



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-1438

Appeal MA-000314-1

Regional Municipality of Waterloo



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NATURE OF THE APPEAL:

The appellant submitted a request to the Regional Municipality of Waterloo (the Municipality) for the correction of two entries contained in the narrative notes in the appellant's General Welfare Assistance file. In making this request, the appellant provided suggested wording to be inserted in place of the entries he seeks to have removed. The Municipality denied the appellant's request for correction of his personal information. The appellant appealed this decision.

This office attempted to deal with the issues in this appeal in intake. An Intake Analyst contacted the Municipality to determine whether it would agree to permit the appellant to attach a statement of disagreement to the records with which he takes issue. The Municipality indicated that it was agreeable, however, the appellant stated that this approach was not acceptable to him. He believed that certain information in the two identified entries is "false" and that it should be corrected.

The appeal was subsequently moved into mediation. Following discussions with the Mediator, the appellant clarified that he is only concerned about one portion of the entry dated January 15, 1997 as being factually incorrect. This information was communicated to the Municipality. The Municipality reviewed the entry, and after contacting the author of the notes, took the position that the information in the entry was accurate and should not be amended.

The appellant believes that a particular phrase in the January 15, 1997 entry can have two possible interpretations and that it is this ambiguity that should be corrected. The appellant believes that the entire entry under July 14, 1997 should be corrected in accordance with his suggestion.

Further mediation could not be effected and this appeal was moved into inquiry.

I sent a Notice of Inquiry setting out the facts and issues in this appeal to the appellant, initially. The appellant submitted representations in response. After reviewing them, I decided to seek representations from the Municipality only with respect to the entry dated January 15, 1997. In the Notice of Inquiry that I sent to the Municipality, I summarized the appellant's pertinent submission regarding this entry. The Municipality responded.

I subsequently sought representations in reply from the appellant and attached the Municipality's representations in their entirety to the modified Notice of Inquiry that I sent to him. The appellant replied to this Notice.

RECORDS:

The information at issue consists of two entries in the narrative notes of the Municipality's General Welfare Assistance file concerning the appellant. The relevant entries are dated January 15, 1997 and July 14, 1997. Only one particular phrase of the entry dated January 15, 1997 is at issue. The portion of the July 14, 1997 entry at issue consists of two sentences beginning with "It appears this client...".

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the *Act* provides, in part, that “personal information” means recorded information about an identifiable individual. As I indicated above, the information at issue is contained in the narrative notes of the Municipality’s General Welfare Assistance file concerning the appellant and, as such, clearly contains recorded information about the appellant. On this basis, I find that the records contain the appellant’s personal information.

CORRECTION OF PERSONAL INFORMATION

Sections 36(2)(a) and (b) of the *Act* state:

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

- (a) request correction of the personal information if the individual believes there is an error or omission;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made.

There is a significant difference in the wording of sections 36(2)(a) and (b). Section 36(2)(a) provides that individuals may **request** correction of their personal information, while section 36(2)(b) states that individuals may **require** a statement of disagreement to be attached to a record. In my view, section 36(2)(a) gives the Municipality a discretionary power to accept or reject a correction request. Section 36(2)(b), on the other hand, compensates for this discretion by allowing individuals who do not receive favourable responses to correction requests to **require** that a statement of disagreement be attached instead.

In Order 186, former Commissioner Tom Wright set out the following requirements for a successful correction request:

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

There is no dispute that the first requirement has been satisfied.

With respect to the second requirement, the Municipality describes the nature of the record in which the disputed entries are located:

The information in question is an entry in a narrative report contained in a social assistance file relating to the appellant. The narrative reports are a standard documentary form in social assistance files and are intended to reflect events, meetings, telephone calls, and other issues deemed relevant by the recipient's caseworker, case supervisor, or other staff involved in case administration. The narrative reports commonly contain subjective information relating to staff's opinions or assessments of certain events or issues. Records pertaining to factual matters around a recipient's assistance (benefit calculations, client applications and information documentation, receipts, documentation of efforts to obtain employment, etc.) are found in other parts of the case file. The narrative report entries do not follow a set pattern or form. The entries frequently contain abbreviations and symbols which are commonly understood by the staff who use information in the files for the pursuit of their duties.

The appellant's representations focus primarily on the various disputes he has with the Municipality and with individual staff in particular. The appellant refers to the subject matter of his disputes as evidence that the information in the record is incorrect or ambiguous.

