section 65(1) of the Act, an individual who has made a correction request to a public body may ask the Commissioner to review the public body's decision. This means that the Applicant must first make a correction request to the Public Body and obtain a decision, or there must be a failure to make a decision, before the correction request can be reviewed by this Office. As a result, the Applicant's concerns regarding the four additional items of information are outside the scope of the review and this inquiry, insofar as any correction of her personal information is concerned.

[para 9] However, the issue of whether the Public Body made every reasonable effort to ensure that the Applicant's personal information was accurate and complete under section 35(a) is a different matter. This issue is further to the Applicant's complaint that her personal information has been used to make a decision directly affecting her in contravention of Part 2 of the Act, which falls within the parameters of section 65(3) (i.e., a complaint) rather than section 65(1) (i.e., a request for a review of a response to a correction request). This issue is therefore not circumscribed by the correction request of June 17, 2010. The Applicant's concerns about the accuracy and completeness of her personal information were raised in her request for review and she expressly cited section 35(a), which is why the issue under section 35(a) was identified in the Notice of Inquiry. Given this, I have the jurisdiction to address the four additional items of information, insofar as they relate to the issue under section 35(a), and I will accordingly address them in this regard.

[para 10] I further note that the last additional item to which the Applicant refers in her submissions includes the IME prepared by the doctor in response to the October 3, 2008 letter. The IME is among the decisions that she alleges to have been made by the Public Body and to have involved the use of her inaccurate or incomplete personal information in contravention of section 35(a). In her request for review, the Applicant squarely raised a concern that the IME prepared by the doctor resulted in a decision to deny her long term disability benefits. She also alleged, in her request for review, that the Public Body provided inaccurate information to another doctor, who she explains in her submissions gave an opinion regarding her ability to travel from Qatar to Canada in September 2008. Again, because the Applicant raised the foregoing matters in her request for review and they are independent of her correction request, I have the jurisdiction to address them in this inquiry.

[para 11] The Public Body also submits that I should not address the four additional items of information, with which the Applicant is concerned, because the portfolio officer who investigated and tried to settle this matter did not comment on them. However, a portfolio officer's investigation and possible settlement of a matter before this Office is separate from an inquiry, in that an inquiry addresses the matter anew. My jurisdiction flows from the Applicant's request for review, not from the comments or findings made by the portfolio officer.

III. ISSUES

[para 12] The Notice of Inquiry, dated March 17, 2011, set out the following issues:

> Did the Public Body properly refuse to correct the Applicant's personal information, as authorized by section 36 of the Act?
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> 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 13] In her submissions, the Applicant alleges instances of improper collection, use or disclosure of her personal information by the Public Body without her consent. Except to the extent that any of her concerns in this regard relate to the two issues above, I will not address them. The collection, use and disclosure of the Applicant's personal information by the Public Body, in various contexts, were reviewed in a different inquiry resulting in Order F2011-007.

IV. DISCUSSION OF ISSUES

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

[para 14] Section 36 of the Act reads, in part, 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 15] Under section 36, an individual has the initial burden of proving that the public body has personal information about him or her and that there is an error or omission in the personal information that the public body refused to correct (Order 97-020 at para. 108; Order F2005-023 at para. 10). If this is established, the public body then 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 16] For section 36(1) to apply, a correction request must be directed toward the "personal information" of an individual, as that term is defined in section 1(n) of the Act. The parties do not dispute that the Applicant's five correction requests in her letter of June 17, 2010 were directed toward her personal information. I find that they were, with one exception that I note later in this Order.

[para 17] Section 36(1) allows an individual to make a correction request to "the public body that has the information in its custody or under its control". If a public body that receives a correction request does not have the information that the individual wants to have corrected in its custody or under its control, it has no obligation to consider making the requested correction to that information.

[para 18] The Staff Wellness Centre of the University of Calgary is operated by Shepell-fgi. In Order F2010-022, which dealt with an access request from the Applicant to the Public Body, I concluded that records held by Shepell-fgi and the Staff Wellness Centre are generally not in the custody or under the control of the Public Body. I wrote as follows (at paras. 26 to 28 and 32):

> With an exception that I note below, I find that the present matter is analogous to the one discussed in Order F2009-030, and is another unusual case where a public body does not have custody or control of records held by its service provider.
>
> In this case, the organization that provides services through the Wellness Centre is Shepell-fgi, a division of HRCP Inc. In turn, the doctor is apparently a subcontractor, as the Applicant indicates that he was contracted by the Wellness Centre to solicit information from another care provider with respect to her medical situation. The "Independent Contractor Agreement", signed September 2008 between The Governors of the University of Calgary and Shepell-fgi, indicates (at pages 21) that Shepell-fgi administers the Employee Assistance Program, which provides eligible users with professional counseling and information services. The mandate of the Wellness Centre is, among other things, to provide assessment, counseling, claims management, referral, rehabilitation and re-integration services for staff members experiencing personal difficulties, illness or injury (page 22 of the Agreement). The Agreement emphasizes that Shepell-fgi is independent of the Public Body (article 2.7) and that all counseling records and case notes related to employees are its property and are confidential (article 5.3(g), as well as article C.9 of "Appendix C" to the Agreement).
>
> As in Order F2009-030, I find that there is a legitimate arm's length arrangement between the Public Body and Shepell-fgi, due to the nature of the services provided by Shepell-fgi and the reasonable requirement that information held by the Wellness Centre operated by Shepell-fgi be kept confidential and private, including vis-à-vis the Public

> Body, which is the employer of the individuals who use the services of the Wellness Centre.
>
> […]
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> Here, records that the Applicant requested from the Wellness Centre and the doctor were created by persons providing services to the Public Body, the records are held for the purposes of their duties, and the Public Body possibly relies on the records to a minor extent, such as to administer claims regarding employee benefits. These factors weigh in favour of a conclusion that the Public Body has custody or control of the records in question. On the other hand, the intention of the service provider, Shepell-fgi, is to use the records for its own independent purposes, their content relates to its own mandate and functions rather than those of the Public Body, the Public Body does not have possession of the records and they are not integrated with other records of the Public Body, and with the exception about to be discussed, the Public Body does not have the authority to possess the records, regulate their use or dispose of them. These factors weigh against a finding of custody or control. On weighing the criteria and relevant considerations, I conclude for the most part that the records requested by the Applicant from the Wellness Centre and the doctor are not in the custody or under the control of the Public Body.

[para 19] The exception that I noted in Order F2010-022 was in respect of any records provided by the Public Body to the Staff Wellness Centre for use in the performance of the services of Shepell-fgi. Article 5.1 of the Independent Contractor Agreement states that such records remain the property of the Public Body, and I therefore concluded that they are under the control of the Public Body. For full context, article 5.1 reads as follows:

> *Any records, information, data, documents and materials provided by the University to Contractor for its use in the performance of the Services shall remain the property of the University and shall be returned by the Contractor to the University, without cost to the university, upon the University's request and, in any event, upon the expiration or termination of this Agreement, in the same condition as when received by the Contractor reasonable wear and tear excepted.*

[para 20] In this inquiry, the Public Body submits that it is not required to make any of the corrections requested by the Applicant because the letter of October 3, 2008 from the Staff Wellness Centre to the doctor conducting the IME is not in the custody or under the control of the Public Body. It characterizes the letter of October 3, 2008 as the record that the Applicant wants to have corrected.

