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

ORDER MO-2526

Appeal MA09-224

City of Toronto

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the City to correct certain information contained in the requester's 2003 social assistance file relating to the identity of the father of the requester's child. The request also asked that all records concerning a specific application for social assistance made in 2008 be "expunged" because the application had subsequently been revoked by the requester.

The City responded to the request by issuing a decision letter identifying that the information the requester was asking for correction of was contained in a "Declaration Support/Maintenance" which had been signed by the requester in 2003. The letter then stated:

> Regarding your request to [correct the information regarding the child's biological father], please be advised that by providing the [information] and signing the Declaration of Support/Maintenance form [in 2003] you declared this information to be true. As such this information cannot be altered. You may request that a "statement of disagreement" be attached to the original Declaration of Support/Maintenance …

The City's decision letter further advised the requester that it cannot "expunge" all documents in her 2008 application for social assistance, which are contained in her Ontario Works file, because By-law 590-2007 states that "Ontario Works files are to be retained by [the City] for seven years after a client's file is terminated or voluntarily withdrawn."

The requester (now the appellant) appealed the City's decision to this office.

Mediation did not resolve the issues, and this appeal was transferred to the inquiry stage of the process. A Notice of Inquiry identifying the facts and issues in this appeal was sent to the City, initially, and the City submitted representations in response. The Notice of Inquiry, along with a severed copy of the City's representations, was then sent to the appellant, who also provided representations in response.

This file was then transferred to me to complete the inquiry process.

As noted above, the appellant had requested that the City ""expunge" copies of all records pertaining to an application made by her in 2008, and the City responded by stating that it could not "expunge" all documents in her 2008 application because of the records retention bylaw requirements for those files. The issue of "expunging" files was not identified as an issue in the Mediator's Report, and the appellant does not directly address this issue in her representations, other than noting that certain older information in her files ought to be "expunged". Because the issue of "expunging" files is not before me in this appeal, I will not address it further in this order.

DISCUSSION:

PRELIMINARY ISSUE – SHARING OF REPRESENTATIONS

In her representations, the appellant takes the position that she ought to have had access to all of the representations of the City in this appeal. She also takes the position that all of her representations ought to remain confidential.

With respect to the issue of access to all of the City's representations, as noted above, the appellant was provided with a severed copy of the City's representations. The City had provided five pages of representations to this office, and had consented to the sharing of all of the representations except for two paragraphs, identifying for the previous adjudicator the reason why the two paragraphs ought not to be shared. The previous adjudicator accepted the City's position, and did not share the two paragraphs.

The appellant takes the position that she requires the information in the severed portions of the City's representations in order to allow her to fully address the issues.

Analysis and Findings

During adjudication, procedural fairness requires some degree of mutual disclosure of the arguments and evidence of all parties. This office has established a process for sharing representations that balances the requirement that parties be given an opportunity to respond to the arguments and evidence of the other parties with the recognition that it may be appropriate to withhold portions of a party's representations in limited and specific circumstances.

Under section 7.07 of the IPC's *Code of Procedure*, the Adjudicator may provide some or all of the representations received from a party to the other party or parties in accordance with *Practice Direction Number 7*. This practice direction states, in part:

> ***Request to withhold representations***
>
> 3. A party providing representations shall indicate clearly and in detail, in its representations, which information in its representations, if any, the party wishes the Adjudicator to withhold from the other party or parties.
>
> 4. A party seeking to have the Adjudicator withhold information in its representations from the other party or parties shall explain clearly and in detail the reasons for its request, with specific reference to the following criteria.

Criteria for withholding representations

5. The Adjudicator may withhold information contained in a party's representations where:

   (a) disclosure of the information would reveal the substance of a record claimed to be exempt; or

   (b) the information would be exempt if contained in a record subject to the [*Municipal Freedom of Information and Protection of Privacy Act*]; or

   (c) the information should not be disclosed to the other party for another reason.

