

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2010-009

November 16, 2010

ODYSSEY HEALTH SERVICES

Case File Number P1482

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Summary: Under section 25 of the *Personal Information Protection Act* (“PIPA”), the Applicant asked the Organization to correct various errors that he believed to exist in his personal information. The Organization refused, but indicated that it had annotated the personal information with the requested corrections. The Applicant requested a review of the Organization’s decision.

The Adjudicator found that the Organization properly refused to make the requested corrections. Some correction requests were not regarding the Applicant’s own personal information; some allegedly incorrect information was not subject to proof or verification; some correction requests were regarding opinions that must not be corrected under section 25(5) of PIPA, or else were observations reflecting what was observed at the time; and some correction requests were regarding the statements or views of third parties that were not shown to be inaccurately recorded. As a result, the Applicant did not establish that there were any errors in his personal information that were subject to correction. The Adjudicator accordingly confirmed the Organization’s decision not to correct the Applicant’s personal information.

The Adjudicator also found that the Organization properly annotated the Applicant’s personal information with the correction requests, as required under section 25(3) of PIPA. He confirmed that the Organization performed its duty in this regard.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1(k) [now 1(1)(k)], 25, 25(1), 25(2)(a), 25(3), 25(5), 26, 37, 46, 52, 52(3)(a) and 52(3)(d); *Personal Information Protection Amendment Act, 2009*, S.A. 2009, c. 50; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 36, 36(1), 36(2) and 36(3); *Health Information Act*, R.S.A. 2000, c. H-5, s. 13.

Authorities Cited: AB: Orders 97-020, 98-010, F2005-023, H2005-007 and P2006-005.

I. BACKGROUND

[para 1] The Applicant was a patient of Odyssey Health Services (the “Organization”), which is subject to the *Personal Information Protection Act* (the “Act” or “PIPA”). In a letter dated October 22, 2009, the Applicant asked the Organization to correct information in his patient file, which he believed had been altered or was otherwise not correct.

[para 2] By letter dated November 26, 2009, the Organization told the Applicant that it was refusing to make the requested corrections for various reasons, but that it had annotated its records to show that the corrections had been requested and not made. It attached a chart in which it set out the annotations.

[para 3] In a form dated December 7, 2009, the Applicant requested a review of the Organization’s refusal to make the corrections that he requested. The Commissioner authorized a portfolio officer to investigate and attempt to resolve the matter. This was not successful, and the Applicant requested an inquiry by letter dated December 28, 2009. A written inquiry was set down.

[para 4] On May 1, 2010, amendments to PIPA came into force by virtue of the *Personal Information Protection Amendment Act, 2009*. However, because the Organization’s alleged failure to comply with the Act occurred prior to the amendments, the legislation applies as it existed previously. For the purpose of cross-reference, I note below when there has been an amendment to a section of PIPA that I discuss in the Order.

II. INFORMATION AT ISSUE

[para 5] The information at issue is various information that the Applicant wants to have corrected in the records held by the Organization. The information is described in the course of the discussion below.

III. ISSUE

[para 6] The Notice of Inquiry, dated July 28, 2010, set out the issue of whether the Organization complied with section 25 of the Act (right to request correction).

[para 7] In its submissions, the Organization requested that the Commissioner authorize it to disregard, under section 37 of PIPA, any further access requests and corrections requests from the Applicant. I cannot address this in the context of the present inquiry because I do not have the delegated authority to do so, and a request under section 37 is a matter that must be addressed separately from a review under section 46. The Organization was advised to make its request separately and directly to the Commissioner.

IV. DISCUSSION OF ISSUE

Did the Organization comply with section 25 of the Act (right to request correction)?

[para 8] In order to comply with section 25 of PIPA, the Organization was required to properly determine whether to make the corrections requested by the Applicant, make the corrections where they were warranted, and properly annotate the Applicant's personal information where the corrections were not warranted. The relevant parts of section 25 read as follows at the time of the Applicant's correction request:

25(1) An individual may request an organization to correct an error or omission in the personal information about the individual that is under the control of the organization.

(2) If there is an error or omission in personal information in respect of which a request for a correction is received by an organization under subsection (1), the organization must, subject to subsection (3),

(a) correct the information as soon as reasonably possible, and

...

(3) If an organization makes a determination not to make the correction under subsection (2)(a), the organization must annotate the personal information under its control with the correction that was requested but not made.

...