[para 21] Consistent with my conclusions in Order F2010-022, I agree that the letter of October 3, 2008 is not in the custody or under the control of the Public Body for the purpose of section 36(1) of the Act. The letter was written by an occupational health consultant of the Staff Wellness Centre to the doctor asked to carry out the IME. It was not provided by the Public Body to Shepell-fgi, and therefore does not fall within the category of records that remain the property of the Public Body under article 5.1 of the Independent Contractor Agreement.

[para 22] The Applicant argues that the Public Body's response of July 27, 2010 to her five correction requests (found at Tab 3 of its initial submissions, as well as Tab 6 of the Applicant's rebuttal submissions) shows that it has custody or control of her personal information, as it

agreed in part to make one of the requested corrections. I also note that the Public Body indicated that a form setting out the refused corrections would be placed on the Applicant's file with Shepell-fgi, in addition to her personnel file with the Public Body. The Public Body responds that its letter of July 27, 2010 indicated that its human resources consultant was working with Shepell-fgi to have the accepted change made in the records of Shepell-fgi, not the records of the Public Body. It says that it was merely suggesting to Shepell-fgi that the Applicant's personal information held by the Staff Wellness Centre be corrected, linked or annotated.

[para 23] I do not interpret the Public Body's response of July 27, 2010 to be a concession, or a definitive indication, that it has custody or control of the records containing the Applicant's personal information that are held by Shepell-fgi and the Staff Wellness Centre. Whether records are in the custody or under the control of a public body for the purpose of the Act is a question of fact and the answer is not overridden by an alleged concession. While a public body's belief that it has custody or control of records can be a factor suggesting that, in fact, it does, the Public Body's alleged belief, in its letter of July 27, 2010, does not change my conclusion, based on the Independent Contractor Agreement between the Public Body and Shepell-fgi, that the letter of October 3, 2008 and other records held by the Staff Wellness Centre are not in the custody or under the control of the Public Body.

[para 24] The Applicant argues that the Public Body has custody or control of the information that she wants to have corrected on the basis that it was the source of much of the information held by the Staff Wellness Centre. She cites article 5.1 of the Independent Contractor Agreement, which states that any "records, information, data, documents and materials" provided by the Public Body to Shepell-fgi for its use shall remain the property of the Public Body. On my interpretation, the reference to "records, information, data, documents and materials" encompasses records created or complied by the Public Body and provided to Shepell-fgi by way of documentation, e-mail correspondence, etc. It does not encompass records created or compiled by Shepell-fgi and the Staff Wellness Centre, even if those records were based on or incorporate information provided by the Public Body, whether verbally or in a pre-existing record. While there is a relatively broad reference to "information" in article 5.1, the other references to "records" and "data, documents and materials" demonstrate to me that the intention was not that snippets of information provided verbally or taken from a pre-existing record would remain the property of the Public Body.

[para 25] The Applicant submits that the personal information that she wants to have corrected is in the custody or under the control of the Public Body because the Independent Contractor Agreement was signed in September 2008, and there was a previous contractor responsible for the Staff Wellness Centre for part of the period relevant to creation of the records that she wants to have corrected (i.e., the summer of 2008). She notes that the agreement with the previous contractor was not entered into evidence, but submits that the Public Body must have had custody or control of her personal information during the transition between contractors. However, the existence of the Independent Contractor Agreement signed in September 2008 is sufficient for me to determine the extent to which the Public Body has custody or control of the records in question. It was the applicable Agreement at the time of the Applicant's correction request of June 17, 2010.

[para 26] Having said this, the Applicant further argues that the Public Body may be characterized as having provided the records of the previous contractor to Shepell-fgi for use in the performance of Shepell-fgi's services, meaning that the records of the previous contractor fall under the control of the Public Body under the terms of article 5.1 of the Independent Contractor Agreement with Shepell-fgi. In my view, however, the records of the previous contractor are more properly characterized as having passed from the previous contactor directly to Shepell-fgi. There is support for this interpretation in article C.10 of Appendix "C" to the Independent Contractor Agreement. That provision refers to Shepell-fgi assisting with the "seamless 'Transition of services' when taking over 'services of the contract' listed in Appendix 'A'" – being such things as assessment, counseling, claims management, referral, rehabilitation and re-integration services – and refers to Shepell-fgi liaising in this regard with the previous contractor, being Sykes Assistance Services and Human Resources. The transition of services directly from Sykes to Shepell-fgi effectively means that the records of Sykes were also transferred directly from Sykes to Shepell-fgi. Moreover, if the records of a previous contractor were characterized as falling in the custody or under the control of the Public Body each time there was a change in contractors operating the Staff Wellness Centre, it would wholly defeat the purposes of ensuring the confidentiality of information of employees who use the services of the Centre.

[para 27] The Applicant notes that public bodies are held accountable under the Act for the actions of their employees (Investigation Report F2007-IR-005 at para. 9, citing Order 99-032 at para. 51). However, the answer to the question of whether a record is in the custody or under the control of a public body does not depend exclusively on whether the record was created or handled by an employee, as this is only one factor in determining custody or control. In Order F2010-022 (at para. 30), I noted that the definition of "employee" in section 1(e) is for the purpose of interpreting other provisions of the Act, in that it applies wherever the term "employee" appears, but there is no provision in the Act that speaks of information "in the custody or under the control of an employee".

[para 28] Finally, the Applicant argues that the Public Body has custody or control of the information that she wants to have corrected because of conduct on its part, which she submits effectively negated the arm's length arrangement between it and Shepell-fgi. She says that, during the period in question, the Staff Wellness Centre was not operating as an independent contractor, and that its mandate was abandoned in favour of a "team approach" resulting in the exchange of her personal information between the Centre and the Public Body's human resources department. She argues that the required confidentiality of her personal information was not maintained, so the Public Body cannot now claim that it does not have custody or control of her personal information.

[para 29] The alleged improper collection, use and disclosure of the Applicant's personal information, in the context of the relationship between the Staff Wellness Centre and the Public Body's human resources department, were addressed in Order F2011-007. The Applicant's similar allegations here, and the conclusions in Order F2011-007, do not mean that the Public Body has custody or control of the personal information that the Applicant wants to have corrected. The possibility that the Staff Wellness Centre and the Public Body's human resources department may have acted in a manner that was inconsistent with the requirements or spirit of the Independent Contractor Agreement does not result in the records of the former falling into

the custody or under the control of the latter. The separation of custody and control, as between the Staff Wellness Centre and the Public Body, is to prevent the Applicant's personal information, such as that contained in her sensitive medical records, from being improperly known by the Public Body. If breaches of confidentiality were to effectively negate the Agreement and alter the nature of custody and control, the negation would serve only to permit further breaches of confidentiality. In other words, if the Public Body were to have custody or control of the Applicant's personal information for the purpose of her correction request, it would then also have custody or control generally, contrary to the intent of the Independent Contractor Agreement.

