Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4179

Appeals PA19-00539 and PA20-00040

Queen's University

August 25, 2021

Summary: With reference to section 47(2) of the *Act,* the appellant requested two *corrections* to a record consisting of the terms of a negotiated settlement agreement between himself, the university and his faculty association. The university initially denied the requests for a variety of reasons, including that they were not proper correction requests under the *Act.* The appellant appealed these decisions to the IPC.

The adjudicator upholds the university's decisions to deny the requests finding that they are not proper correction requests under the *Act.* In essence, the appellant sought to alter his (and others') legal rights in the settlement agreement by making a correction request under the *Act*. The adjudicator finds that section 47(2) of the *Act* cannot reasonably be interpreted in a way that permits a party to a contract to unilaterally amend the terms of that contract.

Statutes Considered: *Freedom of Information and Protection of Privacy Act,* R.S.O. 1990, c. F.31, sections 47(1) and 47(2).

Orders and Investigation Reports Considered: Order PO-2258.

OVERVIEW:

[1] This order deals with two correction requests purportedly made under section

47(2) of the *Freedom of Information and Protection of Privacy Act*[1] (the *Act*) by the appellant. Some background context is necessary.

[2] The appellant, his faculty association and Queen's University (the university) entered into a settlement agreement regarding the termination of the appellant's employment and to resolve grievances filed under the relevant collective agreement. A labour arbitrator was appointed to preside over the grievances. The settlement agreement indicates that disputes about the settlement agreement can be brought before the same labour arbitrator who presided over the grievances.[2]

[3] Sometime later, the appellant and the university had a dispute about whether the appellant was entitled to apply for certain benefits and consequently the meaning of the terms of the settlement agreement and/or the terms of the settlement itself. The dispute about the benefits (and the meaning of the settlement agreement) was returned to the original labour arbitrator, who held a case conference and issued a written decision.

[4] While the dispute about the benefits between the appellant and the university was ongoing, the appellant made separate requests to the university to "correct" the settlement agreement referencing section 47(2) of the *Act*.

[5] First, the appellant requested a correction to paragraph 5(d) of the settlement agreement (the 5(d) request). The 5(d) request stated, in part (emphasis added):

> Subparagraph 5(d) of the Settlement Agreement implies that I ceased to have any rights under the Collective Agreement after the parties signed the agreement on […]. However, this is inaccurate since paragraph 2 of the Agreement shows that I had some rights under the […] Collective Agreement. …
>
> …
>
> It is clear from the foregoing examples that the intention of the parties in entering the Settlement Agreement was not to remove all my rights under the […] Collective Agreement. …
>
> The conflicts between the terms of the agreement appear to be the product of careless drafting. Reasonable steps should have been taken to ensure that there were no conflicts between the terms.

---

[1] R.S.O. 1990, c. F.31.

[2] Minutes of Settlement between the appellant, the university and the faculty association (2016); Labour Arbitrator's decision (2020).

> Subparagraph 5(d) *should be amended* to reflect the fact that not all rights under the Collective Agreement were removed. This is important because it can be misleading, and the university relies on this subparagraph […] to conclude that I "ceased to have any rights under the Collective Agreement." […]

[6] The university refused to make the requested correction. It explained that in making its decision, it considered the requirements established by the Office of the Information and Privacy Commissioner (IPC) with respect to correction requests[3] and it concluded that the request did not meet those requirements. It also took the position that the request was not a proper request to correct a record but rather was an attempt to use the *Act* for an improper purpose – to retroactively amend the terms of the settlement agreement.

[7] The appellant made a second request to correct paragraph 5(e) (the 5(e) request), which stated in part (emphasis added):

> Subparagraph 5(e) of the Settlement Agreement provides that "it is agreed and understood that the Employee is only entitled to enforce the terms and conditions of this agreement." When considered in the context of its uses for purposes of enforcing the terms and conditions, this subparagraph is incomplete. Incomplete because there is no indication as to how the terms and conditions of the agreement can be enforced.
>
> The arbitration clause does not specify how the arbitration can be initiated, or where the arbitration would be held. … Furthermore, the arbitration clause is ambiguous, and susceptible to more than one interpretation. …
>
> Crucial pieces of information are omitted from the record. *The missing information should be added* to the record to give effect to the intent of the parties as expressed in subsection 5(e) of the record.