6. For the purpose of section 5(c), the Adjudicator will apply the following test:

   (i) the party communicated the information to the IPC in a confidence that it would not be disclosed to the other party;

   (ii) confidentiality is essential to the full and satisfactory maintenance of the relation between the IPC and the party;

   (iii) the relation is one which in the opinion of the community ought to be diligently fostered; and

   (iv) the injury to the relation that would result from the disclosure of the information is greater than the benefit gained for the correct disposal of the appeal.

The City had relied on section 5(c) of *Practice Direction Number 7*, which provides an adjudicator with the discretion to withhold information contained in a party's representations where the information should not disclosed to the other party for "another reason." For the purpose of section 5(c), this office applies the test set out in section 6.

I have carefully reviewed the previous adjudicator's decision to apply section 5(c) and 6, and to sever the two paragraphs of the City's representations. I confirm that the four-part test in section 6 applies to the severed information; in particular, I find that, in accordance with part (iv) of section 6, there is little benefit gained for the correct disposal of the appeal if the information is not disclosed. Accordingly, I affirm the previous adjudicator's decision to sever the two brief paragraphs from the representations that were provided to the appellant.

With respect to the appellant's request that all of her representations remain confidential, in the circumstances and because of my findings below, I have not shared the appellant's representations with the City. In addition, given the appellant's position, I will only refer to her representations in a very general manner in this order.

DOES THE RECORD CONTAIN THE PERSONAL INFORMATION OF THE APPELLANT?

Sections 36(2)(a) and (b) of the *Act* (set out below) provide for correction requests and statements of disagreement relating to one's own personal information. Section 2(1) of the *Act* provides, in part, that "personal information" means recorded information about an identifiable individual.

The record in question is, as stated above, a Declaration of Support/Maintenance form signed by the appellant in 2003 and contained in her social assistance file. It provides the appellant's identifying information and solemn declarations, and includes information relating to her marital and family status, and other information relating to her. I am satisfied that the record contains the personal information of the appellant.

SHOULD THE PERSONAL INFORMATION BE CORRECTED?

Section 36(1) gives an individual a general right of access to his or her own personal information held by an institution. Section 36(2) gives the individual a right to ask the institution to correct the personal information:

> 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; 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.

Sections 36(2)(a) and (b) provide two different remedies for individuals wishing to correct their own personal information. Section 36(2)(a) entitles individuals to *request* that their personal information be corrected; institutions have the discretion to accept or reject a correction request. Section 36(2)(b), on the other hand, entitles an individual to *require* an institution to attach a statement of disagreement to the information at issue when the institution has denied the individual's correction request. Thus, section 36(2)(a) is discretionary, whereas section 36(2)(b) is mandatory.

The following passage from *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vol. 3 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) is helpful in understanding the purpose and operation of the *Act*'s correction provisions:

> The ability to correct information contained in a personal record will be of great importance to an individual who discovers that an agency is in default of its duty to maintain accurate, timely and complete records. In this way, the individual will be able to exercise some control over the kinds of records that are maintained about him and over the veracity of information gathered from third-party sources.
>
> Although the report refers to the individual's "right" to correct a file, we do not feel that this right should be considered absolute. Thus, although we recommend rights of appeal with respect to correction requests, agencies should not be under an absolute duty to undertake investigations with a view to correcting records in response to each and every correction request. The privacy protection schemes which we have examined adopt what we feel to be appropriate mechanisms for permitting the individual to file a statement of disagreement in situations where the governmental institution does not wish to alter its record. In particular cases, an elaborate inquiry to determine the truth of the point in dispute may incur an expense which the institution quite reasonably does not wish to bear. Moreover, the precise criteria for determining whether a particular item of information is accurate or complete or relevant to the purpose for which it is kept may be a matter on which the institution and the individual data subject have reasonable differences of opinion.
>
> If the request for correction is denied, the individual must be permitted to file a statement indicating the nature of his disagreement. We recommend that an individual who has been denied a requested correction may exercise rights of appeal to an independent tribunal. The tribunal, in turn, could order correction of the file or simply leave the individual to exercise his right to file a statement of disagreement. (pp. 709-710)

One of the purposes of section 36(2) is to give individuals some measure of control over the accuracy of their personal information in the hands of government. Both the *Act* and the Williams Commission Report support the view that the right to correction in section 36(2) is not absolute.