[para 30] While I conclude that the Public Body does not have custody or control of the letter of October 3, 2008 from the Staff Wellness Centre to the doctor who conducted the IME, for the purpose of section 36(1), that record is not the only one in respect of which the Applicant wanted information to be corrected. Although it was the correspondence that drew her attention to the information that she believes to be inaccurate, she wrote as follows in her letter of June 17, 2010 after noting the five allegedly inaccurate statements:

> *I would ask that the inaccurate information documented above be corrected in my file, in any correspondence that has been sent out in reference to me, and most particularly in the information that was sent to [the doctor conducting the IME].*

The above excerpt also refers to any correspondence sent out, and to the Applicant's file generally. This indicates that the Applicant wanted the five items of allegedly inaccurate information to be corrected in all records in which it appears, not just in the October 3, 2008 letter.

[para 31] Therefore, I must still determine whether the Public Body has custody or control of any of the allegedly inaccurate information that the Applicant wants to have corrected (i.e., information in its own files or in records that it provided to the Staff Wellness Centre). On my review of the Applicant's five correction requests, I conclude that it does not, for the reasons that follow. Throughout the discussion below, it should be borne in mind that I have already found that the October 3, 2008 letter is not in the custody or under the control of the Public Body. What I am discussing is whether the Public Body has custody or control of any other information to which the Applicant's correction requests are directed.

1. The first correction request ("performance issues" and "sick note")

[para 32] In the first correction request set out in her letter of June 17, 2010, the Applicant disagreed with information in a particular statement in the October 3, 2008 letter from the Staff Wellness Centre to the doctor conducting the IME. The statement was that there had been "performance issues" with her and that, when she was about to be terminated from employment, she "provided a sick note". She wrote that she had been threatened with termination, but that it was not for performance issues, and that it was a lie to suggest that she had provided sick notes to avoid being terminated.

[para 33] In its response to the Applicant, the Public Body agreed to make the requested correction, stating that it would work with Shepell-fgi to have the change made to its records. It

now takes the position that it is not required to make the correction, on the basis that it does not have custody or control of the information that the Applicant wants to have corrected.

[para 34] The Applicant's correction request was first directed toward the statement that there were performance issues with her. This information is of the kind that would typically be found in records of the human resources department of the Public Body and therefore would be in its custody or under its control. However, the Applicant notes that she obtained a copy of her personnel file in February 2009, and that it did not contain any performance-related concerns (a copy of the file is found at Tab 9 of her initial submissions). Further, with its response of July 27, 2010, the Public Body attached a "Note to File" setting out her five requested corrections and the extent to which they were made. For the first one, the Public Body wrote: "The University of Calgary notes that performance issues had not been documented nor was [the Applicant] about to be terminated." Given the parties' indications that the Public Body's file does not contain any information about performance issues with the Applicant, I find that the Public Body does not have custody or control of records subject to the Applicant's correction request regarding the alleged performance issues.

[para 35] The Applicant notes a telephone log entry of the Staff Wellness Centre (found at Tab 1, page 115 of her initial submissions), which indicates that the Public Body's human resources consultant told the Staff Wellness Centre, on July 16, 2008, that there were performance issues with the Applicant. This information was conveyed by telephone, rather than by e-mail or other written correspondence that would have suggested that the human resources consultant has a record subject to possible correction and in the custody or under the control of the Public Body. In conjunction with the evidence of the parties to the effect that there is no documentation regarding any performance issues, the merely verbal discussion involving the human resources consultant on July 16, 2008 suggests that the view that there were performance issues was held informally by her, and perhaps others, but this was independent of any records of the Public Body.

[para 36] The records that do refer to performance issues are the letter of October 3, 2008 and the telephone log entry of July 16, 2008. These are held by the Staff Wellness Centre and are outside the custody or control of the Public Body, for reasons set out earlier in this Order.

[para 37] The Applicant's first correction request was also directed toward the statement about providing a "sick note". She says that she did not provide sick notes but rather medical assessments as to her fitness for work. These forms are in her file with the Staff Wellness Centre (found at Tab 1 of the Applicant's initial submissions). In any event, the Applicant objects to the implication, in the October 3, 2008 letter from the Staff Wellness Centre to the doctor who conducted the IME, that she behaved inappropriately by providing the forms or sick notes in order to avoid being terminated. Because this implication appears in the October 3, 2008 letter, I find that the letter is the only record in respect of which the Applicant wants a correction in this regard. Again, the Public Body does not have custody or control of that letter.

[para 38] I conclude that the Public Body was not required to consider making any correction in response to the Applicant's first correction request, as the information that she wants to have corrected is not in the custody or under the control of the Public Body.

2. The second correction request (Applicant returning to Qatar against advice)

[para 39] In her second correction request, the Applicant disagreed with a statement, in the October 3, 2008 letter from the Staff Wellness Centre, that she had returned to Qatar "against the advice of the University of Calgary", as there were "better treatment options available in Canada". She wrote that the Public Body had never told her to stay in Canada, and that she had no information suggesting that there were better treatment options in Canada.

[para 40] As for whether the Public Body has custody or control of any records to which the Applicant's second correction request is directed, I find that it does not. The Applicant notes e-mail correspondence dated May 26, 2008 from the Public Body's human resources director to an occupational health consultant of the Staff Wellness Centre (found at Tab 1, pages 71-72 of her initial submissions). This correspondence is in the custody or under the control of the Public Body, as it was provided to the Staff Wellness Centre for use in the performance of its services. However, the Applicant does not indicate that she wants any of it corrected. She accepts that the human resources director wrote that "[t]he Dean and I both recommend to [the Applicant] that she allow us to send her home to Canada early…" The Applicant focuses on the reply of the occupational health consultant (found at Tab 1, page 71), which was that, contrary to the views of the human resources director, the Staff Wellness Centre supported her decision to have surgery in Qatar. The Applicant relies on the e-mail correspondence of May 26, 2008 not to argue that it should be corrected, but to show that the statement in the letter of October 3, 2008 is inaccurate (i.e., she was not actually advised, in the end, to stay in or return to Canada for treatment).

[para 41] The Applicant disagrees with the statement about her returning to Qatar against the advice of the Public Body because it implies that she demonstrated a belligerent disregard for her employer's wishes. In this respect, it is the particular tone of the statement to which she objects. I therefore find that it is only the statement in the October 3, 2008 letter to which the Applicant's second correction request is directed. Again, that letter is outside the custody or control of the Public Body.

[para 42] The Applicant also disagrees with the statement that there were better treatment options in Canada. The May 26, 2008 e-mail correspondence indicates that the human resources director was of the view that the Applicant would have family support and a network of health care professionals in Canada, and that there were various other reasons for the Applicant to have her treatment in Canada. The Applicant does not dispute that the director had her particular view, but rather requests correction of the statement that there were, in fact, better treatment options for her in Canada. On my review of the records provided to me, I find that this statement appears only in the letter of October 3, 2008, which is outside the custody or control of the Public Body. Moreover, this part of the Applicant's correction request is not directed toward her personal information, as it is instead regarding the nature of treatment in Canada and Qatar.

