ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2017-03

January 18, 2017

CALGARY POLICE SERVICE

Case File Number F8092

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Summary: After obtaining records in an access request, the Applicant made a correction request under the *Freedom of Information and Protections of Privacy Act* (the FOIP Act) to the Calgary Police Service (the Public Body). The Public Body refused to correct the information on the basis the information was not the Applicant's personal information.

The Adjudicator found certain information the Applicant requested to be corrected was not the Applicant's personal information. She upheld the Public Body's decision to refuse to correct the information as the Applicant had not met the burden of proving the information to be incorrect.

The Public Body did annotate the requested corrections to the information at issue.

She ordered the Public Body to provide the annotated record to herself and the Applicant to ensure the annotation was visible to the reader of the information.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 36, 72.

Authorities Cited: AB: Orders 97-020, 2000-007, F2005-008, F2005-023, F2016-34.

I. BACKGROUND

[para 1] This inquiry arises from a request made by the Applicant under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act or the Act) to the Calgary Police Service (the Public Body) for corrections to be made to 19 pages of records that had been provided to him in response to an earlier access request.

[para 2] The Public Body refused to make the requested corrections in each case. The Public Body told the Applicant the changes he requested were considered to be changes to information that was not his personal information or to information that consisted of opinions of the attending officer. The Applicant requested a review of the Public Body's response.

II. RECORDS AT ISSUE

[para 3] The Applicant, in his request for inquiry, attached 19 pages of police reports which were associated with 9 separate cases. They are taken from a batch of numbered (1-61) pages provided to the Applicant in response to a previous access request. I will use that numbering system when referring to the records.

III. ISSUE

[para 4] The Notice of Inquiry set out the following issue:

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

IV. DISCUSSION OF ISSUE

[para 5] Section 36 of the Act states:

> *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.

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

(a) in the opinion of the head of the public body, the correction, annotation or linkage is not material, and

(b) the individual who requested the correction is advised and agrees in writing that notification is not necessary.

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

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

(a) the correction has been made, or

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

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

[para 6] Prior decisions of this office have determined the Applicant has the initial burden of proving the Public Body has personal information about him and there is an error in that personal information the Public Body has refused to correct (Order 97-020 at para. 108 and Order F2005-023 at para. 10).

[para 7] The Public Body has the burden of showing why it refused to correct the personal information and instead annotated or linked the personal information with the requested correction (Order 97-020 para. 109).

[para 8] It would appear, by the Applicant's submissions, that he misunderstands the application of section 36. The Applicant asks:

> …what defines "personal information"? In many of these complaints, no personal statement exists, so I must clarify and correct the author's mistakes that may negatively influence future related legal matters. My understanding of section 36(2) implies that citizen profiling is a guarantee of immunity from civil remedy, without obligating the author to validate their expressed opinion. My understanding of section 36(3) implies that a public body must include personally submitted information without a time limit, since no legislated requirement exists denying entry of the additional data provided to the report author.

[para 9] Section 1(n) of the Act defines the term "personal information".

> *1(n) "personal information" means recorded information about an identifiable individual, including*
>
> *(i) the individual's name, home or business address or home or business telephone number,*
>
> *(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
>
> *(iii) the individual's age, sex, marital status or family status,*
>
> *(iv) an identifying number, symbol or other particular assigned to the individual,*
>
> *(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
>
> *(vi) information about the individual's health and health care history, including information about a physical or mental disability,*
>
> *(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
>
> *(viii) anyone else's opinions about the individual, and*
>
> *(ix) the individual's personal views or opinions, except if they are about someone else;*

[para 10] If information is "about an identifiable individual" it is personal information within the terms of the Act.

Is the information the Applicant's personal information?

[para 11] I will first determine whether the information the Applicant asks to have corrected is his personal information. There are 6 groups of records relating to various case files.

1. <u>Pages 14, 19, 26, 29 and 30</u>

[para 12] The Applicant states in three cases (pages 14, 19, 26, 29 and 30) he did not provide statements to the police. He further states the corrections requested "are scene characteristics and minor details". He further submits he "presumes that none of the officers who authored these reports actually visited the scenes". He states "There is no clear reason for the Applicant's corrected data to be denied an entry onto these reports,

based upon the absence of police statements from the Applicant corroborating these characteristics."