An appellant must first ask the institution to correct the information before this office will consider whether the correction should be made.

For section 36(2)(a) to apply, the information must be "inexact, incomplete or ambiguous". This section will not apply if the information consists of an opinion [Orders P-186, PO-2079].

Section 36(2)(a) gives the institution discretion to accept or reject a correction request [Order PO-2079]. Even if the information is "inexact, incomplete or ambiguous", this office may

uphold the institution's exercise of discretion if it is reasonable in the circumstances [Order PO-2258].

This office has previously established that in order for an institution to grant a request for correction, the following three requirements must be met:

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 (Orders 186, P-382).

In each case, the appropriate method for correcting personal information should be determined by taking into account the nature of the record, the method indicated by the requester, if any, and the most practical and reasonable method in the circumstances (Order P-448).

Representations

In this appeal the appellant has asked that the name of the father of her son, which is set out in Form 2212 – Declaration Support/Maintenance, be corrected, and that other information be inserted instead of the identified name.

The Form 2212 which the appellant wants to have corrected was filled out by the appellant in 2003. It is a Ministry of Community and Social Services form that includes three parts. However, more than simply being a form which is filled out for the purpose of collecting information, this form is also a solemn declaration. The appellant is named as the individual filling out the form, and at the bottom of the form the following clause is set out:

> And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

The form then identifies that it was declared by the appellant (who signed the form) before a Commissioner of Oaths for the Province of Ontario, and indicates the date and municipality in which the declaration was made.

In addition to the declaratory portion at the end of the form, the form includes an introductory portion (in which the appellant is identified and in which she solemnly declares that a named individual is the natural parent of her child) and three other parts. Part 1 deals with information about support provisions and the identity of the child. Part 2 deals with information about the absent parent of the child, including this person's birthplace, height, weight, hair colour, social insurance and health numbers, employers, and other information (some of which is filled in and some of which is left blank in the form at issue in this appeal). Part 3 deals with the efforts the appellant undertakes to secure support from the absent parent, and also provides brief additional comments.

The City's representations state:

> The [Declaration Support/Maintenance (the DSM)] is a mandatory, legislated provincial form that must be completed by an applicant for Ontario Works (OW), one of the purposes of which is to secure information about an absent parent to assist in determining the rights of an applicant parent in the pursuit of support and/or to obtain benefits. The DSM contains a "statutory declaration" which is a solemn declaration authorized by both the *Canada Evidence Act* and the *Ontario Evidence Act* and is used to assert the truth of any fact or facts or of any account rendered in writing. The declaration has the same force and effect as if made under oath and therefore has value as evidence.
>
> When the appellant applied for benefits for both herself and her son in 2003, a DSM form was completed for the appellant by her OW caseworker with information specifically supplied by the appellant.
>
> Guidelines for staff to assist clients in completing the DSM form contain suggested questions to be answered, for example, does the absent parent use an alias or a nickname? When did the client last see the absent parent? etc. The guidelines also indicate that "if the client declares very little information about the absent parent, they must explain why so little is known and what efforts were made to obtain further information."
>
> The appellant subsequently signed the completed DSM form [in 2003], thereby declaring the truth of the information which she had supplied to complete the form.

The City then states that it was during the interview in 2008 when the appellant first indicated that the information provided in the 2003 declaration was not accurate.

