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

ORDER PO-2149

Appeal PA-020224-2

Ontario Human Rights Commission

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NATURE OF THE APPEAL:

An individual made a request to the Ontario Human Rights Commission (the Commission) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) asking that the Commission correct certain information in a Case Analysis report (the report) related to him. His request set out suggested wording to replace the information in the report that he claimed was in error: He wants the phrase "for cause", found in paragraph 9 on page 2 of the report, to be changed to read "without cause".

The Commission issued a decision advising the individual as follows:

> I regret to inform you that the Commission cannot make the correction that you have requested. This is due to the fact that the [report] is a record which is prepared by Commission staff, during the course of case processing, for the purposes of reviewing the finding of the investigation and as such, it does not qualify as "personal Information" as defined by the Act.

The individual appealed this decision.

The appeal could not be mediated, so it was referred to adjudication.

I initially sought representations from the individual (now the appellant). He agreed to share his representations in their entirety with the Commission. I then received representations from the Commission. I have considered all of these representations.

CONCLUSION:

The correction the appellant requests is not warranted.

ANALYSIS:

DOES THE RECORD CONTAIN THE APPELLANT'S PERSONAL INFORMATION?

Sections 47(2)(a) and (b) of the *Act* provide for correction requests and statements of disagreement relating to one's own *personal information*. These sections state:

> 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;
>
> (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made . . .

Section 2(1) of the *Act* provides, in part, that "personal information" means recorded information about an identifiable individual.

In their representations, both the appellant and the Commission argue that the record in question does contain the personal information of the appellant.

As explained by the Commission, the purpose of the report is to summarise the findings of the investigation into the appellant's human rights complaint. The appellant filed a complaint against a former employer whom he alleged had subjected him to reprisals for attempting to enforce his rights under the *Human Rights Code*. The report refers to documentary evidence used by the investigator. The report concludes with the recommendation that the appellant's complaint not be referred to the board of inquiry (now the Human Rights Tribunal).

I am satisfied that the portion of the report that the appellant wants the Commission to correct contains his personal information. It is recorded information about the appellant and refers specifically to his employment history.

SHOULD THE PERSONAL INFORMATION BE CORRECTED?

An early order of this office set out the three requirements necessary for granting a request for correction, all of which must apply in the circumstances.

1. The information at issue must be personal and private information.

2. The information must be inexact, incomplete or ambiguous.

3. The correction cannot be a substitution of opinion.

[See Order 186]

More recent orders have articulated more fully the general context within which this office should consider requests for corrections:

> …It is also worth repeating that the legislature has found it appropriate to give institutions the discretion to decide whether or not to accept a correction request. As proposed by the Williams Commission, an appeal may be brought from an institution's discretionary decision to deny such a request and, on appeal, it is open to this office to order a correction. In order for a correction to be found appropriate, at a minimum, the requirements established by Order 186 must be met. However, there may well be situations where it is not necessary to make a conclusive determination on whether information is "inexact, incomplete or ambiguous", where the exercise of discretion appears reasonable, and the attachment of a statement of disagreement is a sufficient response to a dispute about the correctness of a record.

[See Orders PO-2079, MO-1594]

In this appeal, both the appellant and the Commission argue that my determination essentially rests on a finding about the second requirement.

Appellant's representations

In his representations, the appellant explains his objection to the use of the term "for cause". He argues that the investigator is referring to a conclusion made by an arbitrator in an employment-related arbitration matter. In the appellant's view, the investigator has incorrectly reproduced the arbitrator's finding:

> A careful reading of the arbitrator's decision does not indicate that he at any place said that the appellant was dismissed "for cause".
>
> This matters because the phrase "dismissal for just cause" is loaded with special meaning in employment law . . . In his exhaustive review of employment case law, Mr. Zigler concludes that "just cause" involves "misconduct so serious as to entitle the employer to believe that he cannot safely keep that person in his employment". Sufficient reasons would include "theft, disobedience, insubordination and competition with one's employer in business". Incompetence, economic conditions, illness, and personality conflicts are listed as some of the insufficient or invalid reasons for dismissal for cause. Also, insubordination or disobedience cannot rely on a single instance, and the employer would have to prove that the employee was not provoked or otherwise conflicted. Even in the matter of theft, the employer would have to prove that the employee deliberately tried to cheat or defraud the company in some major way. In other words, someone who has been dismissed for cause has a huge black mark against them that will probably affect their career for as long as they live. It is tantamount to a death sentence.
>
> …
>
> This is not a matter of a record of a subjective impression of an individual. The OHRC has rather recorded that [the arbitrator] recorded something that he did not so record. It is therefore a straightforward error. This satisfies any possible objections under Order M-777.

Commission's representations

The Commission, on the other hand, argues that the use of the term "for cause" in the report is not inexact, incomplete or ambiguous. The Commission also refers to the arbitrator's decision and contends that

> …[T]he use of the term "for cause" in the [report] has an equivalent meaning to [the arbitrator's] finding that he is "unable to conclude that the appellant's dismissal was unjustified" as both terms imply that the appellant's employment was terminated by [the employer] for the reason that his work performance did not meet the standards required.

The Commission refers to the Black's Law Dictionary definition of "for cause":

> **For cause**. With respect to removal from office "for cause", means for reasons which law and public policy recognize as sufficient warrant for removal and such cause is "legal cause" and not merely a cause which the appointing power in the exercise of discretion may deem sufficient. They do not mean removal by arbitrary or capricious action but there must be some cause affecting and concerning ability and fitness of official to perform duty imposed on him.

Findings

The information at issue is not inexact, incomplete or ambiguous. I find that the term the investigator used simply means "for reasons".

I have relied on a number of considerations in reaching this decision.

- It is clear from the evidence before me that the arbitrator concluded that the employer had reasons for dismissing the appellant.
- The context in which the investigator used the term "for cause" is not the employment law context. The investigator was summarising evidence for the purpose of a human rights complaint. The investigator is not an employment law expert and should not be held to standards applied to experts in other areas.
- Even if I were to hold the investigator to the standards suggested by the appellant, I am not satisfied that the term "for cause" is equivalent to the employment law concept of "just cause". I refer back to the definition of "for cause" relied upon by the Commission.

In the whole context of the record, and given the purpose for which the information is recorded, I am satisfied that the term used by the investigator is not inexact, incomplete or ambiguous though it is not verbatim the words used by the arbitrator. Therefore, the second requirement for a correction is not met.

Furthermore, I find that the appellant's proposed substitution of "without cause" is an inappropriate correction in the circumstances. Such substitution is, in fact, inexact or incorrect. Frankly, I cannot conclude on the evidence before me that the arbitrator found that the appellant's employer dismissed him "without cause".

In conclusion, I am not persuaded that the Commission has exercised its discretion inappropriately in refusing correction to the record at issue. The appellant is at liberty to submit statements of disagreement under section 47(2)(b) of the *Act*.

ORDER:

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

Original signed by: May 28, 2003
Rosemary Muzzi
Adjudicator