[para 43] I conclude that the Public Body was not required to consider making any correction in response to the Applicant's second correction request, as the information that she wants to have corrected is not in the custody or under the control of the Public Body.

3. The third correction request (date of suicide attempt)

[para 44] In her third correction request, the Applicant disagreed that she had attempted suicide on August 24, 2008. This date appears on page 2 of the doctor's IME report dated October 29, 2008 (found at Tab 1, pages 2-22 of the Applicant's initial submissions), while the letter of October 3, 2008 from the Staff Wellness Centre to him refers to August 26, 2008. The Applicant's correction request was effectively directed toward both dates, as she indicated that she had been hospitalized for the attempted suicide prior to August 24, meaning that she could not have attempted suicide on either August 24 or 26.

[para 45] In her submissions, the Applicant focusses on the incorrect date as being August 26. She explains that the accuracy of the date is important because psychiatrists view the length of stay in hospital as a determinant of the seriousness of the suicide attempt.

[para 46] The Applicant notes a telephone log entry of the Staff Wellness Centre (found at Tab 1, page 138 of her initial submissions), which indicates that the Public Body's human resources consultant told the Staff Wellness Centre that the Applicant had attempted suicide on August 23, 2008. While the Applicant never clearly indicates what she considers to be the date of her suicide attempt – and I note that she sent her suicide note by e-mail to her siblings shortly before midnight at 11:51 pm on August 22, 2008 (the e-mail is included at Tab 8 of her rebuttal submissions) – I interpret her submissions to mean that she considers her suicide attempt to have occurred on August 23, 2008. This is the date that she notes in the telephone log entry, and she refers to the Public Body's refusal to correct the date as suggesting that the suicide attempt actually occurred "three days later" (i.e., the incorrect date of August 26 rather than the correct date of August 23).

[para 47] Records held by the human resources consultant who advised the Staff Wellness Centre that the Applicant had attempted suicide are in the custody or under the control of the Public Body. However, the human resources consultant provided the correct date of August 23. Therefore, if she recorded the date anywhere, she recorded the correct one. The Applicant's third correction request is not directed toward the correct date, but rather the incorrect dates.

[para 48] The incorrect dates of August 24 and 26 appear in the letter of October 3, 2008 from the Staff Wellness Centre requesting the IME, and in the doctor's IME report of October 29, 2008. For reasons explained earlier in this Order, the October 3, 2008 letter is not in the Public Body's custody or under its control, nor is the doctor's report of October 29, 2008. The doctor was effectively a subcontractor of Shepell-fgi, and he provided the report, which contains the Applicant's sensitive medical information, directly to the Staff Wellness Centre. The report therefore consists of the category of information that falls outside the Public Body's custody or control under the terms of the Independent Contractor Agreement. This is regardless of whether the report is in the hands of the doctor or in the hands of the Staff Wellness Centre.

[para 49] I conclude that the Public Body was not required to consider making any correction in response to the Applicant's third correction request, as the information that she wants to have corrected is not in the custody or under the control of the Public Body.

4. The fourth correction request (Applicant saying she did not attempt suicide)

[para 50] In her fourth correction request referring to the October 3, 2008 letter from the Staff Wellness Centre to the doctor who conducted the IME, the Applicant disagreed with a suggestion that she or her treatment provider had told police in Qatar, who were investigating her case, that she had not attempted suicide but had instead accidentally taken too many medications. The Applicant requested the correction on the basis that she had never spoken to police in Qatar, and she was not aware that her treatment provider had spoken to police.

[para 51] As noted by the Public Body, the letter of October 3, 2008 did not state what the Applicant initially believed that it stated. While the letter noted the investigation by police, it did not say that the Applicant and her treatment provider had spoken to police. The letter did not specify to whom the Applicant or her treatment provider had provided the information about her not actually attempting suicide.

[para 52] The Applicant's submissions regarding her fourth correction request now clarify that what she would like to have corrected is the suggestion that she or her treatment provider told *anyone* that she had not attempted suicide but had instead accidentally taken too many medications. The Applicant acknowledges that two fellow employees spoke to police in Qatar, and she provided an affidavit (found at Tab 7 of her rebuttal submissions) in which one of them states that he told the police that he thought that perhaps the Applicant had accidentally mixed up her drugs or dosages. The Applicant believes that this information got changed as the story was reported from the Qatar campus of the Public Body to the Calgary campus and then to the Staff Wellness Centre.

[para 53] The Applicant explains that she believes that the different story, according to which it was she or her treatment provider who said that she had not attempted suicide, "emerged in the Staff Wellness Centre files". In other words, the error is allegedly in records held by the Staff Wellness Centre. For reasons explained earlier, these are generally outside the custody or control of the Public Body. Further, the Applicant does not point to, and I do not see, any record of the Staff Wellness Center, apart from the letter of October 3, 2008, which contains the allegedly inaccurate information. I therefore do not find that the Public Body provided any record to the Staff Wellness Centre, within the terms of article 5.1 of its Independent Contractor Agreement with Shepell-fgi, which might be subject to the Applicant's fourth correction request. In fact, the Applicant notes that the correct version of events appears to exist in the file held by the Public Body, in that a dean's notebook (the relevant page of which is found at Tab 12 of the Applicant's initial submissions) indicates that the individual who had a discussion with police is the employee who swore the affidavit provided by the Applicant. The fact that the Public Body's file contains an accurate account suggests that the Public Body did not provide information to the Staff Wellness Centre to the effect that it was the Applicant or her treatment provider who had said, to police or anyone else, that she had not actually attempted suicide.

[para 54] I conclude that the Public Body was not required to consider making any correction in response to the Applicant's fourth correction request, as the information that she wants to have corrected is not in the custody or under the control of the Public Body.

[para 55] In its rebuttal submissions, the Public Body makes a request to cross-examine on the affidavit of the Public Body's former employee, but adds that cross-examination is not necessary if I determine that the record containing the purportedly incorrect statement is not in the custody or under the control of the Public Body. The Public Body is specifically referring to the letter of October 3, 2008, but given that I have found that it does not have custody or control of any other information that the Applicant wants to have corrected in her fourth correction request, I take it that the Public Body does not need to cross-examine on the affidavit. Even if it still wishes to do so, I would decline its request for cross-examination, as I have not actually relied on the contents of the affidavit for the purpose of my conclusion regarding the Applicant's fourth correction request, and my conclusion is in the Public Body's favour in any event.

5. The fifth correction request ("remarkable improvement")

[para 56] In her fifth correction request, the Applicant disagreed with a statement that she had shown "remarkable improvement" during her stay at a particular clinic in Qatar. She says that she did not show remarkable improvement.

