ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2017-37

March 28, 2017

WORKERS' COMPENSATION BOARD

Case File Number F8005

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Summary: The Applicant made a correction request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the Workers' Compensation Board (the Public Body). He requested correction to personal information in four records on the basis that these four records indicated that a neurologist had diagnosed dementia, whereas the neurologist had written in a report "the diagnosis is likely probable dementia". The Public Body altered the four records by obliterating the original information and replacing it with paraphrasing from the neurologist's opinion.

The Applicant requested review, and then an inquiry, as he had concerns regarding the changes the Public Body had made, and the way it had made them.

The Adjudicator determined that the reference to a diagnosis of dementia in three of the records represented an opinion of the author of the record. Opinions cannot be corrected under the FOIP Act, but are instead to be annotated or linked to the relevant portions of an applicant's correction request.

With regard to the fourth statement, the Adjudicator determined that it was not incorrect to say that the neurologist "diagnosed dementia". She also noted that the records of a public body are often official records and that "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. 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.

The Adjudicator asked the Public Body to determine whether it could retrieve the original records it had "altered". She ordered it to annotate or link the original records in accordance with section 36(3) of the FOIP Act.

The Adjudicator determined that the Public Body was under no obligation to search its records for similar information and to annotate or link that information to the correction request. The Adjudicator also determined that the Public Body did not have to notify the public bodies and third party recipients of the records that were the subject of the correction request, as the records had not been provided to these parties during the one year prior to the Public Body's receipt of the correction request, as set out in section 36(4).

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 35, 36, 72 Workers' Compensation Act, R.S.A. 2000, c. W-15, s. 45

Authorities Cited: AB: Orders 98-010, 2000-007, F2003-019, F2013-04, F2016-34 **BC:** 01-23

I. BACKGROUND

[para 1] On February 14, 2014, the Applicant made a correction request to the Workers' Compensation Board. The Applicant stated:

> The Workers' Compensation Board claims and states that Dr. […] has diagnosed me with dementia. This information has been forwarded to Ministries of the Alberta Government. At this point [this] has to stop, I should not be forced to live with the [stigma] of diagnosis that I do not have. I should not be subject to being told by a Ministry of the Alberta Government that I have a degenerative disease that I do not have.

The Applicant attached a May 10, 2011 letter from a member of the Public Body's Decision Review Body to the Applicant. This letter provides an explanation of the member's decision to deny the Applicant's claim for traumatic brain injury. It states:

> You believe these reports confirm a closed head brain injury occurred at the time of the work accident. On the other hand, I was unable to conclude there was a reasonable explanation why twelve assessing and treating doctors along with one medical consultant and a neuropsychologist did not suspect a work related closed head brain injury between 2000 and 2005. Dr. […], a neurologist diagnosed dementia on May 16, 2006 but did not relate it to the work accident.

The member concluded the letter by stating that the decision was made under section 45(3) of the *Workers' Compensation Act* and could be appealed to the Appeals Commission for Alberta Workers' Compensation.

[para 2] The Applicant also sought correction of a letter written by the Public Body's government relations manager and an executive assistant for the then Minister of Employment and Immigration. This letter states:

> Dr. […] a neurologist, commented that he felt this condition was not related to the workplace accident, and diagnosed [the Applicant] with dementia.

[para 3] Finally, the Applicant also sought correction of an email from a government relations advisor to an employee of the Government of Alberta. This email states:

> I am forwarding you two briefing notes re; [the Applicant] on [the government relations manager's] behalf, I believe these documents contain the information you require concerning [the Applicant's] diagnosis of dementia.

[para 4] The Applicant also attached the May 18, 2006 medical opinion to which the member of the Decision Review Body (DRB) referred in its clarification letter. The opinion states, "As before, the diagnosis is likely probable dementia."

[para 5] The Applicant also provided a copy of a report dated November 23, 2006 prepared by the Cognitive Assessment Clinic. This report did not confirm or offer a diagnosis of dementia.

[para 6] The Applicant also submitted a letter dated March 26, 2014 addressed to the "WCB" from the neurologist who prepared the May 18, 2006 report to which the DRB member referred. This letter states:

> On review of my file I can confirm that I did not make a definitive diagnosis of dementia in this patient […]

[para 7] On April 7, 2014, the Public Body informed the Applicant that it had decided to correct the records. It stated:

> Based on our discussions with [the team lead] for the [Decision Review Body] and [a government relations manager] we have made the decision to correct the diagnosis of dementia in the above documents to accurately reflect the findings of Dr. […] as stated in his February 10, 2006 and May 18, 2006 reports.

