



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-321

Appeal P-920056

Ministry of Correctional Services



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ORDER

BACKGROUND:

The appellant submitted a request to the Ministry of Correctional Services (the institution) for correction of his personal information contained in two documents, both entitled "Employee Separation/Work Performance Records". The request related specifically to the information contained under the headings "Reason for Separation", "Quality of Work", "Attendance and Punctuality" and "Would you re-hire this employee".

In its decision letter, the institution stated that it did not consider the information at issue to be inaccurate, and the request for correction was denied. The institution invited the requester to submit a statement of disagreement to be attached to the two records in accordance with subsection 47(2)(b) of the Freedom of Information and Protection of Privacy Act (the Act), and also advised the requester of his right under subsection 47(2)(c) to have the statement of disagreement forwarded to any persons or agencies to whom the personal information was disclosed during the previous year. The requester declined to pursue either of these options and appealed the decision denying the correction.

Attempts to settle the appeal through mediation were unsuccessful, and the matter proceed to inquiry. Notice that an inquiry was being conducted to review the decision of the head was sent to the appellant and the institution. Enclosed with the Notice of Inquiry was a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. Representations were received from the institution only.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information to be corrected qualifies as "personal information" as defined by section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the changes requested by the appellant are "corrections" for the purposes of section 47(2)(a) of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information to be corrected qualifies as "personal information" as defined by section 2(1) of the Act.

Section 2(1) of the Act reads, in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

I have reviewed the records and, in my view, the information at issue in this appeal qualifies as the personal information of the appellant under paragraphs (b), (c), (g) and/or (h) of the definition of personal information.

ISSUE B: If the answer to Issue A is yes, whether the changes requested by the appellant are "corrections" for the purposes of section 47(2)(a) of the Act.

Section 47(2) of the Act provides:

Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information where the individual believes there is an error or omission therein; and
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

This issue turns on the meaning of the word "correction" in the context of section 47(2). The same issue was addressed by Commissioner Tom Wright in Order 186, issued on July 11, 1990. In that Order, Commissioner Wright found that "correction" necessarily incorporates three elements:

- the information at issue must be personal and private information;
and
- the information must be inexact, incomplete or ambiguous; **and**
- the correction cannot be a substitution of opinion.

Although the first element has been satisfied in the circumstances of this appeal, I find that the second and third elements have not. In my view, the correction request in this appeal can only accurately be described as a "substitution of opinion". The appellant states in his letter of appeal that he feels that the conclusions reached by his former employer in the two records are not "accurate". For example, he believes that the reason for his employment separation was "racial discrimination", and the reasons cited on the records indicate that his contract had expired and that he was given several opportunities to obtain a classified position as a correctional officer, but was unsuccessful in each competition.

The institution, in its representations, states that the information contained in the records represents an assessment of the appellant's work, attendance record and suitability, none of which the institution believes are factually incorrect. The institution's refusal to correct the information is based on the belief that it is accurate. In support of this position, the institution points out that the records were discussed with the appellant's former supervisors who completed

the assessments, and these individuals confirmed that the comments contained in the records accurately reflect their views regarding the appellant's work performance.

Having reviewed the records and considered the representations, in my view, they accurately set out the views of the appellant's former supervisors. Because the appellant has been given access to this information, he has available to him a basis from which to draft a statement of disagreement. If such a statement was to be attached to the records, anyone obtaining access to the records could formulate his or her own view as to the validity of the supervisors' opinions. The statement of disagreement could also serve to detail the basis for the appellant's contention that the information is without foundation.

ORDER:

I uphold the head's decision to not change the information at issue in the records.

Original signed by: _____ June 24, 1992
Tom Mitchinson
Assistant Commissioner