[para 57] The letter of October 3, 2008 from the Staff Wellness Center to the doctor who conducted the IME does not refer to remarkable improvement. Rather, the reference appears on page 4 of the IME report prepared by the doctor in response to the letter (found at Tab 1, pages 2-22 of the Applicant's initial submissions). For reasons set out earlier in this Order, the IME report is not in the custody or under the control of the Public Body.

[para 58] The original source of the alleged error regarding remarkable improvement is a medical report dated June 16, 2008 (found at Tab 1, page 48 of the Applicant's initial submissions, as well as Tab 9 of her rebuttal submissions), in which two doctors at Hamad Medical Corporation in Qatar wrote that the Applicant had shown remarkable improvement since visiting their clinic. This record is not in the custody or under the control of the Public Body, as it was provided by Hamad Medical Corporation to the Staff Wellness Centre and is held there.

[para 59] I conclude that the Public Body was not required to consider making any correction in response to the Applicant's fifth correction request, as the information that she wants to have corrected is not in the custody or under the control of the Public Body.

6. Summary regarding the Applicant's correction requests

[para 60] To summarize, the information that the Applicant requested to be corrected, in her letter of June 17, 2010, is not in the custody or under the control of the Public Body, as required by section 36(1) of the Act in order for the Public Body to have an obligation to consider making the requested corrections. Some of the Applicant's correction requests are directed toward the content or tone of statements that only appear in the October 3, 2008 letter from the Staff Wellness Center to the doctor who conducted the IME, which is outside the custody or control of the Public Body. Because the Applicant did not merely ask for correction of the October 3, 2008 letter, some of her correction requests are directed toward information appearing elsewhere, such as in the doctor's IME report of October 29, 2008, telephone logs of the Staff Wellness Centre, and the report of Hamad Medical Corporation. However, the Public Body does not have custody

or control of these records either. Finally, I have noted records that are in the custody or under the control of the Public Body, such as the Applicant's personnel file and e-mail correspondence written by human resources staff, but on my review of them, I have found that they do not contain any of the information that the Applicant alleges to be inaccurate.

[para 61] As I have found that the Public Body was not required to consider making any of the corrections requested by the Applicant, it is not necessary for me to decide whether any of the information at issue contains an error or omission within the terms of section 36(1), or consists of an opinion that must not be corrected under section 36(2). Further, because the Public Body has no obligation to consider making the requested corrections, it also has no obligation to annotate or link the Applicant's personal information under section 36(3), or notify any third parties in respect of the correction requests under section 36(4).

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 62] Section 35(a) of the Act 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 63] In order for a public body to be required to make every reasonable effort to ensure that information is accurate and complete, section 35(a) requires there to be personal information about an individual, and the public body must have used or intend to use it to make a decision that directly affects the individual (Order 98-002 at para. 74). 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 individual also has the burden of proving the existence of inaccurate or incomplete personal information (Order F2006-019 at para. 9).

[para 64] As for what constitutes "every reasonable effort" for the purpose of section 35(a), the Applicant notes the following comments (taken from Order 98-002 at paras. 90 and 91):

> … Every reasonable effort is an effort which a fair and rational person would expect to be done or would find acceptable. The use of 'every' indicates that a public body's efforts are to be thorough and comprehensive and that it should explore all avenues in verifying the accuracy and completeness of the personal information.
>
> … "[E]very reasonable effort" requires that a public body take positive steps to ensure that the personal information is accurate and complete before using the personal information to make a decision. This would entail having adequate procedures in place to

> properly verify the accuracy and completeness of the personal information, thereby ensuring accuracy and completeness.

[para 65] The Public Body submits that its duty under section 35(a) is engaged only to the extent that the records containing the Applicant's allegedly inaccurate or incomplete personal information are in its custody or under its control. However, unlike section 36(1) of the Act, section 35(a) contains no such limitation. Rather, for the purpose of section 35(a), a use of the Applicant's personal information by the Staff Wellness Centre is effectively a use of her personal information by the Public Body. This is because the Public Body engages the services of the Staff Wellness Centre, and it is accordingly accountable for the Centre's collection, use and disclosure of personal information in the course of providing those services. In Order F2011-007 (at paras. 10-12), it was likewise found that the Public Body was responsible for the collection, use and disclosure of the Applicant's personal information, on the basis that the Staff Wellness Centre was providing services for the Public Body. The foregoing is consistent with an early principle articulated by this Office, which is that a public body is responsible under the Act for the actions of its officers, employees and anyone else acting on its behalf (Order 99-032 at paras. 51-52).

[para 66] For clarity, my conclusion that the Public Body is responsible for the Staff Wellness Centre's use of the Applicant's personal information is not inconsistent with my conclusion that the Public Body generally does not have custody or control of records held by the Staff Wellness Centre containing the Applicant's personal information. A public body is still responsible for the collection, use and disclosure of personal information held by a service provider that it engages, even if the public body does not have custody or control of the service provider's records for the purpose of an access request or correction request. The question of custody and control is relevant to a review of a public body's response to an access request or correction request because a public body cannot comply with the request if it does not have custody or control of the subject records. However, a public body can dictate how its employees and service providers are to collect, use and disclose personal information in compliance with the Act, regardless of whether the Public Body has custody or control of the records containing the personal information.

[para 67] I now turn to the personal information that the Applicant alleges to be inaccurate or incomplete and used to make decisions that directly affected her. It consists of the same five items that she wanted to have corrected in her correspondence of June 17, 2010 and four additional items set out in her submissions. In her submissions, the five items in the Applicant's correction request are item 1 ("performance issues" and "sick note"), item 2 (Applicant returning to Qatar against advice), item 4 (date of suicide attempt), item 6 (Applicant saying she did not attempt suicide) and item 8 ("remarkable improvement"). The four additional items are item 3 ("housing and travel allowance"), item 5 ("suicide notes"), item 7 (Applicant seen by certain doctors) and item 9 (IME report prepared by the doctor in October 2008 and an expert medical report prepared by two other doctors in the course of litigation in August 2010).

[para 68] As for the decisions that the Applicant says directly affected her, she points to several allegedly made by the Public Body, or submits that the Public Body attempted to influence several decisions of third parties that were of critical importance to her. On my review of her submissions, I find that there are two main decisions. When I discuss these two larger

decisions, I will also be discussing, explicitly or implicitly, the smaller alleged decisions leading up to them. For instance, the Applicant submits that the Public Body made a decision to request the IME in October 2008, that the doctor engaged by the Staff Wellness Centre to carry out the IME made a decision when assessing her condition, and that his inaccurate opinion set out in his IME report of October 29, 2008 was then used to make a decision as to whether to grant her long term disability benefits, as well as influenced the subsequent expert medical report. I treat all of these acts, opinions and decisions together below. Similarly, I discuss another doctor's allegedly inaccurate opinion as to whether the Applicant could return to Canada in September 2008 when I discuss the Public Body's decision not to seek renewal of the Applicant's residency permit, which was allegedly based on that doctor's inaccurate opinion.