[8] The university issued an initial decision denying the 5(e) request on grounds similar to its decision regarding the 5(d) request. It stated that the request was one that substituted the appellant's opinion for a matter of fact. It also stated that the request was not a proper one, noting that paragraph 11 of the settlement agreement sets out a procedure to enforce the terms and conditions of the settlement agreement: that is, to bring the matter back to the labour arbitrator who presided over the settlement.

---

[3] To be discussed below; however, for ease of reference: 1. the information at issue must be personal and private information; 2. the information must be inexact, incomplete or ambiguous; and 3.the correction cannot be a substitution of opinion.

[9] The appellant and the university contacted the labour arbitrator to determine whether the appellant is entitled to the benefits he sought. There is a disagreement between the university and the appellant about why and how the arbitrator was contacted. Nevertheless, the labour arbitrator held a case conference and issued a written decision in which he concluded that the university had not contravened the settlement agreement and that the settlement agreement was "very clear." The labour arbitrator also stated that he did not have jurisdiction over the appellant's rights under the *Act.*

[10] The appellant made a third correction request,[4] this time requesting a correction to the university's *initial decision relating to the 5(d) request*. He requested that the university remove reference to the statement in its decision that the correction request was not proper. In response, and to reflect new developments arising from the labour arbitrator's decision, the university issued a revised decision that no longer stated that the request was improper but denied the request on the basis that correcting paragraph 5(d) would constitute a substitution of the appellant's opinion for a matter of fact, which is not eligible for a correction. However, the university stated that it would permit the appellant to file a statement of disagreement if he wished. The appellant did not file a statement of disagreement.

[11] The appellant appealed the university's decision relating to the 5(d) request to the IPC and appeal PA19-00539 was opened. He also appealed the university's decision about the 5(e) request to the IPC and appeal number PA20-00040 was opened.

[12] During the mediation stage, an IPC mediator had discussions with the parties about both appeals. No resolution was possible, the file was transferred to the adjudication stage of the appeal process and I decided to conduct an inquiry. I sought representations from the university and the appellant. I shared the university's representations with the appellant in full. It was not necessary for me to share the appellant's representations with the university; his position is reflected in the reasons that follow.

[13] In this order, I find that the requests made by the appellant are not proper correction requests and I uphold the university's decisions not to make them. Therefore, the university is not required to attach statements of disagreement to the settlement agreement.

RECORDS:

[14] The information at issue consists of paragraphs 5(e) and 5(d) of a settlement agreement that was negotiated between the appellant, his faculty association and the

[4] The university's decision relating to this request was not appealed to the IPC.

university. The agreement is signed by all three parties.

DISCUSSION:

[15] The issue in this appeal is whether the university should make the corrections requested by the appellant. For the following reasons, I uphold the university's decision not to grant the correction requests.

Correction requests under the *Act*

[16] The rights to request access to, and correction of, personal information and to file a statement of disagreement under sections 47(1) and (2) of the *Act* are connected, and relate, to each other.[5] 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 held by the institution.

[17] The relevant sections state (emphasis added):

> 47(1) Every individual has a *right of access to*,
>
> > (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
> >
> > (b) any other personal information about the individual *in the custody or under the control of an institution* with respect to which the individual is able to provide sufficiently specific information to *render it retrievable* by the institution.
>
> (2) 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; and
> >
> > (c) …

[18] The IPC has previously established that the following three requirements must

---

[5] Orders PO-4040 and MO-1700.

be met before an institution can grant a request for correction:

1. the information at issue must be personal and private information,
2. the information must be inexact, incomplete or ambiguous, and
3. the correction cannot be a substitution of opinion.[6]

[19] 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.[7]

[20] Even if the requirements are met, section 47(2)(a) gives the institution discretion to accept or reject a correction request.[8] The IPC will uphold the institution's exercise of discretion if it is reasonable in the circumstances.[9]

Representations

The university

[21] In this inquiry, the university argues that the requests are not proper correction requests made under the *Act.* It states that it maintains this position despite the fact that it issued a revised decision in response to the 5(d) request.

