

# ALBERTA

## INFORMATION AND PRIVACY COMMISSIONER

### ORDER 2000-018

September 27, 2000

### WORKERS' COMPENSATION BOARD

Review Number 1674

Office URL: <http://www.oipc.ab.ca>

**Summary:** The Applicant made a correction request to the Workers' Compensation Board under section 35(1) of the *Freedom of Information and Protection of Privacy Act*. The Applicant requested that the Workers' Compensation Board correct an error in a clinical assessment report dated March 8, 1993, containing information about the Applicant. The Workers' Compensation Board said it would also correct its other documents that contained the error. The Inquiry Officer found that the Workers' Compensation Board properly corrected the records.

**Statutes Considered: AB:** *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c. F-18.5, section 35(1).

**Authorities Considered: AB:** Order 97-020.

## **I. BACKGROUND**

[para 1.] On January 19, 1999, the Applicant made a correction request to the Workers' Compensation Board (the "Public Body") under section 35(1) of the *Freedom of Information and Protection of Privacy Act* (the "Act"). The Applicant alleged that, in a clinical assessment report (the "Report") written by one of the Public Body's employees, dated March 8, 1993, the employee changed the diagnosis of the Applicant from that contained in a physician's original report. The Applicant asked the Public Body to correct the Report "...through a letter of acknowledgement to be placed on my file against [the employee's] clinical assessment report..."

[para 2.] On February 18, 1999, the Public Body wrote to the Applicant stating that it had reviewed the information in the Report. The Public Body said that it agreed that the Report contained two errors, and specifically identified the information it said it would arrange to have corrected on the Applicant's file. The Public Body further said that, as required by section 35 of the Act, "...[W]e will link or annotate your corrected information in all documents held by the WCB where this information occurs. We will also notify other recipients of the correction that is being made."

[para 3.] On March 9, 1999, the Public Body wrote to the Applicant stating that the Public Body's February 18, 1999 letter incorrectly stated one of the corrections that was to be made. A proper correction was stated.

[para 4.] On April 30, 1999, the Public Body wrote to the Applicant stating that it found two additional documents that the Public Body said it had "annotated" as a result of the Applicant's request. The Public Body further said: "These annotations provide a reference to the actual clinical assessment report where your personal information was corrected."

[para 5.] On July 9, 1999 the Applicant asked the Commissioner to review the Public Body's correction of documents under section 35. The Applicant was particularly concerned that the corrections did not include all of the references to the employee's summary of the physician's diagnosis, appearing on the claim file.

[para 6.] Mediation was authorized but was not successful. The matter was set down for a written inquiry. By delegation dated April 11, 2000, the Commissioner delegated to me the power to conduct the inquiry.

[para 7.] This inquiry proceeds on the basis of the Act as it existed before the amendments to the Act came into force on May 19, 1999.

## II. RECORDS AT ISSUE

[para 8.] The main record at issue is a clinical assessment report (the “Report”), dated March 8, 1993, authored by an employee of the Public Body. The Report contains the employee’s summary of a physician’s diagnosis of the Applicant. In addition, there are other records held by the Public Body, which refer to the Report and the summary of the diagnosis.

[para 9.] In this Order, I will refer to the Report separately, where necessary, and will refer to all the records as the “Records”.

## III. ISSUES

[para 10.] The Notice of Inquiry set out the following issue for the inquiry:

Has the Public Body properly applied section 35 of the *Freedom of Information and Protection of Privacy Act* (FOIP Act) in making the corrections requested by the Applicant?

[para 11.] For the purposes of this inquiry, I have defined the issues as follows:

- A. Does section 35(1) apply to the information in the Records?
- B. Does the Public Body’s correction of the Records constitute an acceptable method of correction under section 35(1)?
- C. Did the Public Body correct all the relevant Records?

## IV. BURDEN OF PROOF

[para 12.] The Act is silent as to which party has the burden of proof under section 35(1). However, in Order 97-020, the Commissioner stated that the public body has the burden of proof regarding its decision to correct or not to correct under section 35(1).

## V. DISCUSSION OF THE ISSUES

[para 13.] [Section 35](#)(1) reads:

*35(1) An applicant who believes there is an error or omission in the applicant'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.*

**ISSUE A: Does [section 35\(1\)](#) apply to the information in the Records?**

[para 14.] The Applicant must meet two requirements for [section 35\(1\)](#) to apply: (i) there must be personal information about the Applicant, and (ii) there must be an error or omission in the Applicant’s personal information.

1. Do the Records contain “personal information” about the Applicant?

[para 15.] “*Personal information*” is defined in [section 1\(1\)\(n\)](#) of the Act. The relevant portions read:

*1(1)(n) “personal information” means recorded information about an identifiable individual, including*

*(i) the individual’s name, home or business address or home or business telephone number,*

*...*

*(iii) the individual’s age, sex, marital status or family status*

*...*

*(vi) information about the individual’s health and health care history, including information about a physical or mental disability,*

*(vii) information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given,*

*(viii) anyone else’s opinions about the individual,*

*...*

[para 16.] I have reviewed the Records. I find that the information in the Records is the Applicant’s personal information because it is recorded information about the Applicant, consisting of one or more of the kinds of personal information listed above.