[para 13] The Public Body response to the Applicant's submissions is as follows:

> [The records in question] all relate to traffic accidents that the Applicant either witnessed or was otherwise involved. In each of the three cases, the Applicant seeks to correct information that is not his personal information.
>
> According to section 1 of the Act, personal information must be recorded information about an identifiable individual. In these [pages], the recorded information at issue consists of roadway descriptions, lighting conditions and descriptions of municipal locations. In none of the three cases is there any personal information belonging to the Applicant, or to anyone else, which is the subject of the request for corrections.

[para 14] In these cases, it is clear the information is not the Applicant's personal information, but rather, as described by the Applicant himself, "scene characteristics and minor details". The information is about such things as road conditions, lighting, road alignment, and road class. This is not the Applicant's personal information.

2. Pages 8 and 9

[para 15] These two pages relate to an incident where the Applicant followed an individual to the airport. When the individual stopped her vehicle, the Applicant got out of his truck. He struck her vehicle with a sledgehammer.

[para 16] The Applicant submits the report is an incomplete recounting of the events. He asked for corrections to be made to add text to the report and to correct a typo in the report.

[para 17] The report is about the actions taken by the Applicant and are his personal information. The requested correction disputes various facts in the report.

3. Page 24

[para 18] The Applicant wishes the Public Body to correct a typo in the report. The report refers to a "male" where it clearly should read "metal".

[para 19] The Applicant was a witness to the events recorded in the report. It is a typical police report commonly referred to as a "will say". The report states "[the Applicant] will state: …I witnessed the altercation and the fist fight became a threeway event with a female appraoching [sic] two combatting males with a male rod…"

[para 20] The Public Body submits this is not the personal information of the Applicant.

[para 21] Section 1(n)(ix) states "personal information means recorded information about an identifiable individual, including the individual's personal views or opinions, except if they are about someone else".

[para 22] This portion of the report is clearly the Applicant's personal view or opinion of the events of an incident reported to the Public Body. The Applicant did not see a female approach two combatting males with a "male rod", but did see her approach with a "metal" rod. As the report states this is something the Applicant "will state" if necessary in further proceedings, it is the Applicant's personal information.

4. Pages 31, 35-38

[para 23] These pages relate to an incident where the Applicant was charged with driving without due care and attention and failing to remain at the scene of an accident.

[para 24] The Public Body submits the requested corrections relate to disputed facts regarding descriptions of roadways, lighting conditions and locations. The Public Body also submits these corrections are not the personal information of the Applicant.

[para 25] I agree with the Public Body the descriptions of roadways, lighting conditions and locations found on pages 31, 35, 36 and 38 are not the Applicant's personal information. I also find the typographical errors are not the Applicant's personal information on these pages.

[para 26] The Applicant also requested corrections on page 37 that relate to an opinion of the investigating officer in the case. Page 37 contains a heading "Professional Opinion". Section 36(2) prohibits a correction to an opinion.

[para 27] The rest of the page is entitled "Investigative Details". There is an account of the Applicant's past behaviour. This is the Applicant's personal information. The requested correction disputes various facts in this account.

5. Pages 50, 51, 53

[para 28] These pages record information regarding a minor traffic violation involving the Applicant.

[para 29] On page 50 under the heading of "Description", there are various characteristics listed describing the Applicant. This is the Applicant's personal informtion.

[para 30] The Public Body, in submissions, states the following regarding one of the characteristics recorded by the police officer in this report:

> [Page 50] was annotated to indicate that the entry of "mental disablility" was "the officer's opinion based on his observations and interactions with [the Applicant] and the officer was

> not aware of any diagnosis from a health care provider that would have him state, as a fact that [the Applicant] suffered from a medically diagnosed disability. The annotation was meant to clarify that the entry was the recorded opinion of the officer who observed [the Applicant].

[para 31] As this characteristic is now annotated as the opinion of the police officer, section 36(2) prohibits correction.

[para 32] The other pages record events involving the Applicant. This is the Applicant's personal information. The requested correction disputes various facts in this record of events.

6. Pages 60 and 61

[para 33] These pages refer to an ongoing complaint regarding the manner in which the Applicant had been contacting one of the individuals with whom he had been in a traffic accident. The recorded information details activities of the reporter (a member of the Public Body) and information about the activities of the Applicant.

[para 34] I do not see any correction request for page 60. On page 61, there is an account of how the Applicant sent letters to various individuals. This account is information about the Applicant and is his personal information. The requested correction disputes various facts in this account of his actions.

Was the Public Body correct in refusing the Applicant's request to correct his personal information?

[para 35] In all circumstances save page 24, the Applicant is requesting changes to facts which are disputed by the Public Body.

