

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2017-40

April 5, 2017

PEACE RIVER SCHOOL DIVISION NO. 10

Case File Number 000153

Office URL: www.oipc.ab.ca

Summary: Pursuant to section 36 of the *Freedom of Information and Protection of Privacy Act*, the Applicant requested that the Peace River School Division No. 10 (the Public Body) correct information in its custody and control. The Public Body declined to make the correction, and instead attached an annotation to the information. The Applicant asked this Office to review the Public Body's response to her request.

The Adjudicator found that the Public Body properly responded 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, and 72.

Authorities Cited: **AB:** 2000-007, F2007-018, F2013-04, and F2017-39.

I. BACKGROUND

[para 1] The Applicant was an employee of the Peace River School Division No. 10. (the Public Body). She applied for a position in an elementary school and was asked for references from her previous employer in another province where she had taught high school years prior. The references were provided and two individuals were contacted. The Public Body determined that neither reference was supportive of hiring her for the

position she applied for. The Public Body's classification of these references as not supportive of hiring the Applicant is dealt with in Order F2017-39.

[para 2] Following the Public Body's decision not to hire her, the Applicant submitted a complaint to the Public Body claiming unprofessional conduct by an employee of the Public Body. This led to a report being issued by the Public Body in which the Applicant's complaint was dismissed.

[para 3] On December 26, 2014, the Applicant requested that the Public Body correct her personal information.

[para 4] On January 16, 2015, the Public Body responded to the Applicant's correction request and refused to make the corrections but stated that the records were annotated to record the requested correction. The Applicant was asked to provide any additional information in writing to the Public Body that she believed should be included in the annotation. Finally, she was advised that any public body provided with the information in the previous year would be informed of the annotation. The Applicant did not agree with the annotation and wanted the correction made to the records.

[para 5] On January 20, 2015, this Office received a Request for Review from the Applicant stating that the Public Body improperly refused to make her correction request. Mediation was authorized but did not resolve the issues between the parties. On February 19, 2016, the Applicant requested an inquiry. I received submissions from both parties.

II. ISSUE

[para 6] The Notice of Inquiry dated September 28, 2016 states the issue in this inquiry as follows:

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

[para 7] The Applicant also has a related file wherein she complains about the Public Body's reliance on information she feels is inaccurate or incomplete. That issue will be dealt with in Order F2017-39.

[para 8] The Applicant raised several issues that were outside the scope of my jurisdiction, such as alleged slander and human rights violations, and the Public Body not acting in accordance with the *School Act* or their policies regarding staffing and harassment and discrimination. The Public Body's adherence to its own policies is not an issue that is within my jurisdiction to review. Neither are any alleged human rights violations. Further, the Applicant repeatedly states that she wants various people and the Public Body prosecuted under section 92 of the Act. My Order will focus solely on the issue noted above.

[para 9] Additionally, the Applicant states that a judicial review of another Order relating to these parties was wrongly decided by a Justice of the Court of Queen's Bench. She opted not to appeal the decision but attached her reasons for appeal to her submissions. I will not be commenting on the Court's's finding in the judicial review. This is not the proper process within which to air grievances about a Court's decision.

[para 10] Finally, the Applicant disagrees with the Letter of Findings sent by the Senior Information and Privacy Manager at the conclusion of the mediation, and alleges misconduct on the part of this employee. This inquiry is *de novo* which means that it is not a review of the investigation, mediation or findings of the Senior Information and Privacy Manager. It is a new process.

III. DISCUSSION OF ISSUE

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

[para 11] The Applicant requested that the Public Body correct her personal information as follows (I have paraphrased):

1. I want the records to show that my references were very supportive in me being hired when contacted by [named employee] on January 8, 2014.
2. The admission that a proper investigation was not performed as required by the Harassment and Discrimination Policy 10.51 of the [Public Body].
3. The admission that a proper investigation into the following of the Instructional Staffing Policy 10.11 was also not performed up to policy standards of the [Public Body].
4. If there is no evidence of discord between [employee of the Public Body] and myself, then this statement should be retracted from the report to dismiss my complaint against [named employee] to the Board of Trustees.
5. Point five was broken down into the following 12 corrections:
 - 1) No notes were taken at our meeting. The notes provided to me were falsified.
 - 2) He did not suggest that [a named employee] be appointed on the interviewing panel at this meeting.
 - 3) He did not offer for [a named employee] to give me interviewing pointers at this meeting.