2. Is there an “error” or “omission” in the Applicant’s personal information?

[para 17.] The Applicant complained that the Public Body’s employee summarized the physician’s diagnosis incorrectly, but the Applicant did not identify the specific errors in the Applicant’s personal information. The Public Body identified two errors of fact, as set out in its February 18, 1999 letter to the Applicant, as follows: (i) a reference to the location of the Applicant’s tenderness being in “C5 to C7”, when the physician’s diagnosis said the location was “C5 to T7”; and (ii) a reference to certain syndromes contributing to the pain symptom complex, when the physician’s diagnosis said those syndromes did not contribute much to the pain syndrome complex.

[para 18.] The Applicant did not take issue with the two errors of fact identified by the Public Body.

[para 19.] In Order 97-020, the Commissioner said that an “error” is a mistake, or something wrong or incorrect. He also said “fact” as a thing that is known to have occurred, to exist, or to be true, or an item of verified information.

[para 20.] After carefully reviewing the Records, I find that there are errors of fact in the Applicant’s personal information. The Report contains two errors set out above. Other Records refer to the Report and repeat the same errors.

[para 21.] Therefore, section 35(1) applies to the information the Public Body has identified as being in error in the Records. Consequently, the Public Body has the discretion to correct the Records.

**ISSUE B: Does the Public Body’s correction of the Records constitute an acceptable method of correction under section 35(1)?**

[para 22.] The Applicant wants all the Records referring to the Report corrected. The Applicant believes that there should be a correction everywhere there is a reference to the physician’s diagnosis. The Public Body states that all the affected Records have been corrected by a two-page Annotation Form attached to all the Records, in all locations where the Report is mentioned.

[para 23.] In Order 97-020, the Commissioner adopted three factors that a public body should consider when deciding how to correct an applicant’s personal information: (i) the nature of the record, (ii) the method indicated by the applicant, if any, and (iii) the most practical and reasonable method in the circumstances.

[para 24.] The Commissioner also said that a correction should be apparent in the file, and that any correction should be retrieved with the original file.

[para 25.] I have reviewed the Records and found that, wherever the Report is mentioned in the Records, the Public Body made hand written annotations on those Records. The Public Body then attached to those Records a two-page Annotation Form correcting the errors.

[para 26.] The Public Body’s hand written annotations on the Records containing the errors say: *“Information in this document has been changed to comply with a FOIP correction of personal information. Please see FOIP Annotation Form dated Feb 18/2000 (precedes this document on claim file).”*

[para 27.] The two-page Annotation Form heading reads: “*In response to our agreement to make a correction to the record of [the Applicant] (correction request dated January 19, 1999), we are making the following corrections to the record, file or database.*” The details of the correction are then set out on the Annotation Form, which is signed by an authorized official or employee of the Public Body.

[para 28.] By the method set out above, the Public Body corrected the Applicant’s personal information by making the appropriate corrections to all the Records on the Applicant’s file. In the circumstances, this is the most practical and reasonable method of correction.

[para 29.] Consequently, I find that the Public Body’s method of correcting the Records constitutes an acceptable method of correction under section 35(1).

### **ISSUE C: Did the Public Body correct all the relevant Records?**

[para 30.] The Applicant does not believe the Public Body corrected all the relevant records.

[para 31.] It appears that the Public Body had to do more than one search to locate all the relevant Records that needed to be corrected. I share the Applicant’s concern that the Public Body may not have initially completed a proper search. Therefore, I can understand why the Applicant is concerned that the Public Body did not correct all the relevant Records.

[para 32.] However, I am satisfied now that the Public Body has located and corrected all the relevant Records. Based on the Records I reviewed, I find that the Public Body has put a great deal of effort in trying to satisfy all the Applicant’s concerns.

## **VI. ORDER**

[para 33.] Under [section 68](#) of the Act, I make the following Order disposing of the issues in this inquiry.

### **Issue A: Does [section 35\(1\)](#) apply to the information in the Records?**

[para 34.] I find that section 35(1) applies to the information the Public Body has identified as being in error in the Records. Consequently, the Public Body has the discretion to correct the Records.

**Issue B: Does the Public Body's correction of the Records constitute an acceptable method of correction under [section 35\(1\)](#)?**

[para 35.] I find that the Public Body's correction of the Records constitutes an acceptable method of correction under section 35(1).

**Issue C: Did the Public Body correct all the relevant Records?**

[para 36.] I find that the Public Body corrected all the relevant Records.

Frank Borsato  
Inquiry Officer