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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 124-1996
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INQUIRY RE: The Workers Compensation Board's application of section 29 of the Act (correction of personal information)

Fourth Floor
1675 Douglas Street
Victoria, B.C. V8V 1X4
Telephone: 604-387-5629
Facsimile: 604-387-1696
Web Site: http://www.cafe.net/gvc/foi

1. Introduction

As Information and Privacy Commissioner, I conducted an inquiry on June 20, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review by an applicant of the response of the Workers Compensation Board (WCB) to a series of requests made under section 29 of the Act for correction of the applicant's personal information.

The WCB corrected some of the material and annotated the remainder. The annotations were noted in red ink on the original documents. The WCB placed all of the applicant's correspondence with respect to his correction requests in a separate "red dot" file folder marked "Freedom of Information and Protection of Privacy Act Annotations/Corrections" and placed the folder in the claim file.

2. Issues under review and the burden of proof

The applicant does not accept the format that the WCB adopted for recording corrections. He is of the opinion that the WCB must correct, not annotate, all information on the file unless that information can be supported by factual evidence. The overall issue under review is whether the response by the WCB to the applicant's requests for corrections satisfies the requirements of section 29 of the Act.

Section 29 reads:

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 establishes the burden of proof for an inquiry into a decision to refuse access. However, the Act is silent as to the burden of proof with respect to a request for review about the correction of personal information. Because a public body is in a better position to prove such matters, I have determined that the burden of proof with respect to these issues is on the WCB in this case.

3. The applicant's case

The applicant wants to correct opinions placed on his WCB claim file which are not supported by fact: "As all information is being used to render decisions which could affect me, I feel that documents which are inaccurate, unsupported and misleading should be corrected not annotated." In his view, it is not enough to annotate documents and opinions "that are based on unsupported, inaccurate, misleading and incomplete information." (Submission of the Applicant, pp. 1, 7)

4. The Workers Compensation Board's case

The WCB's basic position is that it has conscientiously addressed the applicant's concerns, even beyond what is required by the Act. I have presented below, as I deemed it appropriate to do so, its submissions on the interpretation of section 29.

5. Discussion

A considerable part of the applicant's submission states his strong views on how the WCB should go about its business of adjudicating claims. I emphasize that this inquiry before me only concerns the interpretation of section 29 of the Act. However, I have carefully reviewed the applicant's voluminous submissions. The context for this inquiry is that he appears to be dissatisfied with the outcome of his claims to the WCB.

Section 29: Right to request correction of personal information

I agree with the WCB that there is no legal obligation under the Act for a public body to correct personal information. The obligation on the public body is to annotate. The WCB stated:

> In the case at hand, where the two WCB claim files of the applicant are involved, the personal information in question is largely comprised of opinions such as professional medical opinions, opinions of claim adjudicators...as well as opinions of legal and policy advisors whose opinions are intended to assist adjudicators and others dealing with the administration and adjudication of the claim file. (Submission of the WCB, p. 2)

The WCB states that claim files contain opinions as a form of evidence for use by various decision-makers: "One cannot 'correct' a person's opinion by changing the opinion, as [the applicant] would have us do." (Submission of the WCB, p. 3.) According to the WCB, the solution for workers who disagree with opinions on their claim files is to produce a letter that is placed on the claim file, which also becomes "evidence." (Submission of the WCB, p. 4) The only corrections that the WCB makes under section 29 are "non-controversial objective facts."

According to the WCB:

> The simple answer is that no one may tamper with the opinion evidence on a claim file--not even if the worker disagrees with those opinions. The worker's remedy is his or her statutory right of appeal under the Workers Compensation Act. (Submission of the WCB, p. 5)

I fully agree with the WCB that a public body cannot correct an opinion in its records but can only annotate it. I am supported in this position by Ontario Order P-186, July 11, 1990, pp. 5, 6 by then Assistant Commissioner Tom A. Wright and a similar decision of the Quebec Commission on Access to Information cited therein. See also Ontario Order M-201, October 15, 1993, p. 4 by Inquiry Officer Donald Hale.

Section 29: The WCB's proposed guidelines

The WCB has proposed a set of guidelines that I regard as worthy of testing by public bodies as to their workability:

> 1. Whatever the decision (correction or annotation), it is a discretion that should be exercised *in good faith* by the public body, without prejudging the issue or any bias against the applicant.
>
> 2. It is appropriate to *correct* rather than *annotate* where the information in dispute is pure objective fact and where it is within the reasonable administrative resources (including financial considerations and time factors) of the public body to make the decision that the information on record is in fact incorrect and that the applicant's version is the correct one.

> 3. Given that it is the public body's discretion whether to correct or annotate the personal information at issue, and provided that the public body's discretion is made in good faith, the public body should not be required to meet a standard that involves expending a significant amount of time, financial and other resources in assessing the situation to decide where 'truth' lies: provided that the applicant's version of events is documented in the public body records where the personal information is contained, the provisions of Section 29(2) will have been met. (Submission of the WCB, pp. 6, 7)

Section 29: How to make an annotation

> The WCB's position is that a public body should make a reasonable effort to annotate the document that contains the personal information in question. It is the WCB's usual practice to annotate, in red ink, the original document with the correction requested, adding the date that the annotation was made, and the initial of the FIPP analyst making the annotation.... As well a separate 'red-dot' folder is placed in the claim file marked 'Freedom of Information and Protection of Privacy Act Corrections and/or Annotations,' and a full copy of the applicant's letter requesting correction is placed in that folder. (Submission of the WCB, p. 7)

The WCB states that it has been easy to follow this practice consistently for everyone to date, except for the several cases involving the current applicant. (Submission of the WCB, p. 8) It views his latest request for corrections as "attempting to edit the claim file and other Board documents so that they will read exactly as he wishes them to read...." (Submission of the WCB, p. 9)

I agree with the WCB that section 29 "should not be used as a means of attempting to appeal decisions and opinions of adjudicators with which the worker does not agree. The Workers' Compensation Act provides legal avenues of appeal...." (Submission of the WCB, p. 9) In this latest case of requested corrections, the WCB has simply placed the applicant's correction letter in the special red-dot annotation of his claim file.

I agree with the WCB that section 29 should be sensibly interpreted, as the following comments suggest:

> ...an interpretation which would allow a public body some administrative leeway in deciding the manner in which the annotation will occur. No public body should try to bury or hide an applicant's requests for correction. Neither, however, should the public body be forced to comply to unreasonable demands of an applicant who, in voluminous material and in nuisance fashion, insists that the claim file and other Board documents be edited in exactly the fashion that suits him, so that they will say exactly what he wants them to say. Fairness should be the test.

> We submit that what constitutes a 'fair' way to annotate personal information 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 the public body. (Submission of the WCB, pp. 9, 10)

I find that the WCB's method of annotation in this case was appropriate to the circumstances of the case and complies with the requirements of section 29. I found it especially useful in this regard to review two substantial volumes of documents prepared by the WCB to document its correspondence with the applicant and his attachments to his correction request.

6. Section 29: Standards of correction

- 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, 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.

7. Order

I find that the Workers Compensation Board acted in accordance with the requirements of section 29 of the Act with respect to the records in dispute. Under section 58(3)(d), I confirm the Workers Compensation Board's decision not to correct personal information as requested by the applicant.

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David H. Flaherty
Commissioner

September 12, 1996