ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2021-07

March 11, 2021

EDMONTON POLICE SERVICE

Case File Number 005610

Office URL: www.oipc.ab.ca

Summary: The Applicant submitted a correction request to the Edmonton Police Service (EPS or the Public Body) in January 2017, under the *Freedom of Information and Protection of Privacy Act* (FOIP Act). The Applicant included 33 pages documenting the corrections she wanted made to five specified police files.

The EPS refused to correct the information and annotated the Applicant's file.

The Applicant requested an inquiry into the Public Body's response, including the time taken for the EPS to respond.

The Adjudicator determined that, for the most part, the EPS properly refused to correct the personal information the Applicant requested be corrected. In a few instances, the Applicant requested the correction of factual information, such as the spelling of her name. The Adjudicator ordered the EPS to reconsider its decision with respect to that information.

The Adjudicator found that the EPS failed to meet its timeline to respond to the Applicant's correction request.

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 F2004-025, F2013-04, F2016-34, F2017-37, F2018-78, F2020-33, F2021-03, **BC**: Order 01-23

I. BACKGROUND

[para 1] Over the course of several years, the Applicant had made several complaints to the Edmonton Police Service (EPS or the Public Body) alleging that particular individuals were harassing her in different ways. As a result, the Complainant had several interactions with various EPS officers, which are documented in EPS files. In some instances, the EPS officers referred the Complainant to the Police and Crisis Response Team; the referrals are documented in the files.

[para 2] The Applicant submitted a correction request dated January 17, 2017, to the EPS under the *Freedom of Information and Protection of Privacy Act* (FOIP Act). The Applicant included 33 pages documenting the corrections she wanted made to five specified police files.

[para 3] The EPS responded by letter dated March 29, 2017. The EPS informed the Applicant that it would not make the corrections requested, that the Applicant's request would be appended to the relevant records on the files.

[para 4] The Applicant requested a review of the EPS' decision, including the time taken for the EPS to respond, and subsequently an inquiry.

II. ISSUES

[para 5] The Notice of Inquiry dated October 2, 2020, lists the issue as follows:

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

III. DISCUSSION OF ISSUES

[para 6] 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.*
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> *(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).

I will first consider the EPS' refusal to correct the information as requested, and second the time the EPS took to respond to the request.

EPS' refusal to correct personal information as requested

[para 7] The initial burden of proof lies with the Applicant to show that section 36 of the Act is engaged. Two requirements must be met in order for section 36 of the Act to apply:

1. There must be personal information about an applicant; and
2. There must be an error or omission in the applicant's personal information.

[para 8] If these two pre-requisites are met, the burden then shifts to the public body to show why it did not correct the information and instead chose to annotate or link the personal information to the requested correction (see Order F2013-04 at para 14).

[para 9] That said, it must be noted that section 36 does not require a public body to correct an error or omission even if one is identified. The statutory requirement is to link or annotate the personal information with the requested correction.

[para 10] The first question is whether the information at issue is the Applicant's personal information. In this case, both parties agree that the information the Applicant has requested be corrected constitutes her personal information.

[para 11] Some of the information the Applicant requested be corrected is information that she has not said is incorrect, but rather information that she believes is irrelevant for the purposes of the police file, and shouldn't be included. Section 36 is not an opportunity for an applicant to rewrite the information in the EPS file in a manner they prefer. With respect to information the Applicant has requested be removed because she believes it to be irrelevant, the EPS is not obliged under the Act to remove it.

[para 12] Some of the information the Applicant has requested be corrected constitutes opinions, which cannot be corrected per section 36(2). In Order F2018-78 I considered past precedence defining "opinion" for the purposes of section 36(2) of the Act (at para. 37):

> Section 36(2) of the Act states that a public body cannot correct an opinion, including a professional or expert opinion. "Professional" means a belief or assessment based on grounds short of proof, a view held as probable (Order H2004-004). "Observation" means a comment based on something one has seen, heard, or noticed, and the action or process of closely observing or monitoring (Order H2004-004). Although these precedents relate to Orders under the *Health Information Act*, I find them to be applicable under the FOIP Act. They are also consistent with Orders F2013-04 and F2017-37, which found that information having a subjective or evaluative component may be an opinion and not subject to correction under section 36 of the FOIP Act.