[22] Referring to the orders cited above, the university submits that correction requests require an institution to take into account the nature of the record, the method indicated by the requester and the most practical and reasonable method in the circumstances.

[23] The university says that in this case, it concluded that the requests were not proper correction requests because the record at issue is a legally binding settlement agreement negotiated and signed by the university, the appellant and his faculty association. The university submits that "it seems inconceivable that section 47(2) of the *Act* could have contemplated that an institution would be required to correct, or attach a statement of disagreement to, such a record." It argues that the appellant is attempting to use the *Act* for an improper purpose – namely "to amend an agreement to which he had legally bound himself by executing the agreement."

[24] The university submits that the settlement agreement is unlike other kinds of personal information that an institution may collect or use that are created, maintained

---

[6] Orders 186 and P-382.
[7] Orders P-448, MO-2250, and PO-2549.
[8] Order PO-2079.
[9] Order PO-2258.

and owned solely by the institution. It explains that the settlement agreement "was the product of a negotiated settlement process to resolve the appellant's grievances against his employer…." The university points out that the appellant did not first make a request for the record as contemplated by section 47(1), as it was always in his possession because he is a party to the very record at issue.

[25] The university submits that the reason the appellant is seeking the corrections is to obtain certain benefits under his former faculty association's collective agreement. The university elaborates about the underlying dispute between it and the appellant about his entitlement to certain benefits. It also explains that the appellant's right to seek the benefits was determined by the labour arbitrator who presided over the grievances and accordingly remained seized to resolve disputes about implementation. (The university's representations state, "The University told the Appellant that the correct way to address his concern was to take the matter back before the Arbitrator….")

[26] Turning to the IPC-established section 47(2) requirements, the university concedes that the settlement agreement consists of the appellant's personal information meeting the first requirement. However, it submits that the second two requirements are not present.

[27] It says that paragraphs 5(e) and 5(d) are not "inexact, incomplete or ambiguous." It submits that the settlement agreement terms are clear, and that therefore the second requirement is not present. The university points to the findings of the labour arbitrator that the settlement agreement is "very clear."

[28] Lastly, it says that the appellant's requests would amount to the replacement of "clear statements of the appellant's rights and entitlements" with statements of the appellant's *opinion*, which would run afoul of the third requirement. It emphasizes that it would be improper for the university to "subvert the force of a legally binding agreement" by permitting the appellant to change those terms through a correction request under the *Act.* It explains that there is a process to resolve the type of dispute between the appellant and the university – that is, returning to the labour arbitrator, which has occurred.

The appellant

[29] The appellant submits that the university should make the corrections requested and that its failure to do so is not in accordance with section 47(2) of the *Act* and the university's over-arching discretion to make the corrections. He says that the failure of the university to exercise its discretion in his favour means that the decisions reached were unreasonable.

[30] Regarding the three requirements, he (like the university) submits that the settlement agreement is his personal information and that the first requirement is therefore present.

[31] He submits that paragraphs 5(d) and 5(e) are "inaccurate and misleading" and "incomplete and ambiguous," respectively, thereby satisfying the second requirement.

[32] Regarding the third requirement – that the correction cannot be a substitution of an opinion – he submits that the settlement agreement does not contain statements of opinion. He notes also that he was not involved in drafting the agreement. As I understand these arguments, he takes the position that there are factual errors in the settlement agreement and he rejects the notion that his correction requests are statements of opinion.

[33] The appellant acknowledges that the university has discretion not to accept correction requests, even if the requirements are present. However, he says that the university's exercise of discretion in relation to his requests was unreasonable for several reasons.

[34] First, he points out that the university's position in the inquiry is different from its final decision regarding the 5(e) request, in which the university removed reference to the claim that the request was not a proper request.