Commenting on the appellant's interpretation of the January 15, 1997 phrase in particular, the Municipality states:

He alleges that the entry documents two matters - rental income and the asset value of the trailers - not just the income received from renting the trailer... the appellant's case supervisor who recorded this entry, was consulted ... He advised that the appeal to SARB [Social Assistance Review Board] and the subsequent testimony at the hearing discussed several of the issues surrounding the appellant's disagreements with Regional staff. However, his entry in the narrative note concerning receipt of the SARB's decision was meant to reflect only the issue of income the appellant received from renting the trailer, not the asset value in the trailer. As a result, the Region maintains the position that the information is not inaccurate as asserted by the appellant.

It is apparent that the narrative report is an internal document generated and used by staff to record the various activities undertaken on a particular file. The document contains handwritten notes, sometimes in point form, often using abbreviations. The document is clearly intended to reflect the perspective of the author in both the manner in which an event is recorded and in the content of the comments made. There is a definite subjectivity to the content of this document, often reflecting the observations and views of the author.

It appears that the appellant has a number of disputes with the Municipality and has pursued these matters vigorously. Essentially the appellant is of the view that the statements made in the narrative report are incorrect because they refer to matters that were never brought before the SARB. In reviewing the considerable background material provided by both parties relating to the SARB matter, I find that I am unable to agree with the appellant. In my view, the two entries in the narrative report are entirely consistent with the matters that were at issue at that time.

That being said, I note that in Order M-777, former Adjudicator John Higgins dealt with similar arguments made by an appellant. He concluded:

The appellant submits that, in order to deal with his appeal from the City's decision not to grant a correction request under section 36(2)(a), this office is required to investigate his allegations that the contents of the records are incorrect, decide what actually transpired, and "correct" the records by destroying them.

The records to which the appellant has objected consist of "incident reports" completed by staff members, and other notes, letters and memoranda containing similar information. Some of this information consists of characterizations of the appellant by staff -- e.g. indications that his behaviour towards staff was "unacceptable" or "inappropriate", that he "became angry", etc. Staff also recorded that they "felt frightened" or had an "uneasy feeling" as a result of their interactions with him.

In this respect, the records have common features with witness statements in other situations, such as workplace harassment investigations and criminal investigations. If I were to adopt the appellant's view of section 36(2), the ability of government institutions to maintain whole classes of records of this kind, in which individuals record their impressions of events, would be compromised in a way which the legislature cannot possibly have intended.

In my view, records of this kind cannot be said to be "incorrect" or "in error" or "incomplete" if they simply reflect the views of the individuals whose impressions are being set out, whether or not these views are true. Therefore, in my view, the truth or falsity of these views is not an issue in this inquiry.

Although I noted that the entries appear to be consistent with the matters at issue at the time they were created, this finding is not central to the issue to be determined. In this case, the question is, do the statements reflect the views or observations of the case supervisor as they existed at the time they were created? As former Adjudicator Higgins noted in Order M-777:

Above, I indicated that records of the type at issue here cannot be said to be "incorrect" or "in error" or "incomplete" if they simply reflect the views of the individuals whose impressions are being set out. In my view, these same considerations apply to whether the records can be said to be "inexact" or "ambiguous". There has been no suggestion that the records do not reflect the views of the individuals whose impressions are set out in them. The City submits that they are an accurate reflection of the views of these individuals. I find that requirement 2 has not been met.

In the current appeal, the Municipality asserts, and I accept, that these two entries are an accurate reflection of the case supervisor's perception of the events as they existed at the time they were created. Therefore, I do not accept the appellant's assertion that they are "in error", "inexact", "incomplete" or "ambiguous" and the second requirement has not been met.

I recognize that the entries, particularly the January 15, 1997 entry, are not written in complete, grammatically correct sentences. In my view, it is not reasonable to expect that every document intended for internal use that is generated by staff will be in this form. Similar to former Adjudicator Higgin's conclusions, I do not interpret the legislature's intentions or former Commissioner Wright's comments as creating this expectation.

With respect to the third requirement as stated by former Commissioner Wright, in my view, the contents of these records can best be characterized as statements of opinion, as they reflect the subjective perspective and views of the authors, and in particular, the case supervisor, with respect to events that have occurred. Although the appellant disagrees, he is in effect asking that his opinion be substituted for that of the case supervisor, which is precluded by the third requirement outlined above. Accordingly, I find that the third requirement has also not been met.

On the basis of the above, I uphold the Municipality's decision to refuse the appellant's correction request.

ORDER:

I uphold the Municipality's decision to deny the appellant's correction request.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ June 12, 2001