1. Denial of the Applicant's long term disability benefits

[para 69] The Applicant submits that the Public Body ordered and paid for the IME that the Staff Wellness Centre requested in its letter of October 3, 2008, and then used the results of the IME by providing them to the Public Body's long term disability insurer, Great West Life. She says that Great West Life denied her claim for long term disability benefits, based on the conclusions in the IME report. She further notes that the IME was reviewed by a second doctor engaged by Great West Life, but who was an associate professor in the Public Body's Department of Psychiatry. She submits that this other doctor relied heavily on the inaccurate IME of the first doctor, and that his conflict of interest, due to his employment with the Public Body, means that he was not the independent medical consultant that he purported to be for the purpose of assisting in the assessment of the Applicant's long term disability claim.

[para 70] While the decision to deny the Applicant long term disability benefits may have been a decision that directly affected her, I find that it was not a decision of the Public Body to which section 35(a) of the Act applies. It is Great West Life that reviews long term disability claims, and makes the decision to accept or reject them. I acknowledge that the decision results in payment or not to an employee of the Public Body, and that the payments that are warranted are either made by Great West Life as the Public Body's insurer, or else by the Public Body itself with Great West Life only adjudicating the claim. Regardless, the relationship between Great West Life and the Public Body does not make the decision of Great West Life to deny the Applicant's long term disability claim a decision of the Public Body. It remains a separate decision made by an independent third party. Further, the fact that Great West Life's determination was made with the assistance of a doctor affiliated with the Public Body's Department of Psychiatry does not persuade me that its determination was a decision of the Public Body. Medical doctors are often affiliated with an educational institution, or a hospital associated with an educational institution, but carry out professional responsibilities for other entities, in this case Great West Life. I have no evidence in this case to suggest that the doctor who reviewed the IME report was influenced by the Public Body during his review, or had a conflict of interest that effectively rendered his review a decision of the Public Body within the terms of section 35(a).

[para 71] The conclusions set out in the doctor's IME report of October 29, 2008 also did not amount to a decision of the Public Body under section 35(a). The conclusions were not a

decision at all, but rather an opinion. The doctor's views may have been used, in part, to make a decision by Great West Life, but the doctor himself made no decision affecting the Applicant.

[para 72] Even if the IME report or the decision to deny the Applicant's long term disability claim could be characterized as decisions of the Public Body, I would find that the Applicant's allegedly inaccurate or incomplete personal information had an insufficient bearing on them. In other words, the IME carried out by the first doctor and relied upon by the second doctor, to the extent that it resulted in the decision to deny the Applicant benefits, was not based on the "use" of any allegedly inaccurate or incomplete information, within the terms of section 35(a).

[para 73] The Applicant argues that the Staff Wellness Centre forwarded inaccurate and incomplete information to the doctor asked to carry out the IME in a blatant attempt to have him make behavioural and character judgments about her prior to the IME. In Order F2011-007 (at para. 84), it was noted, for instance, that the Public Body should not have informed the Staff Wellness Centre of the alleged performance issues involving the Applicant. While the Staff Wellness Centre, in turn, improperly passed along that information to the doctor who conducted the IME, I find that he did not actually use that information to assess the Applicant's condition. On my review of his IME report of October 29, 2008 (found at Tab 1, pages 2-22 of the Applicant's initial submissions), I likewise find that the doctor did not rely on the information about providing a sick note, about the Applicant returning to Qatar against the advice of the Public Body because there were better treatment options in Canada, about the Applicant or her treatment provider saying that she did not attempt suicide, or about the date of her suicide attempt. All of the foregoing information appears at the outset of the report for the purpose of providing background, and it repeats what the doctor was told by the Staff Wellness Centre in its letter of October 3, 2008, but I see no connection between the information and the conclusions drawn by the doctor, later in his report, regarding the Applicant's condition. He therefore did not use any of this allegedly inaccurate information, within the terms of section 35(a), to make his decision, if it was a decision.

[para 74] Rather, the doctor who conducted the IME based his conclusions on the Applicant's medical information and history, which was apparently contained in a referral folder provided to him by the Staff Wellness Centre, and not merely from the letter in which the Centre requested the IME. He also primarily based his assessment on his own diagnostic impression of the Applicant's psychological condition during the interview and mental status examination, which took place on October 14 and 15, 2008. I further note, from the doctor's report, that the Applicant told him her version of events as to whether she had performance issues, etc. so that even the information regarding the nature of her relationship with the Public Body was accurate and complete, to the extent that it was relevant to the doctor's assessment of her condition.

[para 75] The Applicant submits that the Staff Wellness Centre had not contacted her for two months to obtain information about her medical status, and that the doctor therefore did not receive her complete medical information for the purpose of the IME. She also says that none of the events of September 2008 were included for his review. However, the doctor refers in his report to various aspects of the Applicant's medical condition, as well as to events that took place in September 2008. Whether he obtained this information from the referral folder provided

to him by the Staff Wellness Centre or from the Applicant at the time of the IME itself, I find that the information was accurate and complete.

[para 76] The Applicant alleges that she was duped into undergoing the IME, as she had been misled that the purpose of the visit was to assist her in her medical treatment, rather than for the benefit of the Public Body as her employer, or for the benefit of Great West Life as the insurer in relation to long term disability claims. She says the she only learned the true purpose of the IME at the IME itself. In any event, the fact that the Applicant did not initially know that she was attending for an IME does not alter the personal information that was used to carry out it out. The information conveyed to the doctor in the letter of October 3, 2008, the medical information in the referral folder, the information provided verbally by the Applicant at the IME, and the doctor's observations of her, all remain the same.

[para 77] At page 4 of the IME report, the doctor refers to the Applicant's "remarkable improvement" following her stay at a clinic in Qatar. Earlier in this Order, I found that this information is not in the custody or under the control of the Public Body for the purpose of the Applicant's correction request under section 36. I therefore did not delve into whether it contained an error for the purpose of that section. For the purpose of section 35(a), however, I find that the information is inaccurate. The statement regarding "remarkable improvement" was originally taken from a medical report dated June 16, 2008 from the Hamad Medical Corporation (found at Tab 1, page 48 of the Applicant's initial submissions, as well as Tab 9 of her rebuttal submissions). The Applicant explains that the statement related to a male patient given that the word "his" appears, it contradicts a preceding statement in the same report that she had merely shown "some" improvement, and the statement about remarkable improvement was therefore mistakenly included in the report in relation to her. She drew the error to the attention of the Staff Wellness Centre in an e-mail dated June 16, 2008 (found at Tab 1, page 47), and she says that the Staff Wellness Centre acknowledged the error in a follow-up telephone conversation. I accept her evidence in this regard.

[para 78] However, I find that the doctor who conducted the IME did not actually use the inaccurate information about the Applicant showing remarkable improvement for the purpose of his conclusions. Again, the statement regarding remarkable improvement appears in the introductory section of the doctor's report, in which he notes that background information that he reviewed, but I find that the statement did not affect his subsequent opinion of the Applicant's condition. He therefore did not use the information for the purpose of his decision, assuming that it can even be characterized as a decision. Consequently, when Great West Life allegedly used the opinion of the doctor, it did not rely on the statement about remarkable improvement, as the doctor's conclusions did not flow from that statement. Great West Life therefore did not use the statement about remarkable improvement for the purpose of its decision to deny the Applicant long term disability benefits, even assuming that this decision may be characterized as one made by the Public Body under section 35(a).