[para 8] The Public Body altered the May 10, 2011 letter of the Decision Review Body member so that it now states:

> Dr. […] a neurologist diagnosed likely probable dementia on May 18, 2006 but he did not relate it to the work accident.

[para 9] The Public Body also altered the August 14, 2009 letter from the government relations manager to the Executive Assistant to the Minister of Employment and Immigration in this way and a letter dated March 17, 2009 from a government relations advisor to the Minister of Alberta Employment and Immigration.

[para 10] The Applicant made the following complaint to the Commissioner:

> One of the concerns of the changes on these three letters is that they [are] no longer written by the author, as these changes do not reflect that the authors accept the changes. The department heads should accept the responsibility in making the changes by either amending or reissuing the letters with their own signature. The memos were provided when the WCB was requested to provide proof that [the Applicant] was indeed diagnosed with dementia.
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> Another concern is that the change is ambiguous and open to misinterpretation. The original statement was: Dr. […] diagnosed [the Applicant] with dementia. It has been changed to: Dr. […] a neurologist diagnosed likely probable dementia on May 18, 2006, but he did not relate it to the work accident.
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> The actual statement on the May 18, 2006 letter is:
> As before, the diagnosis is likely probable dementia. I had sent him for neuropsychological testing but they refused to see him for some reason, thinking that this was somehow related to a WCB claim which of course would be extremely unlikely, if not impossible.
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> […]
>
> These letters do NOT reflect the medical investigation as it progressed. These letters only reflect the dementia, and no other diagnosis or medical opinions.

[para 11] Following mediation, the Applicant requested an inquiry. The Applicant stated that the remedy he is seeking is the following:

> An error refers to mistaken or wrong information that does not reflect the true state of affairs. The Complainant is not requesting personal opinions or interpretations of Dr. […]'s words. The Complainant is requesting that correction be made using Dr. […]'s exact words. "The diagnosis is likely probable dementia.
>
> […]
>
> The purpose of the request was to have ALL the documents that inaccurately state Dr. […]'s words, by simply stating "diagnosed" or "dementia" corrected to reflect Dr. […]'s words and update the medical information in the claim file, intergovernmental files, and Ministerial files.

II. ISSUE

Issue A: Did the Public Body respond properly to the Applicant's request for correction of his personal information under section 36 of the Act (right to request correction of personal information)?

[para 12] Section 36 empowers an individual to request that a public body correct his or her personal information when the individual believes that there is an error or omission in the individual's personal information. It 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 13] In Order 98-010, former Commissioner Clark defined error or omission in the following way:

> […] As the terms "error" and "omission" are not defined in the Act, I have used the ordinary dictionary definitions to define these terms. The *Concise Oxford Dictionary*, Ninth Edition, defines "omission" as something missing, left out or overlooked. "Error" is defined to mean a mistake, or something wrong or incorrect. Furthermore, the *Concise Oxford Dictionary* defines "incorrect" to mean not in accordance with fact, or wrong, while the term "correct" is defined as meaning, to set right, amend, substitute the right thing for the wrong one.

> Applying these definitions, an applicant may request correction of personal information under section 36 if the applicant considers information to be incorrect, missing, left out, or overlooked.

[para 14] 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.

[para 15] Section 36(2), cited above, prohibits a public body from correcting an opinion, including a professional or expert opinion.

[para 16] In Order 01-23, the former Information and Privacy Commissioner of British Columbia set out the following principles regarding correction 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.
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> 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 […]

[para 17] 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;*

[para 18] 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.

[para 19] 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.

[para 20] As I noted in Order F2016-34, 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.

[para 21] 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 22] Under section 36, an individual need only *believe* that there is an error or omission in his or her personal information to make a correction request. If a public body chooses not to make the requested correction, it must annotate or link the request to the information. As discussed above, the Act does not impose a duty on a public body to make the requested correction, even if the individual proves that there is an error or omission in the individual's personal information. While the Commissioner has jurisdiction under section 72(3)(d) to order a public body to correct personal information in a particular way, for the reasons given above, this power cannot be reasonably exercised so as to destroy or obliterate the integrity of public documents. In other words, even if an individual were to prove that there is an error in the individual's personal information, the Commissioner would not necessarily order a public body to correct personal information by deleting the information proven to be incorrect and substituting other information, or by requiring a public body to alter the original document by adding the information proven to have been omitted.