[para 13] The EPS cites Order F2004-025, which states (at para. 36):

> The police recorded how they saw each occurrence and what was reported by the third parties. Different people view the same events differently. In some cases, police and third parties included comments about the Applicant. Just because the Applicant views the events differently than others, this does not constitute an error or omission which can be corrected. In effect, the records reflect the opinions of the police and third parties about what they have seen or experienced. Section 36(2) of the Act states that the Public Body must not correct an opinion. I confirm the Public Body's decision not to correct this type of information.

[para 14] The Applicant has objected to the accuracy of conclusions drawn by officers and reflected in their notes, including conclusions about the Applicant and the validity of her complaints. Where officers are making observations or drawing conclusions based on information they have gathered while responding to or investigating a complaint – as is the case with the information at issue here – that information constitutes the officers' professional opinions. This information cannot be corrected.

[para 15] Some of the information the Applicant has requested be corrected can be characterized as factual information, rather than opinion. However, this doesn't necessarily mean that it can be corrected.

[para 16] It is appropriate to refuse to correct personal information where a factual determination cannot be made. As stated in Order F2013-04 (at para. 25):

> As cited by the Public Body, it is not sufficient, for the purpose of section 36(1), to allege that information is wrong or missing, without establishing the correct or complete facts or the true version of events (Order F2007-018 at para. 63). It notes that a public body exercises its discretion properly if it does not correct a disputed fact, provided that it has acted in good faith (Order 97-020 at para. 123). It further notes that there is reason to refuse a correction request in circumstances where it is not possible to make a factual determination about the matter through the inquiry process (Order F2005-008 at para. 52). I find that this is one of those cases.

[para 17] This has also been applied in Order F2020-33.

[para 18] Some of the information the Applicant has requested be corrected is not information about which I can make a factual determination in this inquiry. For example, the Applicant objects to an officer's notes in which he states that he made numerous attempts to contact the Applicant by phone; the Applicant believes this to be false. In many other instances, the Applicant believes that the officers' notes misrepresent things that she told them. In all of these cases, I am not in a position to determine what is factually accurate.

[para 19] Lastly, some of the information the Applicant has asked to be corrected is factual information that is verifiable. For example, she notes that her last name has been misspelled in at least one instance (point 2 at page 16 of the Applicant's correction request), and that an officer misstated which university faculty she works at. I agree that this is factual and verifiable information (point 3 at page 10 of the Applicant's correction request).

[para 20] The EPS has not specifically addressed the Applicant's requests to correct where her name has been misspelled, or where an officer misidentified the university department she works for.

[para 21] Past Orders of this Office have discussed the significance of maintaining the integrity of official records in the custody and control of public bodies, determining that correcting information by altering or removing incorrect information can destroy the integrity of the records (See Orders F2016-34, F2017-37, F2020-33). A recent decision, Order F2021-03, has summarized the application of section 36 as follows (at paras. 79-85):

> In my view, the reason the FOIP Act does not make it mandatory to correct records by obliterating the data they contain relates to the public nature of records in the custody or control of a public body. This point is 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.

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, nor is it often the optimal, 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.

I interpret section 36 as giving an individual some control over 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 (and supporting evidence) of information by requiring a public body to link or annotate correction requests to the records.

As I noted in Order F2016-34, 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.)

To summarize, a public body must not correct an opinion, but must annotate or link the requested correction to the relevant text. If information is not an opinion, a public body

> need not correct the information, even if it is incorrect or inaccurate, but must link or annotate the requested correction to the information. The duty imposed on a public body by section 36 is to annotate or link a correction request to the information that is the subject of the request.