(5) Notwithstanding anything in this section, an organization shall not correct or otherwise alter an opinion, including a professional or expert opinion.

[An amendment to section 25 came into force on May 1, 2010, by which it was made clear that a correction request should be made in accordance with the requirements of section 26.]

[para 9] Section 25 of PIPA is analogous to section 36 of the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act"), as the latter likewise

permits an individual to request the correction of an error or omission in his or her personal information [section 36(1)], prohibits the correction of an opinion, including a professional or expert opinion [section 36(2)], and requires the fact that a requested correction has not been made to be indicated in the records containing the personal information [section 36(3)]. I therefore adopt the same burdens of proof, as have been developed under the *FOIP Act*, for the purpose of reviewing an organization's response to an applicant's correction request under section 25 of PIPA. Specifically, the applicant has the initial burden of proving that the organization has personal information about him and that there is an error or omission in that personal information (Order 97-020 at para. 108; Order F2005-023 at para. 10). The organization then has the burden of showing why it refused to correct the personal information and that it instead properly annotated the personal information with the requested correction (Order 97-020 at para. 109; Order F2005-023 at para. 10).

1. Did the Organization properly refuse to make the corrections requested by the Applicant?

[para 10] Under section 25(2)(a) of PIPA, an organization must correct an individual's personal information if there is an error or omission in it, but not where the alleged error or omission is in respect of an opinion under section 25(5). Here, the Organization says that it refused to make any of the corrections requested by the Applicant because they were not in relation to his personal information, he did not show that there was an error or omission in his personal information, and/or the request was regarding a professional opinion.

[para 11] In his submissions in the inquiry (paragraphs 24 to 31), the Applicant includes correction requests in respect of statements made by a particular representative of the Organization. However, these requests were not among the Applicant's correction requests of October 22, 2009 that proceeded to the review by this Office. In his request for an inquiry dated December 28, 2009, the Applicant further says that the Organization did not respond to each and every one of his correction requests, noting one in particular. However, the correction request that he notes was made on December 7, 2009, not in his correspondence of October 22, 2009. All of these new correction requests are not properly the subject of this inquiry and I will not address them.

[para 12] The Applicant's correction requests of October 22, 2009 were set out in an eight-page document with 49 paragraphs, which included points that he was making in addition to his correction requests. In particular, the document also raised concerns about information that the Applicant believed had not been provided to him following an access request that he had made to the Organization (which matter was addressed in a different inquiry). Where the Applicant reproduces a statement from his patient file, and then alleges that information was not provided to him following his access request or that information does not actually exist, I considered whether he is implicitly saying that his personal information in the reproduced statement contains an error because he has been given no proof of the truth of its content. However, I find that the paragraphs in which the Applicant alleges, without anything further, that the Organization had not provided

information in response to his access request are not clear enough to constitute proper correction requests under section 25(1).

[para 13] In other paragraphs of the eight-page document, the Applicant also reproduces a statement from his patient file, but then alleges that the information in the statement has been altered, is not correct, has no support, or something else to that effect. I find that these paragraphs in the document are the ones that constitute proper correction requests, in that they more clearly allege an error in the Applicant's personal information.

[para 14] The Applicant also attached a 12-page document to his cover letter of October 22, 2009, but I find that it does not contain any correction requests. It deals only with the Applicant's access request, which was addressed in a different inquiry

[para 15] In his submissions, the Applicant argues that the Organization has altered information, or recorded incorrect information, in an effort to justify its diagnosis and treatment of him. I will now discuss whether the Organization properly refused to make each of the corrections requested by the Applicant. Below, I will refer to various paragraphs in the eight-page document, which I will call the Applicant's overall "Request".

(a) *Correction requests that are not regarding the Applicant's own personal information*

[para 16] Under section 25(1) of PIPA, an individual may make a correction request only in respect of his or her own personal information. Under section 1(k) [renumbered section 1(1)(k) as of May 1, 2010], "personal information" means "information about an identifiable individual".

[para 17] Some of the Applicant's correction requests are not in relation to his own personal information. For instance, he alleges that there is no support for a statement about the credentials of one of the Organization's staff members (paragraph 28 of his Request), and a statement about the expertise of the Organization's interdisciplinary team (paragraph 34). As these statements are not about the Applicant, the Applicant is not making requests, in these instances, to correct his own personal information under section 25(1). Because the correction requests are not proper ones under section 25(1), the Organization has no obligation to determine whether to correct the statements in question.