[para 23] Annotating or linking personal information will, in many or most instances, be the preferred method of correcting information when an applicant complains that there is an error or omission in his or her personal information. (In some cases, it may be possible to create a revised "corrected" version, but even so, the original version will likely need to be retained.)

Is the information the Applicant asks to have corrected his personal information?

[para 24] The information in this case relates to statements in the Public Body's records regarding a medical opinion about the Applicant. The information in the statements is about the Applicant as an identifiable individual. As section 1(n) of the FOIP Act defines personal information as "recorded information about an identifiable individual", the information in the statements is the Applicant's personal information.

Is the information the Applicant asks to have corrected an opinion within the terms of section 36(2)?

[para 25] As discussed above, the references to the Doctor's report that are the subject of the correction request appear in four documents: a letter from a member of the DRB to the Applicant, a letter from a government relations manager to the Executive Assistant to the Minister of Employment and Immigration, two letters from government relations advisors to representatives of the Government of Alberta.

[para 26] In Order F2013-04, the Adjudicator considered the question of whether information was factual, and capable of correction, or opinion, which is not. He said:

> The information at issue may be characterized, on one hand, as factual in the sense that EPROS purports to say that the Applicant was, in fact, a suspect chargeable and that he did, in fact,

> commit assault with a weapon or assault causing bodily harm. Another way of framing the information factually is to say that there was, as a matter of fact, sufficient evidence to charge the Applicant with the offence of assault with a weapon or assault causing bodily harm. The Public Body's primary submission is that the Applicant alleges errors of fact, which it argues cannot be corrected because there are competing versions of events, and the Applicant has not shown that his version is the correct one. In a letter attached to his request for inquiry, the Applicant also characterizes the information at issue as being factual.
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> On the other hand, the information that the Applicant wants to have corrected may be characterized as an opinion that the Applicant had committed assault with a weapon or assault causing bodily harm, and that he therefore could be charged with that offence. Under section 36(2) of the Act, a public body must not correct an opinion, including a professional or expert opinion.
>
> In my view, the information that the Applicant wants to have corrected is more properly characterized as an opinion. The investigating officer and/or other personnel of the Public Body believed, as a professional opinion, that there was sufficient evidence to charge the Applicant with the offence of assault with a weapon or assault causing bodily harm. There was a subjective view that he could have been charged, even though he was not so charged. As I find that the information constitutes an opinion within the terms of section 36(2), the Public Body had no ability to correct the information. I accordingly conclude that the Public Body has properly refused to correct the Applicant's personal information.

From the foregoing, I conclude that if information has a subjective or evaluative component, even though it may also contain facts, the information may be an opinion and not subject to correction.

The letter from the DRB member of May 10, 2011

[para 27] The letter from the DRB member serves to clarify the reasons for a decision under section 45(3) of the WCA in which the member concluded that the Applicant had not sustained a work-related head injury. As noted above, he stated in that letter: "a neurologist diagnosed dementia on May 16, 2006, but did not relate it to the work accident."

[para 28] From my review of the DRB member's letter, I conclude that when he referred to the neurologist's opinion, he was interpreting it and explaining why the opinion was relevant to his decision. He did not *quote* from the neurologist's opinion, but explained the meaning he attributed to it with respect to the matter he had decided. To put the point differently, the DRB member's reference to the neurologist's opinion constitutes *the DRB member's opinion* as to meaning and significance of the neurologist's report to the matter he decided.

[para 29] Moreover, the verb "diagnose" refers to identifying a disease from a patient's symptoms. The sentence used by the DRB member – "a neurologist diagnosed dementia on May 16, 2006" – reasonably could be said to describe the contents of the neurologist's report, which, as noted above, contains the following statement: "As before, the diagnosis is likely probable dementia." The neurologist expressed the opinion that given the patient history and findings on examination, the diagnosis was likely dementia; this action could also reasonably be described as "diagnosing dementia". In saying this, I

do not mean that the DRB member's opinion is correct, or that an incorrect opinion can be corrected. I mean only that the DRB Member's opinion is a possible interpretation of what the neurologist wrote and it is not necessarily "incorrect" to interpret the neurologist's report in this way.