- 4) He did not inform me of any problems with my teaching practices or pedagogical beliefs at this meeting.
- 5) “To be fair”, he offered to call my references at the end of my meeting after I informed him of the unprofessional conduct of the administrators of [a named school] and several other colleagues.
- 6) I wasn’t the one who brought up my [experience from another province]; it was [a named employee], after he looked into my personnel file. I never included my [references from another province] because I wasn’t applying for a secondary position. I was applying for an elementary position, so I included my elementary references, which they never talked with.
- 7) As already stated my references were extremely supportive.
- 8) Bullying did occur at [named school] and I mentioned this to both the principals of [named school] at my meeting with them. They are being untruthful. I gave a list of 40 examples to [an employee] at my meeting with him as well.
- 9) As already stated, a proper investigation was not performed as required by the Board Policy 10.51 and the Instructional Staffing Policy was not being followed as per Board Policy 10.11.
- 10) There have been other complaints of unprofessional conduct at [named school]. I know of another complaint that was brought to the attention of [two named employees]. I mentioned this to a colleague at my meeting with them. So this is another inaccurate statement. There are others like me that have been wronged and informed [a named employee] of their situation. Many lacked the courage, and moved to another school, but I do not believe I should be denied a position, if I am not guilty of any wrongdoing. Therefore, I chose to follow the process to seek a resolution in this matter. I’m still trying.
- 11) I would like to be informed of the difference of opinion that existed between the principals of [named school] and myself that would cost me my livelihood. It states in the Professional Code of Conduct that I am allowed to voice my opinions. However, I am unaware of any situation where I stated my opinions to the principals, so this statement is extremely puzzling to me. They did not speak to me enough to even know my opinions.

- 12) At my meeting with him I was firm in relaying the treatment I endured at [named school] and I would not deny, in any way, the seriousness of this breach of the Professional Code of Conduct by the principals. I went to [named employee] for advice and guidance and he chose instead to try and protect the principals rather than investigate this matter. This would be another significant error on his part.
6. I want the record to show that [named employee] did not personally contact any of my references from [out of province] like he agreed to do at the end of my meeting with him and [another named employee] on September 4, 2013.
 7. I want the record to show that the [employees] were most definitely informed of bullying occurring at [named school] by the I-Coach at my meeting with them on August 21 & 23, 2013. Both [employees] apologized to me because of their conduct towards me. [An employee] agreed to write [an employee] and [named employee] explaining her unprofessional behaviour towards me on August 23, 2013. Notes were written at this meeting by the [employee]. I am positive of this fact.
 8. I want the record to show, I tried my best to find a resolution to this matter at the school level and divisional level first, before contacting higher authorities. I expressed my desire to find a resolution at every turn, but those of authority denied me that request and I lacked the power to overrule any decision made by the people of authority.

[para 12] 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.

(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] 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 14] 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 15] Personal information is defined in section 1(n) of the Act as follows:

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,

(ii) the individual's race, national or ethnic origin, colour or

religious or political beliefs or associations,

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

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,

(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, and

(ix) the individual's personal views or opinions, except if they are about someone else;

[para 16] The Applicant's correction request points 2, 3, and 5 (subsection 9) are not the Applicant's personal information because they are not about her, they are about the investigation process and procedures and how those procedures were followed or not followed in the investigations relating to the Applicant's complaints. Therefore, with regard to these points, the Applicant has not met her burden of proving that the Public Body has personal information about her and that there is an error or omission in that information. As a result, I find that the Public Body decision not to correct this information was reasonable.

[para 17] Regarding the remaining points above, I do not believe that the Applicant has met her burden in proving that there was an error or omission in the personal information. I will deal with each additional point individually below.

- 1. I want the records to show that my references were very supportive in me being hired when contacted by [named employee] on January 8, 2014.*

[para 18] As stated in the background of this Order, the Applicant applied for an elementary school position and was asked to provide references from another province where she had taught high school several years earlier. Two of those references were checked. Both the individuals said generally positive things about the Applicant. However, given that the references had worked with the Applicant several years before, for a short amount of time, and in a high school setting (which in that province meant that the Applicant would not be qualified for an elementary school position), the Public Body

determined that these references were not supportive of the Applicant's being hired for the position she had applied for.

[para 19] In addition to making this correction request, the Applicant also complained to this Office that the statement that her references were not supportive of her being hired for the position she applied for were incorrect. In Order F2017-39 I determined that this was an assessment made by the Public Body based on the information it had before it, and that there was nothing inaccurate or incomplete in the Applicant's personal information that had been provided to the Public Body that had led to the Public Body making that decision.