[para 18] I reach the same conclusion regarding the Applicant's requests to correct a statement about whether neck stretches fell within the guidelines set out by a third party (paragraph 16 of his Request), a statement about whether a staff member would absent herself from the Applicant's physical examination (paragraph 18), and a statement about how most individuals would experience a type of personality test (paragraph 31). Even though the Applicant disagrees about whether the neck stretches fell within the guidelines, says that the staff member actually did attend the exam, and says that he experienced the personality test differently, the information that he wants to have

corrected is not about him. Rather, it is about the neck stretches and guidelines, about the staff member attending the exam, and about the personality test.

(b) *Allegedly incorrect information that is not subject to proof or verification*

[para 19] In some instances, the Applicant alleges that a statement is incorrect because it is not how he recalls events to have occurred, he says that he did not say or do things attributed to him, and he believes that the Organization has altered or fabricated the events. Specifically, he disputes what he indicated about returning back to work (paragraph 12 of his Request), whether he was prepared to change his wake-up time (paragraph 14), what the Organization pointed out and suggested to him about pain management (paragraph 17), what occurred between him and his family physician (paragraph 22), what happened at a meeting between him and one of the Organization's staff members (paragraph 23), what happened at his house and an emergency department (paragraph 24), and what occurred when he wrote a personality test (paragraphs 30 and 32).

[para 20] In order for me to find that there is an error in the Organization's recorded account of what occurred at these various times, I must be able to factually ascertain precisely what was said or done, or be able to verify that the events were as they are described by the Applicant (Order H2005-007 at para. 56, discussing correction requests under the analogous section 13 of the *Health Information Act*). As I have no way of knowing whether the Organization's or the Applicant's version of events is the correct one, I can find no error in the Applicant's personal information. I realize that the Applicant says that no representatives of the Organization were even present during some of the events, and he points to evidence of what was said on one occasion, which he argues is in conflict with the Organization's version of events on a different occasion. However, whether or not a representative of the Organization was present, and regardless of what was said or done on a different occasion, I still cannot verify what occurred at the time in question. I therefore conclude that the Organization properly refused to correct the Applicant's personal information in the foregoing instances.

[para 21] The Applicant also submits that, contrary to written statements of the Organization, he did not send "several" e-mails to it (paragraph 19 of his Request), and did not "continue to leave voice mail messages" (paragraph 20). He indicates that he sent only two e-mails on May 24 and 30, 2008, and provided copies of those two e-mails. Further, he suggests that the Organization should have the burden of proving that the statements about the e-mails and voice mail messages are correct, as it is difficult for him to prove that he did not do something, whereas the Organization can more easily prove what it says that he did do.

[para 22] The burden of proving an error or omission in personal information rests with applicants under section 25 of PIPA because they are normally in a better position to establish the truth of information about themselves. If organizations were required to prove the truth of an applicant's personal information, an applicant could simply allege

that all of their personal information in the custody or under their control of the organization was incorrect, and the organization would then have to spend much time and effort proving that the information is correct. Having said this, where applicants claim that they did not do something, they may need to present less evidence in order to meet the burden of establishing an error in their personal information. Still, in the circumstances of this case, I have competing assertions as to whether the Applicant sent “several” e-mails or left voice mail “messages” in the plural. I am unable to determine whether the Applicant’s or the Organization’s assertions are the correct ones, and therefore can find no error in the Applicant’s personal information.

[para 23] I have no evidence whatsoever regarding the voice mail messages, other than the parties’ competing assertions. While the Applicant attached two e-mails that he sent, I do not know whether or not there were others. The Organization’s statement about “several e-mails” may also be in reference to a longer period of time than the Applicant thinks. Finally, the word “several” means “more than two”. If the Applicant, in fact, sent only two e-mails, the word “several” amounts to an exaggeration that, in my view, is not so different from the truth that it amounts to an error within the meaning of section 25(1) of PIPA.

(c) *Correction requests that are regarding opinions that must not be corrected, or observations reflecting what was observed at the time*

[para 24] In one instance, the Applicant requests a correction to a letter in which he is said to be “over-reporting or at least exaggerating negative symptoms” (paragraph 10 of his Request). The statement appears to be a conclusion of the representative of the Organization who wrote the letter (as opposed to a conclusion attributed to a third party, which type of information I discuss in the next part of this Order). I find that the statement is a professional opinion, in that it is an opinion of the results of a personality test taken by the Applicant. The opinion cannot, and must not, be corrected under section 25(5) of PIPA. I reach the same conclusion regarding an opinion that the Applicant is “fearful of physical activity” (paragraph 26).