[para 30] I find that the statement in the DRB member's letter is an opinion within the terms of section 36(2) of the FOIP Act.

The letter from the government relations manager of August 14, 2009

[para 31] The letter of the government relations manager is dated August 14, 2009 and is written to an executive assistant for the then Minister of Employment and Immigration. The letter recounts the history of the Applicant and the decisions and steps the Public Body took. The letter contains the following statement about the neurologist's report:

> Dr. […] a neurologist, commented that he felt this condition was not related to the workplace accident, and diagnosed [the Applicant] with dementia.

[para 32] The government relations manager neither quoted from the report nor indicated that the foregoing sentence was intended to be a quotation from the report. As was the case with the reference to the report in the DRB member's letter, I find that the government relations manager's reference to the neurologist's report is an interpretation of the report from the perspective of the Public Body, and was not intended to be a verbatim reproduction. In other words, the sentence regarding the neurologist's report is an opinion.

The letter from the government relations advisor of March 17, 2009

[para 33] The March 17, 2009 letter from the government relations advisor to the then Minister of Employment and Immigration contains a detailed history of the Applicant's workers' compensation claim, including his medical history. As noted in the background above, this letter contains the following sentence: "Dr. […], a neurologist commented that he felt this condition was not related to the workplace accident and diagnosed [the Applicant] with dementia."

[para 34] Again, like the statements of the DRB member and the government relations manager, the government relations advisor did not quote the neurologist but explained the meaning and significance of the report in the chronology of the Applicant's file. The statement of the government relations advisor may be taken as having been intended to present the Public Body's opinion of the report in order to provide context for its decisions.

The government relations advisor's email of November 23, 2009

[para 35] As noted above, this email contains the statement:

> I believe these documents contain the information you require concerning [the Applicant's] diagnosis of dementia.

[para 36] In this case, it is not clear what the reasons for referring to a "diagnosis of dementia" were. It appears possible that the government relations advisor referred to it either because the government relations manager had referred to it in her briefing note, or because a representative of the Government of Alberta had referred to a diagnosis of dementia when asking for information. As I am unable to say what prompted the government relations advisor to refer to a "diagnosis of dementia", I cannot say whether the statement reflects an opinion or not. I will therefore determine whether the sentence is one that can be corrected or whether it should be linked or annotated.

How is the personal information that is the subject of the correction request to be dealt with?

[para 37] I have found above that the references to a diagnosis of dementia in the letter from the DRB member, the August 14, 2009 letter from the government relations manager, and the March 17, 2009 letter from the government relations advisor are opinions. Section 36(2) prohibits a public body from correcting an opinion. If the head of a public body receives a request to correct an opinion, the head's only option is to annotate or link the opinion with the requested correction, as required by section 36(3).

[para 38] As I find the foregoing references are opinions, the Public Body must not correct them by altering them as it has done, but must instead link or annotate these references to the relevant requested correction.

[para 39] As discussed above, it is not clearly the case that the statement in the government relations advisor's email of November 23, 2009 is an opinion and so I must still consider whether it can be corrected. In my view, there are two reasons why this statement should not be corrected.

[para 40] First, it is not clear that the statement in the email is incorrect or reflects an omission. The neurologist stated "as before, the diagnosis is likely probable dementia." The neurologist subsequently clarified that this statement was not a "definitive diagnosis"; however, the neurologist did not suggest that his statement was not a diagnosis at the time it was made. A "likely or probable diagnosis" remains a diagnosis. Certainly, if the government relations advisor intended to capture all the nuances or shades of meaning of the neurologist's report, she could have referred to the report as stating "the diagnosis is likely probable dementia". However, if she intended to summarize the report in its entirety, she could reasonably describe the same statement as "Dr. […] diagnosed dementia," as she did. Moreover, I do not consider the absence of the words "the diagnosis is likely probable dementia" to be an omission, given that the government relations advisor did not quote from the report or indicate an intent to do so.

[para 41] Second, correcting information by obliterating the original information and substituting amended personal information is not the only means by which a public body may correct errors in information, assuming there are such errors present. As

discussed above, the records of public bodies may be 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.

[para 42] In the event that I am wrong regarding the status of the other statements as opinions, I will also consider whether they should be corrected by obliterating the data the records contain, or by other means, or whether they should be annotated or linked.