[para 20] Section 36(2) of the Act, cited above, states that a public body must not correct an opinion, including a professional or expert opinion. It was the opinion of the Public Body's employee who did the reference checks that they were not supportive of the Applicant being hired for the position she applied for. This was an opinion and the Applicant has adduced no evidence that the opinion was recorded inaccurately or incompletely. In addition, given section 36(2) of the Act prohibits the Public Body from correcting an opinion, I find the Public Body properly refused to correct its opinion that the references were not supportive of her being hired.

4. *If there is no evidence of discord between [employees of the Public Body] and myself, then this statement should be retracted from the report to dismiss my complaint against [named employee] to the Board of Trustees.*

[para 21] The report referenced in this point of the Applicant's correction request is the report issued by the sub-committee of the Public Body that decided that the Applicant's complaint against an employee of the Public Body for unprofessional conduct was without merit. In that report, the sub-committee noted that it had spoken with the employee who was complained about, and he had stated that he had been told by another employee of the Public Body (who had spoken to staff at a school at which the Applicant worked) that there was discord between the Applicant and employees of the school.

[para 22] In her correction request, the Applicant appears to place the onus on the Public Body to prove that this report of discord was correct. In fact, (as noted above) the initial burden lies with the Applicant to show that this statement was inaccurate or incomplete. The Applicant has not done so. To the contrary, several statements made by her in her submissions seem to indicate that there was a contentious relationship between the Applicant and certain employees of the school, which resulted in the Applicant making complaints about being bullied. Therefore, I do not believe that the Applicant has met her burden to prove that this statement was inaccurate or incomplete.

[para 23] Further, even if the statement itself were incorrect and there was no discord, the statement in the report was a recorded statement of fact made by a third party (the investigated employee). As the Adjudicator stated in Order F2007-018:

...In Order 97-020 (at para. 127), the former Commissioner provided the following explanation for not correcting a third party statement:

That reason involves maintaining the integrity of the record in certain situations, such as investigations in which a third party's statements have been recorded. In investigations, there is a need to record statements accurately, in order later to make a decision relating to what was said, and to understand the basis on which a decision was made. Accordingly, a third party's statement of fact cannot be corrected, even if that statement of fact is in error. The statement does not appear for the truth of it; it appears for the fact that it is what was said, truthful or not.

If information is a record of a statement by a third party about an individual, it cannot be concluded that the information is inaccurate unless there is evidence that the third party's statement was not accurately recorded (Order 97-020 at para. 128; Order F2003-019 at para. 37). This is so whether the third party statement is a fact or an opinion (Order 97-020 at para. 133), and whether a recorded statement is right or wrong (Order 97-020 at paras. 122 and 127; Order 2000-001 at para. 16).

(Order F2007-018 at paras 29-30)

[para 24] The Applicant has not argued nor put forward any evidence to suggest that the investigated employee did not say that there was discord between the Applicant and certain employees of the school. The Public Body simply recorded what was told to the sub-committee. Without evidence that this recording was not done accurately, I find that the Applicant did not meet her burden to prove that this statement was inaccurate or incomplete.

5. *Various issues with notes from a meeting*

[para 25] The Applicant's point five above, and of the subsections of point five (except subsection 9 which was dealt with above), relate to statements recorded in a meeting between a member of the sub-committee and the investigated employee. Some of what was recorded in these meeting notes was also noted in the sub-committee's report.

[para 26] All of the points with which the Applicant takes issue came from answers given by the investigated employee. Therefore, these are a third party's recorded statement of fact (see Order F2007-018, quoted above). The Applicant has not argued or put forward any evidence that the investigated employee (the third party) did not say the things that were recorded. Therefore, she has not met her burden to prove that the information is inaccurate or incomplete.

6. *I want the record to show that [named employee] did not personally contact any of my references from [out of province] like he agreed to do at the end of my meeting with him and [another named employee] on September 4, 2013.*

[para 27] The Applicant did not reference a record in the custody or control of the Public Body that indicated that the named employee personally contacted her references. In reviewing the Public Body's records before me, I do not see a reference to the named employee checking the Applicant's references. In fact, the records show that another employee of the Public Body contacted the Applicant's references.

[para 28] Further, section 36 of the Act does not require a public body to create a record to indicate something an applicant feels is missing from the records that do exist.

[para 29] Therefore, the Applicant did not meet her burden to show that there was inaccurate or incomplete personal information.