[para 25] The Applicant also requests a correction to a statement by a representative of the Organization that he appeared to show “a significant amount of anger” (paragraph 10). In my view, this is an observation, rather than an opinion, in that it is an observation of the Applicant’s behaviour when he was apparently refused a special chair in the workplace. Still, the observation cannot be corrected. A statement cannot be considered an error where the statement accurately reflects a person’s views or observations at the time, whether or not those views or observations are supported by fact (Order 98-010 at para. 42).

[para 26] The Applicant takes issue with a particular statement of the Organization because he feels that it implies that Millard Health Centre had a particular opinion, when the opinion was really that of the Organization (paragraph 11 of his Request). First, the opinion cannot be corrected under section 25(5), regardless of who holds it. Second, to the extent that the Organization has misattributed the opinion, the fact of who holds the

opinion is not the personal information of the Applicant in respect of which he can request a correction.

[para 27] The Applicant disputes a statement where a representative of the Organization “is concerned that this may becoming a matter of harassment” because he feels that it improperly accuses him of harassment (paragraph 21 of his Request). Whether or not the Applicant was actually harassing the Organization, the statement is not subject to correction, as it is a view or observation held by the particular individual at the time. The individual is saying that he is *concerned* about something, whether or not that something is true.

(d) *Correction requests that are regarding statements or views of third parties that are not shown to be inaccurately recorded*

[para 28] The Organization’s assessment and treatment of the Complainant involved an interdisciplinary team and referrals to several third party professionals. In many of the Applicant’s correction requests, he reproduces a statement of the Organization, which it attributes to a third party, and then alleges that the Organization misquoted or fabricated the third party’s statement.

[para 29] 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 P2006-005 at para. 86). This is so whether the third party statement is a fact or an opinion (Order 97-020 at para. 133). Here, the Applicant’s very argument is that the statements and views of various third parties were not accurately recorded or reproduced by the Organization.

[para 30] The Applicant submits that some statements or views attributed to third parties are wrong because he cannot locate them, or locate support for them, in the original correspondence from those third parties that he has in his possession (see, e.g., paragraph 4 of his submission). I find that this is insufficient to establish an error or omission in the Applicant’s personal information, as it rests on the improbable assumption that the Applicant has *everything* ever conveyed from the third parties to the Organization, whether verbally or in writing. It is also possible that the Organization is referring to views or statements that it never recorded or retained. Therefore, I cannot conclude that a third party’s statement was inaccurately reproduced, or fabricated, simply because I cannot locate the original statement somewhere. I acknowledge that the Applicant’s burden may be difficult to meet, but he effectively must show me both an original statement and the attributed statement, so that I can compare the two.

[para 31] Indeed, the Applicant does show me both statements for some of his correction requests. In some instances, the Applicant is disagreeing with a word or sentence used by the Organization because it is not exactly the same as the word or sentence found in the original correspondence from the third party. At other times, he

notes that only part of an original statement was reproduced rather than the entire sentence, or that some words were added.

[para 32] By way of examples of words added by the Organization, the Applicant takes issue with the Organization saying that his “symptomatic progress” was slow when the original third party statement only said that his “progress” was slow (paragraph 4 of his Request). He also takes issue with the Organization saying that he was not a candidate for further medical or surgical “investigation or intervention” when the original third party statement referred only to “intervention” (paragraph 7). By way of example of a partial reproduction, the Applicant takes issue with the fact that the Organization wrote that his progress was “slow” rather than “slow but satisfactory” (paragraph 4). By way of example of a paraphrased statement, the Applicant takes issue with the Organization saying that an MRI “was reported to be normal” when the original third party statement was that the MRI “does not reveal any significant abnormality” (paragraph 5). He also takes issue with the Organization saying that he could return to employment “of light to moderate physical demands” when the original third party statement was that he was fit for “sedentary or light work” (paragraph 9).

[para 33] A third party’s view or statement is not inaccurately recorded simply because it is not an exact reproduction of the original view or statement, only part of it is reproduced, or words are added. It is acceptable if the statement or view that is attributed to the third party accurately reflects the original statement or view, and does not mislead the reader as a result of a paraphrase, a partial reproduction or the addition of words. Here, I find that none of the Organization’s words or sentences, in the examples just cited above, are so different from the original statements or views of third parties that they constitute an inaccurate recording of those statements or views.