[35] Regarding the university's position that paragraphs 5(d) and 5(e) are clear and represent terms that were negotiated, he says that this is not a fair way to characterize the agreement. He says that it is not correct to refer to the settlement agreement as a "legally binding settlement agreement" because, he says, the university has repeatedly breached the agreement by refusing the certain benefits, among other actions.

[36] The appellant explains that the university should have taken a different approach when he requested the benefits, including acting in accordance with the university's duty to act in good faith and other articles of the settlement agreement. On this point, he submits that I should review the circumstances of a separate privacy complaint he made to the IPC for further context.

[37] The appellant also provides detailed information about how and to whom he applied for the benefits and who made the decision not to grant the benefits. As is clear, there is a disagreement between the appellant and the university about his entitlement to certain benefits and his expectations about his entitlement to these benefits based on prior actions of the university. In his representations, he urges the university to grant him the benefits on the basis of its good faith duty, among other arguments. I have not summarized his concerns about who made the decision and why because these circumstances are not relevant to the issues before me.

[38] Regarding the labour arbitrator's recent decision, the appellant points out that the arbitrator expressly stated that he does not have jurisdiction over any matters under the *Act*. He disagrees with the reasons why the labour arbitrator became involved and submits that it was unrelated to his requests made under the *Act.* The appellant also disagrees with the process undertaken and the findings made by the labour arbitrator. He submits that the university's re-engagement of the labour arbitrator was in bad faith and a further breach of the settlement agreement.

[39] The appellant states, "the University claims that the proper means to address the correction requests was to take the matter back to the Arbitrator."[10] He says that this is incorrect because the arbitrator only has jurisdiction over whether the parties have complied with the agreement, not requests made under the *Act.*

[40] Lastly, the appellant argues that he is not a party to the settlement agreement, pointing to some correspondence that occurred between the labour arbitrator and counsel for the faculty association, and to the fact that he did not pay for any costs associated with the case conference or eventual decision rendered by the labour arbitrator. He also explains that if he did wish to engage the labour arbitrator to enforce the terms of the settlement agreement the cost to do so would be prohibitive for him so, as I understand the argument, he effectively has no remedy to pursue the benefits.

Discussion

[41] In consideration of the record at issue and the nature of the corrections sought, I uphold the university's decisions not to make the corrections requested on the basis that they are not proper correction requests. I therefore also find that the university is not required to attach statements of disagreement to the settlement agreement. These are my reasons.

[42] I begin by accepting that the settlement agreement was entered into between the appellant, the university and the faculty association as a resolution to a variety of disputes and issues between them. I do not accept the appellant's assertion that he is not a party to the agreement. He does not deny signing the agreement and it is clear from a review of it that he is a named party and signatory.

[43] I now turn to the wording of the correction requests themselves. In his requests, the appellant takes issue with the wording of paragraphs 5(d) and 5(e) of the settlement agreement and points out what he believes are errors in drafting (i.e., "the product of careless drafting," internal inconsistencies). In one case, he expressly states (emphasis added), "Subparagraph 5(d) should be *amended* to reflect the fact that not all rights under the Collective Agreement were removed." In the other, he seeks an addition (emphasis added):

> When considered in the context of its uses for purposes of enforcing the terms and conditions, this subparagraph [5(e)] is incomplete. Incomplete because there is no indication as to how the terms and conditions of the agreement can be enforced.
>
> …

[10] The university's precise statement about this is quoted above.

> Crucial pieces of information are omitted from the record. *The missing information should be added to the record* to give effect to the intent of the parties as expressed in subsection 5(e) of the record.

[44] On the basis of the wording of the requests themselves, it is clear that the appellant seeks "corrections" that would impact the duties and obligations owed to him by the university by altering the terms of the settlement agreement, either to align them with what he thought the substance of the agreement was, or to change the contractual terms in his favour. In other words, I find that the appellant's objective in making the correction requests is to *amend* the terms of the settlement agreement.

[45] The appellant's representations in this inquiry are also consistent with his objective of seeking to amend the terms of the settlement agreement to improve his contractual rights.