[para 36] The Public Body refers me to Order 97-020, paras. 124 and 125 where the former Commissioner Clark stated:

> It follows that if a public body and an applicant dispute a fact, the public body is justified in not correcting the applicant's personal information because the applicant has not met the burden of proving that there is an error or omission of fact. As I have said previously, the burden of proof is on an applicant to prove that there is an error or omission in the applicant's personal information.
>
> …if there are facts upon which an applicant and a public body cannot agree, I accept that a public body should not be required to expend an unreasonable amount of time, financial and other resources to decide the correct version of those facts. (my emphasis)

[para 37] I was also referred to Order F2005-008 where former Commissioner Work applied these principles to the inquiry process at para 52:

> I do not agree that the application for correction should be dismissed on the basis that there is a dispute about a fact. In my view that is a reason to refuse a correction only in circumstances where it is not possible to make a factual determination about the matter at issue, through the inquiry process.

[para 38] The Public Body also states:

> In many cases, the Applicant has asked to alter a report based on his version of the events that transpired. Where that pertains to information provided by a third party and recorded in the report, it is submitted that the Applicant has not met his burden with respect to establishing firstly that the statement is false and secondly that it was not accurately recorded. The investigators were obligated to record the information as provided to them and the information is not subject to correction based on the Applicant's views and opinions of the manner in which the investigation was handled.

[para 39] I agree the Applicant has not met his burden with respect to establishing an error in his personal information. I also agree with the Public Body's submission that it is not possible for this inquiry process to conduct an investigation into the events of these incidents and come to a conclusion regarding the facts. I cannot, therefore, make a decision regarding the facts in the Applicant's case. I uphold the Public Body's decision to refuse to correct the information.

Did the Public Body comply with its duty under section 36(3)?

[para 40] A recent decision of this office reviewed various principles and orders relevant to the procedure to be followed in cases dealing with correction requests. I adopt the adjudicator's reasoning in this case. In Order F2016-34, at paras. 7-13, the adjudicator stated:

> Section 36 creates a duty in public bodies to annotate or link an individual's personal information with the requested correction in the event that a requested correction is not made or the information that is the subject of the requested correction is an opinion. However, section 36 does not impose a duty on public bodies to correct personal information, even in circumstances where an individual establishes that the individual's personal information in the custody or control of a public body is inaccurate. The head of a public body is given the ability under the FOIP Act to correct personal information that is not an opinion, but if the head does not correct the information, then it is mandatory for the head to either annotate or link the requested correction with the personal information that is relevant to the requested correction.
>
> In Order 01-23, the former Information and Privacy Commissioner of British Columbia set out the following principles regarding corrections requests with respect to similarly worded provisions in British Columbia's statute:
>
> - There is no requirement in section 29 that a public body must correct personal information. However, it should do so where facts are clearly incorrect.

- The statutory obligation on a public body is to annotate the information with the correction that was requested and not made.

- A public body cannot correct someone's opinion; it can only correct facts upon which an opinion is based. (See Order No. 20-1994, [1994] B.C.I.P.C.D. No. 23, August 2, 1994, p. 11)

- Annotations and corrections should be apparent in the file, but public bodies have discretion to make administrative decisions about how they will annotate. In general, the annotation should be as visible and accessible as the information under challenge by the applicant. Any annotations or corrections should also be retrieved with the original file.

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

While section 36 does not make it mandatory for the head of a public body to correct errors or omissions in personal information, section 72(3)(d) of the FOIP Act empowers the Commissioner to make orders regarding the correction of personal information. This provision states:

> *72(3) If the inquiry relates to any other matter, the Commissioner may, by order, do one or more of the following:*
>
> > *(d) confirm a decision not to correct personal information or specify how personal information is to be corrected;*

Section 72(3)(d) authorizes the Commissioner to specify how personal information is to be corrected. The implication of this provision is that there is more than one way to correct personal information. This point is also made in Order 01-23, where the former Information and Privacy Commissioner of British Columbia stated:

> Further, the Ministry's argument apparently assumes that a correction must be made by physically changing a record produced by someone else or by the Ministry, *i.e.*, by deleting or altering incorrect personal information in a way that impairs or destroys the integrity or accuracy of the record. Correction does not by definition require the physical alteration of an existing record. It is easy to conjure a number of ways in which the Ministry could correct an error or omission as contemplated by s. 23(2) of the CFCSA Regulation or under s. 29 of the Act. Handwritten corrections could, for example, be made on a copy of the original record, with a note being attached to the original to alert readers to the existence of the corrections on the copy. An attached note to the original could,

> alternatively, contain (or merely repeat) the actual corrections. Such approaches preserve the integrity of original records while ensuring that the incorrect personal information is actually corrected.