[para 79] The foregoing addresses the five items of allegedly inaccurate or incomplete information set out in the Applicant's correction request of June 17, 2010. I now turn to whether the Applicant's personal information was inaccurate or incomplete on the basis of the additional items that she sets out in her submissions.

[para 80] The Applicant submits that the doctor who carried out the IME was incorrectly advised that she had been seen only by a general practitioner, an oncologist and a psychologist, but not by a psychiatrist and other treatment providers (item 7 in her submissions). However, the doctor refers in his report to the fact that the Applicant had been seen by a psychiatrist and other treatment providers, presumably because he noted this information from the referral folder given to him. The Applicant also believes that the October 3, 2008 letter from the Staff Wellness Centre to the doctor inaccurately suggested that the Centre was only aware of the Applicant's treatment providers based on what she told them, rather than based on its own knowledge or independent records. Again, however, the doctor would have noted the Applicant's treatment providers from the medical reports in the referral folder, making it apparent to him that the Applicant was not merely the source of the information.

[para 81] The Applicant submits that the Staff Wellness Centre provided inaccurate information about the content of her suicide note and its intended recipients, and that the doctor was not provided with a copy of it to review for himself (item 5 in her submissions). However, I do not believe that the content of the Applicant's suicide note, or to whom it was sent, would have affected the doctor's conclusions. Again, his assessment of the Applicant's condition was primarily based on her presentation and his interview with her.

[para 82] The Applicant is concerned about a reference in the October 3, 2008 letter from the Staff Wellness Centre that "she was advised that the housing and travel allowance that she received for working in Doha would be discontinued" (item 3 in her submissions). She objects to the terms "allowance" because her housing and travel entitlements were part of her employment contract. She also disagrees with the Public Body's decision to remove her transportation and salary premiums as of August 1, 2008. She says that the decision was not properly based on policy, and that the doctor conducting the IME (as well as the one asked to give his opinion about her ability to travel, as discussed in the next section of this Order) should have been advised of her income reductions and that they were not based on policy. First, the Applicant's concern about the removal of her entitlements rests on her view that proper policy was not followed, not on any aspect of her personal information within the terms of section 35(a). Second, I fail to see how the removal of her entitlements had anything to do with the doctors' medical assessments. I therefore find that her personal information was not inaccurate or incomplete for the purpose of those assessments, insofar as her housing and travel entitlements are concerned.

[para 83] Finally, in relation to the decisions surrounding the IME and the Applicant's entitlement to long term disability benefits, she says that the Public Body and Great West Life jointly engaged two other doctors to carry out another IME and prepare an expert medical report in August 2010, and that these doctors, in turn, relied on the allegedly problematic IME of the first doctor in October 2008 (item 9 in her submissions). The Applicant explains that this subsequent medical examination was ordered by a court in the context of litigation involving her, the Public Body and Great West Life, following the denial of her benefits.

[para 84] The court order was not a decision of the Public Body subject to section 35(a) of the Act. Even if the Public Body's actions in the litigation may be characterized as being or leading to decisions that directly affected the Applicant, I see no basis for concluding that the

Applicant's personal information was inaccurate or incomplete for the purpose of the medical examination in August 2010. As I have found that her personal information was accurate and complete for the purpose of the IME in October 2008, I dismiss her argument that this first IME resulted in a subsequently problematic expert medical report in the lawsuit. As for any other allegedly inaccurate or incomplete personal information in the expert medical report, I do not have that report before me. I also note that it is apparently dated August 13, 2010, which is one day after the date of the Applicant's request for review by this Office, meaning that my review of the expert medical report would be outside the scope of this inquiry, in any event.

[para 85] To summarize, the doctor's IME in October 2008 and the denial of the Applicant's long term disability benefits did not involve a decision of the Public Body under section 35(a) of the Act. Even if they did, the Applicant's allegedly inaccurate or incomplete personal information was not actually used to make those decisions. Either way, the Public Body did not contravene section 35(a).

2. Requirement for the Applicant to leave Qatar

[para 86] The second decision that the Applicant says was made by the Public Body and directly affected her was its decision to "evict" her from Qatar. In a letter dated September 10, 2008 (found at Tab 5 of the Applicant's initial submissions), the Public Body's human resources consultant wrote to the Applicant as follows:

> *The purpose of this letter is further to your expired Residency Permit. The University of Calgary notified you via letter from [the Interim Dean and CEO] on August 6, 2008 that your Residency Permit would expire on September 1, 2008. The State of Qatar requires you to be actively at work in order to renew your Residency Permit. As part of the Agreement with the State of Qatar, your current request for an extension is not possible as you are still not actively at work.*
>
> *The University of Calgary has been advised through a doctor with Shepell-fgi, and in consultation with your treating physician that you are medically able to travel. As a result of this clearance, and the State of Qatar's requirement for you to be actively at work, your Residency Permit has been cancelled so you may exit the State and return to Canada. Your expired Residency Permit will be cancelled as of September 11, 2008 and it is my understanding that you and your belongings must leave the State within seven days, on or before September 18, 2008. […]*

[para 87] The Applicant argues that the Public Body's decision was based on an inaccurate opinion that she was medically able to travel. The Staff Wellness Centre had written to a doctor in Toronto by e-mail dated September 2, 2008, seeking his opinion as to her ability to travel to Canada with her sister (found at Tab 1, pages 139-140 of the Applicant's initial submissions). The doctor's opinion, which followed his consultation with another doctor in Qatar, was conveyed in e-mail correspondence dated September 7, 2008 (found at Tab 1, pages 143-144). The Applicant submits that the Staff Wellness Centre provided the first doctor with inaccurate and incomplete information when it requested his opinion.

[para 88] The allegedly inaccurate information consists of many of the same statements that the Staff Wellness Centre made in its letter of October 3, 2008 to the doctor who carried out the

IME, being the statements that there were performance issues with the Applicant, that she returned to Qatar against the advice of the Public Body despite better treatment options in Canada, that her housing and travel allowance was discontinued, that she attempted suicide on a particular date, and that she sent suicide notes to particular people. The information that the Staff Wellness Centre allegedly neglected to include in the request for the opinion regarding the Applicant's ability to travel was her detailed medical background information. The Applicant also argues that the Public Body failed to draw the doctor's attention to the contents of an e-mail of September 2, 2008, in which the Applicant's sister explained that the Applicant had been released into her care pending a determination of her ability to travel by a medical team at a hospital in Qatar, and that the Applicant had further medical issues.

