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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 192-1997
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INQUIRY RE: The Ministry for Children and Families' application of section 29 (Correction of Personal Information) of the Act to certain records in its custody and control

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1. Description of the review

As Information and Privacy Commissioner, I conducted an oral inquiry at the Office of the Information and Privacy Commissioner (the Office) on Friday, September 5, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of the lack of response by the Ministry for Children and Families (the Ministry) to the applicants' request for correction of information contained in a Superintendent's Case Review (the Report) prepared by the Ministry. The applicants are a mother and her son. For clarity, I have referred to the mother as the female applicant.

2. Documentation of the inquiry process

On November 4, 1995 the applicants submitted a letter to the then Superintendent, Family and Children's Services, Ministry of Social Services (now the Ministry for Children and Families) outlining concerns about the accuracy of information, regarding one of the applicants, contained in the Report. A request for the Ministry to make "record corrections" was one of the solutions suggested in this letter. While the Ministry did not originally perceive this to be a request for corrections under the *Freedom of Information and Protection of Privacy Act*, it agreed to accept it as such for the purposes of this inquiry.

In October, 1996 the applicants submitted a new request for the Ministry to annotate the Report on the basis of an "Omissions and Errors" report prepared by the female applicant. On January 31, 1997 the Ministry informed the applicants that it had

annotated the Report by asking the Audit and Review Division to include the "Omissions and Errors" report in its file.

On February 3, 1997 the applicants requested a review of the manner in which the Ministry annotated the Report. They requested that their "Omissions and Errors" Report be sent to any department, body, or person who had received the Ministry's Report. On June 3, 1997 the applicants requested a review of the Ministry's failure to make the requested corrections to the Report. On June 5, 1997 the Ministry notified my Office that the "Omissions and Errors" Report had now been attached to all copies of the Report and that the review of the manner in which the Ministry annotated the record was closed.

While the applicants may have been satisfied that the Report had been appropriately annotated, they take the position that their request for corrections to this same file remains unresolved.

On July 21, 1997 my Office issued a notice of an oral inquiry to take place on September 5, 1997 with respect to the applicants' request for corrections to the Report.

3. Issue under review and the burden of proof

The issue at this inquiry is whether the Ministry is required under section 29 of the Act to make the corrections requested by the applicants.

Section 29 provides as follows:

Right to request correction of personal information

29(1) An applicant who believes there is an error or omission in his or her 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) If no correction is made in response to a request under subsection (1), the head of the public body must annotate the information with the correction that was requested but not made.

(3) On correcting or annotating 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 period before the correction was requested.

(4) On being notified under subsection (3) of a correction or annotation of personal information, a public body must make the

> correction or annotation on any record of that information in its custody or under its control.

Section 57 of the Act, which establishes the burden of proof on parties in an inquiry, is silent with respect to a request for review about the correction of personal information under section 29 of the Act. I decided in Order No. 124-1996, September 12, 1996, that the burden of proof is on the public body in such circumstances.

4. Procedural objections

No significant procedural objections arose at the oral inquiry.

5. The record in dispute

The record in dispute is a seven-page report prepared at the request of the applicants by the Audit and Review Division of the then Ministry of Social Services. It is dated November 15, 1994.

6. The applicants' case

Since the issues required discussion of sensitive matters, the two applicants made almost all of their submissions, and presented all of their exhibits, on an *in camera* basis. I can say that the episodes in dispute involved matters that have occurred over the past twenty years in both Alberta and this province that, according to the applicants, have deeply affected their lives on an ongoing basis up to the present. The applicants submit that the information they have given to the Ministry has not been properly used to correct erroneous information about them. They want their records corrected and not simply annotated.

7. The Ministry's case

The Ministry states that the applicants were involved with one of its district offices for six years until the early 1990's. The case file was closed, until the applicants made allegations of misconduct on the part of the Public Body:

> The Applicant [female] later alleged misconduct and breach of confidentiality by the Public Body's staff. In August, 1994, ... Regional Director for the Public Body requested a review by the Superintendent of Family and Child Services of the Applicants' case file. The purpose of the review was to assess the Public Body's actions in this matter and to address the Applicants' concerns. (Submission of the Ministry, paragraph 1.03)

The Ministry described how an analyst for its Audit and Review Division conducted a review of the applicants' concerns about the Family and Child Services Program only and

indicated to the applicants, in advance, the specific issues that could be addressed during the process. (Submission of the Ministry, paragraph 1.04; Affidavit of Cheryl Jan Mosher, Exhibit A, p. 4) The resulting report was completed in November 1994:

> [The analyst] concluded that Family and Child Services staff acted in accordance with policy when they responded to protection concerns and provided support services. She concluded that information had not been shared with other community members, except as permitted by legislation and policy. (Submission of the Ministry, paragraph 1.05)

The Ministry states that the female applicant subsequently took issue with the conclusions reached in the report. Two successive Superintendents of Family and Child Services responded to these concerns in three letters in 1995. (Submission of the Ministry, paragraphs 1.06-1.10; Affidavit of Sandra Toth, Exhibits B, D, and F) During this process the female applicant submitted a fifteen-page document entitled “Omissions and Errors.” The Ministry states that it used this record to annotate its Report in the applicants’ Family Services file and the Superintendent’s Case Review held by the Audit and Review Division. (Submission of the Ministry, paragraph 1.11-1.15) This annotation document has now been placed on all of the Ministry’s files containing a copy of the Report: “The annotation is as visible as the information under challenge by the Applicant.” (Submission of the Ministry, paragraph 4.09)

