

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-4093

Appeal PA17-170

Lambton College of Applied Arts and Technology

December 8, 2020

Summary: The college received a request, pursuant to the *Freedom of Information and Protection of Privacy Act*, for the correction of personal information in a specified Canada Revenue Agency T2202A form. In its decision, the college agreed to correct four of the five items listed in the correction request. The requester appealed the college's decision based on item 5. The college agreed to attach a statement of disagreement to the appellant's file. However, the appellant takes the position that the college should correct item 5. In this order, the adjudicator upholds the college's decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), and 47(2)(a).

Orders Considered: Orders P-448, M-722, P-1478, MO-1594, PO-1785, PO-2079, PO-2258 and MO-2526.

OVERVIEW:

[1] The appellant, a student, made a request to Lambton College of Applied Arts and Technology (the college), pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*), for the correction of personal information:

Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), I would like to request correction of my T2202A posted in my Student WebAdvisor account. The information I am requesting to correct is specified below:

1. The valid certificate is T2202A-16B instead of T2202A-08
2. Lambton College is an institution certified by the *Employment and Social Development Canada* (ESDC) rather than *the Minister of Human Resources and Skills Development* (HRSD)
3. The specified program I was enrolled at Lambton College during 2016 is *Business Administration – General* (BGEN) rather than *Business Administration*.
4. My name and address are:

[Specified name]

[Specified address]

Rather than

[Specified name]

[Specified address]
5. Under section 118.5(3) of *Income Tax Act* (R.S.C., 1985, c.1 (5th Supp.)), the eligible fees for an my tuition includes ancillary fees and charges that are paid in respect of my enrollment at Lambton College, whereupon the total amount of eligible fees for my 2016 tuition is \$7,372.00 instead of \$6,809.06.

[2] The college issued a decision agreeing to correct the errors. Subsequently, it issued a revised decision advising that it agreed to correct items 1 through 4 of the request, and had done so, but that it would not correct item 5 of the request.

[3] The requester, now the appellant, appealed the college's decision to this office.

[4] During mediation, the appellant requested that the college attach a statement of disagreement to his file. The college confirmed in writing that it had attached the statement of disagreement. Despite the college's confirmation, the appellant continues to take the position that the college should correct item 5 and advised that he wanted the file to proceed to adjudication on the issue of right of correction.

[5] As mediation did not resolve the issue under appeal, it was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry under the *Act*.

[6] The adjudicator initially assigned to this appeal invited the college and the appellant to provide representations on the issues in this appeal. She received representations from the college and the appellant. In accordance with section 7 of this

office's *Code of Procedure* and *Practice Direction Number 7*, a copy of the college's representations (in their entirety) were shared with the appellant. The appeal was then transferred to me to continue the adjudication of the issues on appeal.

[7] In this order, I uphold the college's decision.

RECORDS:

[8] The record that the appellant seeks to have corrected is a Canada Revenue Agency (CRA) T2202A form.

DISCUSSION:

[9] The sole issue in this appeal is whether the college should correct personal information under section 47(2)(a) of the *Act*.

[10] Section 47(1) gives an individual a general right of access to his or her own personal information held by an institution. Section 47(2) gives the individual a right to ask the institution to correct the personal information. If the institution denies the correction request, the individual may require the institution to attach a statement of disagreement to the information.

[11] Sections 47(2)(a) and (b) 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;

[12] This office has previously established that in order for an institution to grant a request for correction, all three of the following 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.¹

[13] 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.²

Representations

[14] In this appeal, the appellant has asked the college to correct the total amount of the eligible fees for his 2016 tuition from \$6,809.06 to \$7,372.00. The college's denial was based on its position that health insurance premiums should not be included in the amount of tuition for the purposes of the tax form.

[15] The college submits that the personal information in item 5 should not be corrected and that it has complied with its obligations under the *Act*. It submits that the information the appellant has requested to be corrected is not inexact, incomplete or ambiguous. The college points out that the amount of eligible fees is based on the applicable provisions of the *Income Tax Act (ITA)* which outline which fees are to be included on the T2202A. The college also points out that page 12 of the CRA's publication titled "students and income tax" outlines that eligible tuition fees will not include medical expenses. The college also submits that section 118.5(3)(c) of the *ITA* specifies other fees that are not to be included in eligible tuition fees. As such, the college submits that its position is that health insurance fee should not be included in the appellant's tuition fees. Accordingly, it submits that the information at issue does not meet the definition of being inexact, incomplete or ambiguous.

[16] In any event, the college submits that its decision to refuse to correct the information in item 5 was entirely reasonable in the circumstances. It relies on Orders PO-2079 and P-1478 for the principles that there is no absolute "right" to correct a file and institutions have a discretionary power to accept or reject a correction request.

[17] Moreover, the college submits that the issue boils down to whether its exercise of discretion in refusing to correct the information was reasonable in the circumstances. It submits that as long as its exercise of discretion is reasonable, it is entitled to deny the request for the correction.

[18] For the following reasons, the college submits that it exercised its discretion reasonably. First, after receiving the appellant's request and engaging in dialogue with him, the college contacted the CRA to confirm that its interpretation of the *ITA* was in fact correct. A CRA agent advised the college that its interpretation was correct and that

¹ Orders P-186 and P-382.

² Orders P-448, MO-2250 and PO-2549.

the disputed fee should not be included on the T2202A. Second, the college sought independent legal advice from a tax specialist to determine if the disputed fee should be included on the T2202A. The college was advised that it could stand firm on its interpretation of the *ITA*.