[para 34] As for other instances where the Organization reproduces only part of a third party’s view or statement, I find that none of them result in information that is misleading. As for other instances where it is paraphrasing a third party’s view or statement, or effectively using synonyms that mean the same thing, I find that none of these instances amount to an error in the Applicant’s personal information.

[para 35] With respect to the addition of words, the Organization’s statements are indeed sometimes quite different from the original third party statement pointed out to me by the Applicant. For instance, he notes that the Organization says that “radiographically the fusion appeared to be solid”, but the sentence in the third party’s correspondence, which the Applicant is comparing, does not say this. However, in two different pieces of correspondence from that same third party, the third party says that x-rays are “entirely satisfactory”, which I consider to be sufficiently close to “solid”. What appears to be occurring, in this and other instances, is that the Organization is setting out the views of a third party, as taken from various sources. The Applicant has established no error in these instances, either because the information that he notes to be added has an alternate source than the one he is using for comparison, or because it is impossible for me to be sure that the information did not come from some alternate source. Other examples where this applies is where the Organization states that third parties felt that the

Applicant was “evidencing chronic pain” (paragraph 5 of his Request), that he was “not at risk for of harming himself” (paragraph 25), that there were “no true medical contraindications to activity and exercise” (paragraph 25), and that the Applicant “needs to deal with the psychological and behavioural issues and not medical ones” (paragraph 29).

[para 36] Sometimes, the Organization is possibly exaggerating what was actually said by a third party. For instance, the Applicant takes issue with a statement, attributed to a third party, that he should not be subjected to any “significant” or “prolonged” axial loading, when the qualifying words that I have placed in quotation marks do not appear in the original third party statement (paragraph 8 of his Request). However, even if these statements are properly characterized as exaggerations – and they might not be, to the extent that the Organization is relying on other written or verbal sources for the information – I find that they do not amount to incorrect statements. While I acknowledge that the Applicant believes that the exaggerations may have affected the Organization’s overall diagnosis and treatment of him, or an insurance claim that he was pursuing, I do not find the possible exaggerations so different from the original third party statements that they amount to an error in the Applicant’s personal information.

(e) *Conclusion*

[para 37] For the various reasons set out above, I conclude that the Organization properly refused to make all of the corrections requested by the Applicant. It therefore had no obligation to correct any of the Applicant’s personal information under section 25(2)(a) of PIPA.

2. Did the Organization properly annotate the Applicant’s personal information with his requested corrections?

[para 38] Under section 25(3) of PIPA, the Organization was required to annotate the Applicant’s personal information where it made a determination not to make the requested correction. I have found that the Organization properly refused to make the requested corrections, and now turn to the question of whether it properly made annotations.

[para 39] The Organization prepared a chart, in which it set out the Applicant’s various correction requests by paragraph number, the records in which the alleged errors appear, a summary of the correction request, and why the Organization did not make the requested correction. It provided a copy to the Applicant when responding to him on November 26, 2009. It indicates that it placed a copy of the chart on the Applicant’s patient file generally, and with each of the records in question.

[para 40] Earlier in this Order, I found that some of the Applicant’s correction requests were not in relation to his own personal information. They were therefore not proper correction requests under section 25(1) of PIPA, and the Organization had no obligation to decide whether to make the requested corrections. For the same reason, the

Organization had no obligation to make any annotation in respect of those correction requests under section 25(3).

[para 41] On my review of the Applicant's correction requests and the chart prepared by the Organization, I find that the Organization made an annotation in all instances where it determined not to make a correction that was properly requested in respect of the Applicant's own personal information. The Organization did not omit a reference or annotation in respect of any paragraph of the Applicant's correspondence of October 22, 2009 that set out a proper correction request.

[para 42] I conclude that the Organization properly annotated the Applicant's personal information with his correction requests under section 25(3) of PIPA.

V. ORDER

[para 43] I make this Order under section 52 of PIPA.

[para 44] I find that the Organization properly refused to make the corrections requested by the Applicant and properly annotated the Applicant's personal information with his correction requests. The Organization therefore complied with section 25 of PIPA.

[para 45] Under section 52(3)(d) of PIPA, I confirm the Organization's decision not to correct the Applicant's personal information. Under section 52(3)(a), I confirm that the Organization performed its duty to annotate the Applicant's personal information with the correction requests.

Wade Riordan Raaflaub
Adjudicator