With respect to the possible correction of the information, the City takes the position that, strictly speaking, the appellant is not asking for a "correction" of the information. The City reviews the information about the absent parent provided by the appellant in 2003 and declared to be true by her, and identifies that much of it refers to details about the absent parent. The City states that the appellant subsequently signed the form, thereby attesting to the truth of all of the information she had provided to the City, and that she now wants to change the information. The City then states:

> … if the City were to permit the changes that the appellant has requested, this would set a precedent that would have an impact on the City's processing of applications for assistance as it would negate the purpose of the declaration of truthfulness upon which the City relies for its assessment of applicants' eligibility for benefits. It should also be noted that all other OW offices in the province use the same DSM form.

The City also states:

> … in the circumstances of this appeal, if it is accepted that what the appellant is claiming now to be the truth, the information on the DSM form relating to the biological father cannot be said to be "inexact" meaning "incorrect" but rather this information was a "lie" meaning it was "untrue". Therefore, it can be argued that the appellant's request does not fit in with requirement 2 of the test for correction.

In response, the appellant provided substantial representations in support of her position that the information in the DSM form ought to be corrected. Without going into detail, the appellant's representations focus on the reasons why she provided the incorrect information in 2003, and on why she now wishes this information to be corrected.

Analysis and Findings

To begin with I note that in the circumstances of this appeal, the correction requested by the appellant would have the effect of rendering much of the other information contained in the DSM form incorrect. Without identifying the specific change requested, I note that the requested change is much more significant than simply requesting that a typographical error, spelling error, name or date be changed. If the information in the form were to be corrected in the manner suggested by the appellant, this would result in the DSM form containing much information that would on its face be contradictory and inaccurate.

In addition, I note that the decision to correct information is a discretionary decision of the City. As stated by Adjudicator Liang in Order MO-1594:

> 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.

I agree with the statements made by Adjudicator Liang.

Furthermore, as identified in the quotation from the Williams Commission Report set out above, in certain circumstances, permitting an individual to file a statement of disagreement is an appropriate mechanism to address a correction request. The Report also stated:

> … the precise criteria for determining whether a particular item of information is accurate or complete *or relevant to the purpose for which it is kept* may be a

> matter on which the institution and the individual data subject have reasonable differences of opinion. [emphasis added]

In my view, the above statement from the Williams Commission Report confirms that the purpose for which a record is made and/or kept is a factor to consider in determining whether the appropriate response is a correction or attaching a statement of disagreement. The record requested to be corrected in this appeal is a sworn statement made by the appellant, which the appellant intended the City to rely on in processing her application. (Whether the statement was actually relied on or used by the City does not affect this intention).

Given the circumstances of this appeal, including the fact that the record the appellant seeks to have "corrected" is a sworn statement made by her in the past, I find that the City's decision to deny the correction request ought to be upheld. In my view, this is a situation where it is not necessary to make a conclusive determination on whether information is "inexact, incomplete or ambiguous"; rather, on my review of the circumstances of the appeal (including the requested correction, the nature of the record, and the impact of allowing the requested correction), I find that this is a situation where the City's 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. In this appeal the appellant is essentially seeking to significantly revise a sworn statement made by her in 2003 and witnessed by a commissioner of oaths. In the circumstances, I find that a more appropriate tool for the appellant would be to request that a statement of disagreement, found in section 36(2)(b) of the *Act*, be added to the previously sworn statement. Accordingly, I find that the City's denial of the appellant's correction request should be upheld.

As a final note, I have referred to the use of the "statement of disagreement" mechanism in the *Act* to resolve some of the appellant's correction request issues. Both of the parties addressed this issue in their representations, with the City suggesting that a statement of disagreement would be appropriate, and the appellant stating that she was not interested in requesting one. As the issue of attaching a statement of disagreement is not before me in this appeal, I will simply refer the parties to Order MO-1700 for guidance in the "statement of disagreement" procedure and the determination of the type of information to be inserted in a "statement of disagreement", should the parties pursue this in the future.

ORDER:

I uphold the decision of the City, and dismiss the appeal.

Original signed by: May 27, 2010
Frank DeVries
Adjudicator