Former Commissioner Loukidelis recognized that the records of public bodies are official documents. "Correcting" such documents by removing or altering incorrect information in the original document has the potential to destroy the integrity of a public body's documents. He noted that there are other ways that information can be said to be "corrected", such as attaching corrections to the document or annotating the documents such that the correct information is available to the reader.

I agree with the reasoning in Order 01-23 that correcting personal information by obliterating information deemed incorrect in an original document is not the only means by which personal information may be corrected. In addition, I agree that correcting information by replacing incorrect information with correct information in a document is a step that should be taken only rarely, (such as in the case where information is inaccurately entered into a database with the result that an individual is, for example, incorrectly billed or refunded as a result) as doing so may destroy the integrity of the original record. An original record, even one containing inaccurate information, may be an important part of the history of a matter for which the document was prepared. If inaccurate information is destroyed and not preserved, then a significant part of the history of a matter could also be destroyed. If the matter in question is a legal matter, then the public body's action of altering information in an original document, even for the purpose of correcting it, may have adverse legal consequences for a public body or for others.

From my review of the foregoing cases and the terms of section 36, I interpret section 36 as giving an individual some control over the personal information about the individual in the custody or control of government institutions. While this provision does not permit an individual to dictate what may be said or written about the individual, or to require the deletion of information the individual considers inaccurate or misleading, it does permit the individual to provide the individual's own views of information by requiring a public body to link or annotate correction requests to the records.

[para 41] Former Commissioner Clark reviewed past decisions regarding public bodies duties under this section in Order 2000-007. At paras. 20-23 he states:

> Section [36(3)] states that if a public body does not correct an applicant's personal information, or if no correction may be made because of section [36(2)], it must annotate or link the information with the correction that was requested but not made. In Order 97-020, I defined the word "annotate" to mean "add an explanatory note" to something and the word "link" to mean "connect or join two things or one thing to another", "attach to", or "combine".
>
> Furthermore, I stated that to "annotate … the information with the correction that was requested" implies that the correction that was requested is written on the original record, close to the information under challenge by the applicant. Although there is no requirement to do so, the annotation should also be signed and dated.

> In addition, I said that to "link the information with the correction that was requested" implies that the correction that was requested is attached to, or joined or connected with, the original record containing the information under challenge by the applicant.
>
> In Orders 97-020 and 98-010, I also adopted several principles found in B.C. Order 124-1996. I said that an annotation or linkage must be apparent on the file. A public body must not try to hide or bury an applicant's request for correction. The correction request should be as visible and accessible as the information under challenge, and should be retrieved with the original file. In addition, I stated that the public body should not be forced to comply with unreasonable demands of an applicant who, "in voluminous material and in nuisance fashion" insists the documents be edited in exactly the way he or she wishes. Rather, the annotation or linkage should be made in a fair manner. What is considered "fair" will depend on the type of records involved, the length of the correction requested by the applicant, the applicant's other avenues of redress within the public body, such as appeals, and the administrative resources of a public body.

[para 42] The Public Body informs me in every instance of requested correction, including those not the Applicant's personal information, "[the record has been annotated] to reflect that the Applicant has requested corrections to the Report, and that those requests have been denied."

[para 43] While I have not seen a copy of the original records and how they have been annotated, the Public Body did provide me with a copy of the annotations. I am satisfied with the wording of the annotations.

[para 44] I will order the Public Body to provide me and the Applicant with a copy of the records to show the manner of the annotations to ensure compliance with the former Commissioner's direction to ensure the annotations are done in a fair manner (i.e. the annotation must be apparent on the file and the correction request be as visible and accesible as the information challenged).

V. ORDER

[para 45] I make this Order under section 72 of the Act.

[para 46] I find the Public Body correctly refused the Applicant's request to correct his personal information.

[para 47] I further find the Public Body correctly worded the annotations to the records at issue.

[para 48] I order the Public Body to provide me and the Applicant with a copy of the records at issue showing annotations made by the Public Body to ensure the annotations are apparent on the records and the correction request is visible as the information challenged.

[para 49] I further order the Public Body to notify me, in writing within 50 days of receiving a copy of this Order, that it has complied with the Order.

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Neena Ahluwalia Q.C.
Adjudicator