The Ministry submits that it has complied with section 29 of the Act. It relies on my Order No. 110-1996, June 5, 1996, p. 8; and Order No. 124-1996, p. 5, where I set out standards for corrections under this section. (Submission of the Ministry, paragraphs 4.01-4.05) The Ministry contends that the female applicant “is unsatisfied with how the review was conducted and disagrees with the conclusions in the Report and, like the applicant in Order 124-1996, seeks correction for the purpose of editing a record so that it will read as she wishes it to read .... The Applicant essentially wants a new Report.” (Submission of the Ministry, paragraph 4.06)

8. Discussion

The application of section 29

The reasoning reflected in Order No. 124-1996 is essentially determinative of the matters at issue in this inquiry. I agree with the Ministry that it “cannot correct the opinion and statements of persons which are reflected in the Report or the conclusions reached in the Report. Furthermore, the method of investigation and review and the way the Report is written are not matters which are capable of correction under section 29.” (Submission of the Ministry, paragraph 4.08) The author of the Report also deposed in an affidavit that she has no basis to believe that the factual is incorrect.

Review of the records in dispute

I have indicated in previous Orders that section 29 of the Act requires the correction of factual errors but only the annotation of what can be called subjective information, such as opinions, judgments, and conclusions. Government officials and applicants for public services will continue to differ over what constitute the latter, but my experience to date suggests that annotation is the only practical, cost-effective solution to such disagreements.

What is especially difficult in the current inquiry is that the applicants have alleged that there are some factual errors in the Report. When the government was asked at the inquiry whether such changes could be made, such as the approximate date of a significant event during the childhood of the female applicant, the response was that the government would require documentation of the factual basis for such a change. See also Order No. 190-1997, September 15, 1997. Applicants can thus find themselves in a "Catch-22" situation of endless requests for documentation. I appreciate the need for supporting documentation in such circumstances, but applicants, such as the present ones, are understandably frustrated.

In the present inquiry the number of "factual" corrections is relatively minor when compared to the alleged fundamental errors of judgment and conclusion in the Report that the applicants state have seriously affected their interests. Their view is that they have suffered very negative consequences from all of this. My own sense is that the alleged factual errors in the present matter are of little real importance in light of other more fundamental alleged "errors." If the applicants wish to produce the required documentation for the Ministry, then I was assured during the inquiry that "factual" changes can be made in the actual record.

I have carefully reviewed the Ministry's Report and the female applicant's list of omissions and errors. I have noted perhaps a half dozen places where there are truly "factual" errors alleged that might be corrected if the applicants were to submit appropriate documentation. But what is perfectly clear to me is that these "factual" matters are insignificant in terms of the range of "errors" that the applicants believe are in the original Report. There are significant differences of opinion and interpretation between the original Report and the list of Omissions and Errors, which is itself a very substantial document. I cannot see any way in which the Ministry can fulfill its obligations under section 29 of the Act other than by the annotation that has actually occurred.

Although I find that the Ministry has met its burden of proof with respect to its application of section 29 of the Act, I reach this conclusion reluctantly because, in my view, the applicants' broadest concerns are deserving of further consideration by the Ministry. It is no solution to keep asking the applicants to address their issues under the Act, which they have already done extensively. It would be helpful to the applicants if the Ministry for Children and Families would at least consider doing more for them,

mother and son, in order to try (again, perhaps) to achieve closure with respect to their past relationships with the Ministry itself and its predecessor, the Ministry of Social Services. I make this statement without firm knowledge that injustices have actually occurred. What I do know, as a result of the oral inquiry, is that the two applicants firmly believe that they have been treated unfairly and inappropriately by public servants in Alberta and British Columbia. These are not matters for me to address or settle under the Act. Nevertheless it is evident from the regular contact that my Office has had with these applicants over the last few years that they are experiencing considerable frustration. The Ministry should consider addressing these issues once again, from a comprehensive perspective, as an alternative to a continuation of requests for access to records under the Act. The applicants' concerns go far beyond the scope of the Act. Encouraging the applicants' to make further requests for access and corrections will only serve to add to their frustration and result in a waste of public funds.

At the end of the day, what we have in this Inquiry, from a substantive perspective, is a clash of interpretations of events that occurred over the course of more than twenty years in two provinces. I have concluded that nothing more can be done under the Act with respect to the "marriage" of the Superintendent Case Review produced by the Ministry and the "Omissions and Errors" report prepared by the female applicant. If closure is to be brought to this matter, what remains to be determined is whether erroneous documents have in fact been used by the analyst in preparing her written report as alleged by the female applicant. The applicants contend that fraudulent documents continue to hamper their relationships with public bodies, physicians, schools, and dentists. The applicants wish to purge certain offending records from information held about them by the Ministry in particular. I am not in a position to determine the merits of the applicants' submission on these matters, nor were the representatives of the Ministry at the oral inquiry. I understand that some of these contested records actually originated in Alberta.

Although I find that the Ministry has discharged its burden under section 29 of the Act, I would nevertheless encourage the Deputy Minister of Children and Families to consider the applicants' broader concerns again, much as I appreciate the fact that his response could well be that the appropriate authorities within his Ministry, particularly the Superintendent(s) of Children and Families, have already done so in a thorough manner. In particular, the Ministry could provide (re)assurance that basic issues were not "covered up" in preparing the Superintendent Case Review and responding to the applicants' letters of complaint.

9. Order

Under section 58(3)(d) of the Act, I confirm the decision of the Ministry for Children and Families not to correct the applicants' personal information contained in the Superintendent Case Review Report.

David H. Flaherty October 6, 1997
Commissioner