[para 89] The decision relating to the Applicant's departure from Qatar was, effectively, the Public Body's decision not to take steps to renew her residency permit, which had expired on September 1, 2008. While the letter of September 10, 2008 noted that the Applicant's residency permit could not be renewed because she was not actively at work – a factor that would apparently be considered for the purpose of a decision by officials in Qatar rather than the Public Body – the Public Body might have made efforts to have the Applicant's residency permit renewed rather than cancelled. For instance, it might have drawn her health condition to the attention of officials in Qatar, even if doing so would not, in the end, have affected their decision as to whether to renew the permit. While I do not have the Public Body's agreement with Qatar or Qatar's requirements for residency permits before me, it is possible that there were arguable grounds on which to renew the Applicant's residency permit, apart from being "actively at work". Further, the Applicant points to notes of a meeting between the Public Body's human resources director and her assistants in Calgary and Qatar (found at Tab 3 of the Applicant's initial submissions), which suggest that there was a three-month grace period in which to renew the Applicant's residency permit following its expiry.

[para 90] Because the Public Body might have at least made efforts to renew the Applicant's residency permit so that she would not have to leave Qatar, I find that the failure to do so was a decision of the Public Body falling within the terms of section 35(a) of the Act. I also find that the decision directly affected the Applicant, in that the cancellation of her residency permit obligated her to pack up her belongings, leave her villa, apparently abandon a vehicle that she had, interrupt her medical treatment, and return to Canada.

[para 91] However, I find that the Public Body used the Applicant's accurate and complete personal information when making the decision not to seek renewal of her residency permit and instead allow it to be cancelled. The opinion of the doctor as to whether the Applicant could travel was accurate in the sense that it was indeed the doctor's opinion. The Applicant argues that the doctor did not actually consult with her treating physicians, and did not review her medical reports despite asking the Staff Wellness Centre for them in an e-mail of September 7, 2008 (found at Tab 1, page 144 of the Applicant's initial submissions). She also says that he was not advised that the reason for soliciting his opinion was to determine whether the Public Body could justifiably "evict" her from Qatar. However, none of the foregoing renders the doctor's opinion regarding the Applicant's ability to travel inaccurate or incomplete. His opinion was based on a limited set of information, but the Public Body was aware of what the opinion was and was not based on. In his e-mail correspondence, the doctor stressed that he had not seen the

Applicant, and that the doctor in Qatar with whom he had consulted in order to form his opinion provided minimal information orally, and nothing in writing. He (the doctor in Toronto) explained that there was no contraindication to the Applicant returning to Canada, but added that she was "vulnerable and unstable so her mood could change" and that she "might want to stay in Qatar". In other words, the doctor who the Public Body said had cleared the Applicant to travel to Canada gave a qualified opinion. Even if the Public Body's letter of September 10, 2008 made it appear that the doctor's opinion was stronger than it really was, the Public Body had the benefit of his actual opinion when using it to make the decision not to take steps to renew the Applicant's residency permit.

[para 92] As noted earlier, an opinion is not, in and of itself, a decision. This means that the doctor who provided the opinion regarding the Applicant's ability to travel was not himself required to have all of the Applicant's personal information before him. Rather, it was the Public Body that was required to use the Applicant's accurate and complete personal information when making the decision not to seek renewal of her residency permit.

[para 93] In this case, the Public Body appears to have based its decision on a consideration of a variety of factors. The letter of September 10, 2008 itself noted the fact that the Applicant was not actively engaged in work as one of the reasons for which her permit would be cancelled. An earlier letter of August 6, 2008 from the Public Body to the Applicant (found at Tab 1, pages 26-27 of her initial submissions) had already explained that the Public Body did not intend to renew the permit until such time as the Applicant was deemed fit to return to work. I also see a telephone log entry of July 16, 2008 (found at Tab 1, page 115 of the Applicant's initial submissions), in which notes were made by the Staff Wellness Centre following a conversation with the Public Body's human resources consultant. The notes indicate that the Public Body's human resources director was "under pressure to either have [the Applicant] stay in Canada to receive appropriate treatment or return to work in Doha". The telephone log entry adds that the private individual sponsoring the Doha campus in Qatar did not approve of the Applicant being off work. Further, I note an e-mail dated July 28, 2008 from the Interim Dean and CEO to the Staff Wellness Centre (found at Tab 1, pages 127-128 of the Applicant's initial submissions). It indicates that the dean had concerns about the Applicant not working while living in the same complex as employees who continued to work, and was worried that her presence would create difficulties for the individual replacing her in her position.

[para 94] The foregoing tells me that the Public Body's decision not to seek renewal of the Applicant's residency permit did not arise from the use of any of the personal information that the Applicant alleges to be inaccurate, namely the doctor's opinion that she was able to travel or any of the nine items set out in her submissions. The Public Body's decision was based on the fact that the Applicant was not actively at work, as expressly stated in the letter of September 10, 2008, and it was also apparently based on other factors that were not set out in the letter. While the decision was also based, in part, on the doctor's opinion that she was fit to travel, his opinion cannot be said to be inaccurate.

[para 95] I note that, in addition to her concerns set out in the nine items in her submissions, the Applicant argues elsewhere that some of the information in the above-referenced telephone log entry of July 16, 2008, which I have found to set out factors on which the Public Body partly

based its decision not to renew her residency permit, is untrue. She might also have concerns about the content of the above-referenced e-mail of July 28, 2008. However, the information about the human resources director being under pressure to have the Applicant stay in Canada, the attitude of the individual sponsoring the Doha campus, and the dean's concerns about the Applicant not working but still remaining onsite, are not the Applicant's personal information within the meaning of section 1(n) of the Act. Rather, this information is about other individuals, or sets out their views or opinions that are not about the Applicant. The views or opinions are not about the Applicant because they are more properly characterized as being about a state of affairs (i.e., any employee not working in the same circumstances, not just the Applicant in particular). The information therefore does not fall within the terms of section 35(a), and the Public Body has no obligation under that section in respect of the information.

[para 96] Finally, to the extent that the question of whether the Applicant was able to travel to Canada in September 2008 is determined in reference to fact, rather than opinion, I am not in a position to determine whether, in fact, the Applicant could or could not travel. A fact is a thing that is known to be true, an item of verified information, or something that may be determined objectively (Order 97-002 at paras. 42-43). While the Applicant points to information to suggest that she was not able to travel, such as her medical information and the contents of her sister's e-mail of September 2, 2008 to the Staff Wellness Centre, I am not able to verify whether the Applicant could or could not travel. The result is that the Applicant has not proven that the Public Body relied on inaccurate information in this regard when it made its decision not to seek renewal of her residency permit.

[para 97] Given the foregoing, I conclude that the Public Body complied with section 35(a) of the Act by making every reasonable effort to ensure that the Applicant's personal information was accurate and complete before it made its decision not to seek renewal of the Applicant's residency permit.

V. ORDER

[para 98] I make this Order under section 72 of the Act.

[para 99] I find that the Public Body was not required to consider making any corrections in response to the Applicant's correspondence of June 17, 2010, as the information that she wants to have corrected is not in the custody or under the control of the Public Body, as required under section 36 of the Act.

[para 100] I find that the Public Body made every reasonable effort to ensure that the Applicant's personal information was accurate and complete before the Public Body made a decision that directly affected her, as required by section 35(a) of the Act.

Wade Riordan Raaflaub
Adjudicator