[46] Although the appellant draws a distinction between his correction requests and his efforts to obtain the benefits, I have concluded that it is simply not possible to consider the correction requests without the other context. The appellant holds steadfast to his right to seek these corrections; however, he is also focused on his wish to be able to apply for and access certain benefits that have been denied to him on the basis of the terms of the settlement agreement. The two topics are intertwined.

[47] Although he has attempted to focus his arguments in this inquiry on the requirements established by the IPC for section 47(2) correction requests, he also makes several other arguments about why the university should allow him to apply for the benefits. For example, he urges the university to act on its duty of good faith or to act consistently with how it acted in the past or by requiring a different person to make the decision about the benefits.

[48] I agree with the university that the changes requested by the appellant would impact the contractual rights of the university, the faculty association and the appellant and it would be improper for it to make such changes as it would "subvert" the terms of the settlement agreement.

[49] There are some records that are simply not susceptible to a correction request. In Order PO-2258, the adjudicator upheld the decision of the Assessment Review Board not to "correct" the reasons for decision of the Board even in the face of a clear error. The Adjudicator held,

> While it is clear that the reason for adjournment is incorrectly noted in the Board's written decision, it is not for this office to engage in the review of the adequacy or correctness of the decisions or findings of fact of a decision-making entity such as the Board. The decisions of the Board are subject to review for some errors of fact and law before other bodies.

[50] As Order PO-2258 illustrates, there are some types of correction requests that are simply outside of the scope of review by the IPC under the *Act.* The reasons for

decision of an administrative tribunal are one example. In my view, the terms of a negotiated contract are another.

[51] I have also reached this conclusion because the issues that require determination in a section 47(2) analysis are the same as those that would be at issue in any dispute between the parties about their respective rights and duties under the agreement. Let me illustrate.

[52] Were I to apply the analysis ordinarily applied to correction requests, I must decide whether paragraphs 5(d) and 5(e) are "inexact, incomplete or ambiguous." This is the very issue at the core of the dispute between the parties about whether the appellant is entitled to certain benefits and in respect of which there has been a recent decision by the labour arbitrator. Indeed, the university relies on the labour arbitrator's determination that the agreement is "very clear," a finding that is hotly contested by the appellant.

[53] It is not for the IPC to engage in a review of the clarity, or lack thereof, of specific contractual terms negotiated between the parties to the agreement. There are other more appropriate forums and remedies available to the parties to resolve these kinds of disputes.

[54] I have also considered the plain and ordinary meaning of section 47(2) read in its context within the *Act*. There is no basis to conclude that when it enacted section 47 of the *Act,* the Legislature intended that an individual could attempt to unilaterally amend the terms of a negotiated contract by making a correction request under the *Act*. For me to interpret the *Act* in such a way would be an interpretation that the *Act* does not bear.

[55] It is also noteworthy that the appellant did not first make an access request for the settlement agreement pursuant to section 47(1), which is the section from which the correction request right flows. As noted, the rights to request and correct personal information and to file a statement of disagreement under sections 47(1) and (2) of the *Act* are connected, and relate, to each other.[11] Although this may not be a determinative factor – and it is something that could easily be remedied in this case by simply making the access request – it is an additional factor that leads me to conclude that the correction requests are not proper. The rights in section 47 are intended to enable individuals to correct personal information maintained and used by an institution for its own use,[12] not negotiated contracts like the settlement agreement.

---

[11] Orders PO-4040 and MO-1700.

[12] See *Public Government for Private People: the Report of the Commission on Freedom of Information and Individual Privacy* (1980), Volume 3, p. 709, which described the right as follows: "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

[56] The requests made by the appellant are not proper correction requests within the meaning of section 47(2). As a result of my finding, the companion right to require the institution to attach a statement of disagreement is not available to the appellant.

[57] I uphold the university's decisions and dismiss the appeals.

ORDER:

I dismiss the appeals.

Original signed by: August 25, 2021
Valerie Jepson
Adjudicator

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."