7. *I want the record to show that the [employees] were most definitely informed of bullying occurring at [named school] by the I-Coach at my meeting with them on August 21 & 23, 2013. Both [employees] apologized to me because of their conduct towards me. [An employee] agreed to write [an employee] and [named employee] explaining her unprofessional behaviour towards me on August 23, 2013. Notes were written at this meeting by the [employee]. I am positive of this fact.*

[para 30] Again, the Applicant is referencing "the record" instead of pointing to an actual record that has inaccurate or incomplete information in it. As above, the Applicant has failed to meet her burden to prove that the Public Body is in possession of personal information about her that is inaccurate or incomplete. As well, as stated above, there is no obligation on the Public Body under section 36 of the Act to create a record to state what the Applicant believe should be noted in "the record".

8. *I want the record to show, I tried my best to find a resolution to this matter at the school level and divisional level first, before contacting higher authorities. I expressed my desire to find a resolution at every turn, but those of authority denied me that request and I lacked the power to overrule any decision made by the people of authority.*

[para 31] Again, the Applicant is referencing "the record" instead of pointing to an actual record that has inaccurate or incomplete information in it. As above, the Applicant has failed to meet her burden to prove that the Public Body is in possession of personal information about her that is inaccurate or incomplete. As well, as stated above, there is no obligation on the Public Body under section 36 of the Act to create a record to state what the Applicant believe should be noted in "the record".

[para 32] As I have found that the Public Body's decision not to make the corrections requested by the Applicant was correct, I must decide if the Public Body annotation of the correction request was reasonable. The Public Body annotation was as follows:

1. [The Applicant] wants records to show that her references were supportive in her being hired when contacted by [a named employee] on January 8, 2014
2. [The Applicant] wants an admission that a proper investigation was not performed as required by the Harassment and Discrimination Policy 10.51 of Peace River School Division No. 10
3. [The Applicant] wants an admission that a proper investigation into the following of the instructional Staffing Policy 10.11 was not performed up to the policy standards of Peace River School Division No. 10
4. [The Applicant] wants the statement noting discord between the principals of [named school] and herself retracted from the report to dismiss her complaint against [named employee] to the Board of Trustees
5. [The Applicant] wants the following statements removed from the report to dismiss her complaint against [named employee] to the Board of Trustees:
 - Removal of statement referring to notes taken by [named employee]
 - Removal of statement of [employee] offering to have [another employee] participate in the interview process
 - Removal of statement of [employee] offering to provide pointers to [the Applicant] to improve her interview skills
 - Removal of statement of [employee] informing [the Applicant] as to problems with her teaching practices or pedagogical beliefs
 - Removal of statement saying that [the Applicant] references were not supportive
 - Admission that bullying did occur at [named school]
6. [The Applicant] wants the record to show that [named employee] did not personally contact any of [the Applicant's out of province] references
7. [The Applicant] wants the record to show that the principals were informed of bullying occurring at [named school] by the I-Coach at her meeting with them on August 21 and 23, 2013
8. [The Applicant] wants the record to show that she tried her best to find a resolution to this matter at the school level and divisional level first, before contacting higher authorities.

[para 33] The Applicant argues that the Public Body's paraphrasing of her correction request is not appropriate. The Applicant's request for correction was very detailed and gave a lot of background information that was not relevant to what she was actually asking to have corrected. As the former Commissioner stated in Order 2000-007:

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.

(see Order 2000-007 at para 23)

[para 34] The Public Body is not required to annotate the records with all of the information provided by the Applicant or using the exact wording provided by the Applicant. The Public Body need only be fair with its annotation. With the exception of parts of point 5, which seems to have combined a few of the subsections, the annotation uses nearly the same language as the Applicant used and addresses everything of substance from the Applicant's correction request. The portions that were removed, reworded or combined were not relevant to what the Applicant was requesting be changed. As I stated above, much of it was background material. The Public Body's suggested annotation covers the Applicant's request fairly and fully with all the substantial information the Applicant requested to be corrected. I find that this was a fair annotation.

[para 35] Finally, the Applicant alleges that the Public Body did not provide a copy of the annotation to the Human Rights Commission as required by section 36(4) of the Act. She also references the information not being given to the Alberta Teachers Association, Education Department, and Board of Trustees. These issues appear to be the subject of another of the Applicant's requests for review (file 003043), which is being considered for an inquiry and, therefore, I will not be dealing with this issue in this Order.

[para 36] Given the above, I find that the Public Body properly exercised its discretion not to correct the Applicant's personal information as requested. I further find that the Public Body's annotation was fair and reasonable.

IV. ORDER

[para 37] I make this Order under section 72 of the Act.

[para 38] I find that the Public Body properly refused to correct the information as requested by the Applicant and met its duty under section 36 of the Act in annotating the records.

Keri H. Ridley
Adjudicator