[19] Further, the college relies on Order P-448 for the principle that adjudicators should also be mindful of what would be the most appropriate way to effect the corrections that may be required to a record. It points out that the appellant has pursued this matter with the CRA, and the CRA purportedly issued a revised notice of assessment in 2018 reflecting the appellant's interpretation of the *ITA* with the additional eligible tuition credits. The college submits that the fact that the record in its custody does not align with the revised notice of assessment will not impact the appellant in any material way. As well, it submits that the record at issue will not be used or accessed for any purpose going forward.

[20] In response, the appellant submits that the college has not provided any proof that it contacted the CRA and received confirmation that its interpretation of the *ITA* was correct.

[21] He also submits that paragraph 2.36 of the CRA's "Income Tax Folio S1-F2-C2, Tuition Tax Credit" states the following:

Certain ancillary fees and charges imposed by an educational institution described in subparagraph 118.5(1)(a)(i) (see ¶2.3), in respect of enrolment at the institution in a program at a post-secondary school level, are also eligible tuition fees pursuant to subsection 118.5(3). These include health services fees and athletic fees.

[22] In any event, the appellant submits that he presented the college with the CRA's written decision dated November 13, 2017 about the disputed health insurance fee. He submits that if the college did not agree with the CRA's decision regarding his notice of re-assessment, it could have appealed the CRA's decision.

[23] Finally, the appellant submits that the college has a legal duty to align his T2202A form with CRA's written decision about what information should have been included or reflected therein. He submits that it is unreasonable that the college refuse to align his personal information under its control with CRA's decision simply because the college did not think its defiance would impact him.

Findings and analysis

[24] As noted above, in order to qualify for a correction, all three of the following 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.³

[25] After reviewing the record at issue and the representations of the parties, I find that the first requirement of the test has been met, and the information at issue is the personal and private information of the appellant. This information relates to information about his education, which falls within paragraph (b) of the definition of "personal information" in section 2(1) of the *Act*. Having found that the first requirement of the test has been met, instead of turning to the second and third requirement, I will consider whether the personal information should be corrected.

[26] In Order MO-2526, Senior Adjudicator Frank DeVries states the following about section 36(2)(a) and (b) (the municipal equivalent of section 47(2)(a) and (b)) and the purposes of section 36(2):

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.

...

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 [*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)] support the view that the right to correction in section 36(2) is not absolute.

[27] Therefore, the decision to correct information is a discretionary decision of the college. As stated by Assistant Commissioner Sherry 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 Report, an

³ Orders P-186 and P-382.

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.

[28] I agree with and adopt the above statements made by Assistant Commissioner Liang for the purpose of this appeal.

[29] This is one of the situations, in my view, where it is not necessary to make a conclusive determination on whether the information is "inexact, incomplete or ambiguous" as the college's exercise of discretion is reasonable, and the attachment of a statement is a sufficient response to the dispute about the correctness of the tuition amount.

[30] For the following reasons, I find that the college exercised its discretion reasonably. As stated above, the college engaged in dialogue with the appellant and gave him the opportunity to explain why he believed the health fees should be included in his T2202A. Subsequently, the college contacted the CRA to confirm that its interpretation of the *ITA* was in fact correct. A CRA agent advised the college that its interpretation was correct and that the disputed fee should not be included on the T2202A. I note that the appellant argues that the college did not provide any proof that it spoke to a CRA agent and received confirmation that its interpretation was correct. In my view, it is not necessary for the college to provide proof of its conversation with the CRA agent.

[31] Besides relying on the assurance received from the CRA agent, the college sought independent legal advice from a tax specialist to determine if the disputed fee should be included on the T2202A. The tax specialist advised the college that its interpretation of the *ITA* was correct.

[32] In addition, I accept that the college genuinely believed that the information on the T2202A was accurate. As a result, the college chose not to correct the tuition amount, which I find is a reasonable decision to make.

[33] I acknowledge that the college's interpretation, in hindsight, was incorrect, and that the *ITA* in fact allows for health services fees to be included in the eligible tuition

fee amount.⁴ However, I find that the attachment of a statement of disagreement is a sufficient response to the dispute about the correctness of the tuition amount. As noted above, the appellant has filed a statement of disagreement reflecting the correction for item 5 that was requested but not made. I note that the college states that his statement of disagreement has been copied on to the Student Remarks portion of the appellant's online web portal and was also attached to the T2202A form in the appellant's paper file in the Registrar's office. Subsequently, the college emailed the appellant JPEG images demonstrating that the statement of disagreement had been attached to the appellant's electronic student file. The college also provided the appellant with a PDF version of the images demonstrating that the statement of disagreement had been attached to his electronic student file.

[34] Furthermore, in this appeal, the appellant has purportedly received a revised notice of assessment in 2018 from the CRA reflecting his interpretation of the *ITA* with the additional eligible tuition credits. As such, for tax purposes, it is not necessary for the appellant to have his 2016 tuition amount on his T2202A corrected. The CRA's revised notice of assessment is sufficient for the appellant's tax purposes. Accordingly, I accept the college's decision to attach a statement of disagreement to the appellant's file and not exercise its discretion to correct the tuition amount on the T2202A.

[35] In these circumstances, and noting that the incorrect information reflected the college's good faith understanding at the time the record was created, I uphold the decision of the college not to correct the personal information under section 47(2)(a) of the *Act*.

ORDER:

I uphold the college's decision to deny the correction request, and dismiss the appeal.

Original signed by: _____

Lan An
Adjudicator

December 8, 2020 _____

⁴ I could see how this mistake occurred as the CRA uses the term "health services fees" and "medical expenses" which are confusing. (The latter is an amount that cannot be included in eligible tuition fees while the former is an amount that can be.)