[para 43] The original uncorrected version of the Decision Review Body member's letter contains his decision; the corrected version does not. It is unclear what legal status the second letter would have under the *Workers' Compensation Act*, despite the original decision being made under section 45(3). Moreover, the correction may be said to alter the reasoning of the decision maker, and it is unclear whether the corrected version serves to clarify the original decision, as the letter was intended to do, or whether it renders the decision incoherent.

[para 44] Similarly, the originals of the ministerial correspondence contain what was *actually* communicated to the Minister and the Minister's executive assistant. The altered versions of the letters do not. The correspondence of the government relations manager and the two government relations advisors constitutes records of what the Minister was told. The amended version is no longer a record of the actual communications between the Public Body and the Minister's office and its utility as a public record is compromised.

[para 45] If it were the case that the original records contained clear errors, then the Public Body could choose to correct the record by annotating it and indicating that the original record contains an error. In my view, this is the form of correction former Commissioner Loukidelis had in mind in British Columbia Order 01-23, as it preserves the document, but corrects the information at the same time. It is different than annotation within the terms of section 36(3), as it is a correction that the Public Body has decided must be made, and it need not refer to an applicant's correction request as required by section 36(3).

[para 46] In this case, there are no clear errors in the information that the Applicant seeks to have requested and so correction is not an option available to the Public Body.

What are the Public Body's obligations to the Applicant under the FOIP Act in this case?

[para 47] As noted above, section 36(3) requires a Public Body to link or annotate the information that is the subject of a correction request with the requested correction when it decides not to correct information or when the information that is the subject of a correction request is an opinion. In Order 2000-007, former Commissioner Clark summarized past decisions regarding public bodies' duties to annotate and link correction requests to personal information. He said:

> 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".
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> 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.
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> 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 48] As noted in the background above, the Public Body attempted to correct the records discussed above and possibly other records it located containing the phrase "diagnosed dementia" (or similar) by substituting: "likely probable dementia".

[para 49] The Applicant indicates in his request for inquiry that he would like the sentence from the neurologist's report to be quoted in the Public Body's records, rather than interpretations by employees:

> The original statement and the re-statement was the interpretation of the [employees] of the Public Body and not the actual statement of Dr. […]. At no time did Dr. […] use the words "diagnosed with", his wording was: "the diagnosis is likely probable dementia."
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> […]
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> […] It certainly is not unreasonable to request that the exact words of Dr. […] be restated as opposed to a personal opinion and interpretation of a non medical practitioner, claiming that is what Dr. [….] had stated […]

[para 50] As noted above, I agree with the Applicant that the information the Applicant would like corrected is the interpretation of the Public Body's employees. It is for this reason that I find that the information (with the exception of the one email from the government relations advisor) is opinion information which cannot be corrected by application of section 36(2) of the FOIP Act. Rather, section 36(3) requires the head of a public body to annotate or link this information.

[para 51] I must therefore ask the Public Body to retrieve the original records it has altered as a result of the Applicant's correction request, if it is still possible for it to do so.

If it is able to retrieve the information, I must then direct it to amend or link the information that is the subject of the correction request to the relevant portions of the Applicant's correction request. In this case, linking or annotating the statements in the records listed by the Applicant to the text of the opinion "as before, the diagnosis is likely probable dementia" would satisfy the Public Body's duties to the Applicant in this case.

Is the Public Body required to review all its records and annotate or link any references to the Applicant's requested correction in records that were not part of the original correction request?

[para 52] The Applicant has also requested that the Public Body review all records in its possession to correct any references to a diagnosis of dementia. Although I have found that the statements I have reviewed must be linked or annotated, rather than corrected, I must still consider whether the Public Body should seek out any other such references and link or annotate them.