[para 22] A agree with this analysis; there are many factors to consider when determining whether or how to deal with a requested correction. Deleting or significantly altering records will often not be the preferred approach and ought to be done only in clear cases.

[para 23] In this case, the Applicant's last name has been misspelled in the "Narrative" portion of an officer's notes. In their notes, the officer spelled the Applicant's name correctly in some instances and incorrectly in others. Having reviewed all of the officers' notes in the records at issue, I surmise that the "Narrative" portions of these notes are not proofread. I say this not as a critique, but an observation about the standard of accuracy that may be expected for this section of notes, based on the number of spelling errors that appear.

[para 24] From the content of the records before me, it is not clear that the misspellings and misstating of workplace would have any impact on the data quality of these records. In every place, other than the "Narrative" sections, the Applicant's name is correctly recorded; there is also a copy of her identification in the records.

[para 25] That said, it is not clear to me that correcting the spelling of the Applicant's last name, or the department where she works, in these notes would compromise the integrity of the records. As noted by former BC Commissioner Loukidelis in Order 01-23 (cited above at para. 21 of this Order), corrections may be made in a number of ways; for example, by way of a handwritten note, where appropriate.

[para 26] From its submissions, it is not clear that the EPS considered whether the misspellings of the Applicant's name, or the misstatement of her place of work, should be corrected. I will order the EPS to reconsider the Applicant's correction request with respect to these items. Should the EPS decide not to correct this information, it should explain to the Applicant what factors it considered in making this determination, and confirm that it annotated or linked the requested correction as required by section 36(3).

[para 27] With respect to the remaining personal information the Applicant requested be corrected, I find that the EPS properly refused to correct the information for the reasons discussed above.

[para 28] Where information is not corrected, the EPS is obligated to link or annotate the personal information with the requested correction (section 36(3)). In its response to the Applicant, dated March 29, 2017, the EPS informed the Applicant that it "arranged for your request to be appended to the records where the information appears." An affidavit provided with the EPS' initial submission, sworn by a Freedom of Information and Privacy Coordinator, states that this annotation was performed.

[para 29] There is nothing in the submissions before me to indicate that the EPS did not fulfill its obligations under section 36(3) of the Act.

Time taken to respond to the correction request

[para 30] The Applicant's correction request is dated January 17, 2017. The EPS responded to the Applicant by letter dated March 29, 2017. In that letter, the EPS acknowledged that it received the Applicant's request on January 17, 2017.

[para 31] Sections 36(7) and (8) of the Act set out the timelines in which public bodies are to respond to an access request. They state:

> *36(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*
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> *(a) the correction has been made, or*
>
> *(b) an annotation or linkage has been made pursuant to subsection (3).*
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> *(8) Section 14 applies to the period set out in subsection (7).*

[para 32] The EPS acknowledges that it did not respond to the Applicant's correction request within the time limit set out in section 36. It states that several factors hindered its ability to respond in 30 days, including the length and complexity of the Applicant's request and staff shortages at the time. The EPS also appears not to have exercised its authority to extend the time to respond under section 14(1) of the Act, which would have required it to notify the Applicant of that extension.

[para 33] Given the dates of the Applicant's request and EPS' response, as well as the acknowledgement from EPS, I find that the EPS failed to respond to the Applicant within the time limit set out in section 36 of the Act.

IV. ORDER

[para 34] I make this Order under section 72 of the Act.

[para 35] I find that the EPS properly refused to correct the personal information as requested by the Applicant, with the exception of the information identified at paragraph 19 of this Order. With respect to the information discussed in that paragraph, I order the EPS to reconsider its decision not to correct the information, as described at paragraph 26.

[para 36] I find that the EPS failed to respond to the Applicant's correction request within the time limit set out in section 36 of the Act. As the EPS did respond to the request, it is not necessary for me to order it to do so now.

[para 37] I further order the EPS to notify me in writing, within 50 days of receiving this Order, that it has complied with it.

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Amanda Swanek
Adjudicator