[para 53] In its submissions, the Public Body drew my attention to its compliance with the recommendations of the senior information and privacy manager (SIPM) who investigated the Applicant's correction request and attempted to settle the matter. Although it is not my usual practice to review a SIPM's recommendations, given a SIPM's report is not prepared for an inquiry and may be considered hearsay for that reason, I agree with the Public Body that the recommendations are relevant to this issue. The Public Body states:

> FINDINGS OF THE OIPC-REQUEST FOR REVIEW
>
> In the January 4, 2016, Letter of Findings, from [the] OIPC – Senior Information and Privacy Manager, [she] found the following regarding the steps taken by WCB in response to [the Applicant's] request for correction (attachment 14).
>
> "The method the Public Body used to correct the information is acceptable. It is practical and reasonable in the circumstances. It is not necessary or reasonable for the records to be re-signed or re-issued, and the corrections accurately reflect the words of Dr. […].
>
> The Public Body did not correct all the records required to be corrected under s. 36.
>
> The Public Body did not notify other public body(s) to whom the personal information had been disclosed."
>
> Included in the Letter of Findings were 3 recommendations:
>
> 1. "I recommend the Public Body make a decision about making corrections in records, 1, 14, and 15, and it communicate to the Applicant in its decision; and
> 2. I recommend the Public Body review their procedures on receiving a request to correct personal information, particularly about searching for the asserted incorrect personal information.
> 3. I recommend the Public Body notify the recipients of records 11, 12, and 13."

[para 54] It appears that the SIPM's view that the records required correction led her to recommend that the Public Body amend its procedures to involve searching for

"incorrect information" and to notify other public bodies of its correction of the information. The Public Body explains in its submissions that it has completed a review of its search practices for incorrect personal information and provided the amended records to the public bodies in question. I commend the Public Body for complying with the SIPM's recommendations; however, for the reasons below, I find that the SIPM recommended actions for the Public Body to take that are in excess of its duties under the FOIP Act.

[para 55] As discussed above, I find that there are no records before me that the Public Body is required by the FOIP Act to correct. For this reason alone I do not find it necessary for the Public Body to seek out any other records containing statements similar to those that are the subject of the correction request.

[para 56] Even had I found that the information was capable of correction and should be corrected, it would be an excess of my jurisdiction to direct the Public Body to seek out any other similar such references to correct them.

[para 57] Section 35 of the FOIP Act requires personal information in the custody or control of a public body to be accurate and complete. However, section 35 of the FOIP Act applies only in the situation where the information in question will be used to make a decision directly affecting an individual. This cannot be said necessarily for "all the records in the public body's custody or control". In the absence of evidence that information will be used to make a decision directly affecting the applicant's rights, there is no power to require a public body to search its records for information capable of correction.

[para 58] As discussed above, I have determined that the Public Body must annotate or link the information to the relevant portion of the Applicant's correction request. In my view, I cannot order the Public Body to search all its records for information that appears to relate to the correction request in some way. Section 36(3), cited above, explains that an annotation or linkage is to be done by linking or annotating the personal information "with that part of the requested correction *that is relevant and material to the record in question*". If an applicant does not request a correction in relation to a particular record, then the particular record cannot be annotated or linked, as no portion of the correction request will be relevant and material to it.

[para 59] As the Applicant's request referred only to four records, it would not be possible to link any other records to the request within the terms of section 36(3), as information not subject to the correction request would not be "relevant and material" to the correction request.

Is the Public Body required to notify public bodies and third parties of the linkage or annotation?

[para 60] As cited above, section 36(4) requires a public body to give notice of a correction, linkage, or annotation to another public body or third party who received the information *during the one year before the correction was requested*.

[para 61] In Order F2003-019, former Commissioner Work declined to require a public body to give notice to other public bodies of a linkage, as there was no evidence that the personal information in question had been disclosed during the one year period prior to the receipt of the correction request.

[para 62] The most recent of the records in this case is the government relations advisor's email of November 2009. This email was sent to the Government of Alberta more than one year before the correction request was made. As the records that are the subject of the correction request were sent to the Government of Alberta more than one year prior to the Public Body's receipt of the correction request, the Public Body is under no duty to inform the recipients of an annotation, linkage, or correction.

III. ORDER

[para 63] I make this Order under section 72 of the Act.

[para 64] I ask the Public Body to determine whether it has kept copies of the original records and, if so, to return these to the Applicant's file. If this can be done, then I direct it to link or annotate the statements in these records listed by the Applicant to the relevant and material portions of his correction request.

[para 65] This order encompasses the four records that were referred to in the initial correction request. If the Public Body has altered other records containing similar information to that which was the subject of the correction request, I recommend that it also retrieve the original records if it can and restore them to the Applicant's file.

[para 66] I order the Public Body to notify me in writing, within 50 days of being given a copy of this Order, that it has complied with the Order.

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Teresa Cunningham
Adjudicator