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

ORDER 186

Appeal 890358

Ontario Hydro

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July 11, 1990

VIA PRIORITY POST

Dear [Appellant]:

Re: Order 186
Ontario Hydro
Appeal Number 890358

This letter constitutes my Order in your appeal from the decision of Ontario Hydro (the "institution") regarding your request made under the Freedom of Information and Protection of Privacy Act, 1987, as amended (the "Act"), for a correction of personal information.

On January 5, 1990, the undersigned was appointed Assistant Commissioner and received a delegation of the power to conduct inquiries and make Orders under the Act.

The appeal file indicates that on October 19, 1989, you wrote to the institution asking that your exit performance review be corrected or removed from your personnel file at the institution and that the recommendation concerning rehire be changed to "yes" from "no".

On November 16, 1989, the institution's Freedom of Information and Privacy Co_ordinator responded to your request as follows:

> The correction will not be made because no new information has been provided which would change the (location of workplace identifier) Supervisor's opinion of your performance while you were employed at the (named location).
>
> In accordance with section 47(2) of the Freedom of Information and Protection of Privacy Act, you may prepare a statement of disagreement which will be attached to your exit performance evaluation. You may also require that the statement be sent to any person to whom the record was disclosed in the last twelve months.

On November 27, 1989, you appealed the decision of the institution. Notice of the appeal was provided to you and the institution on that day.

As you know, as soon as your appeal was received an Appeals Officer was assigned to investigate the circumstances of the appeal and to attempt to mediate a settlement. The Appeals Officer obtained and reviewed the record in question. The relevant part of the record consists of two pages. The first page is an inter_office memo from the personnel department of the institution to a named supervisor, which asked the supervisor to rate you on work performance, attendance, punctuality and co_operation with others. After that came the question, "Would you rehire?" The answer to that question was, "No (See Comments)". The second page of the record at issue consists of the "Comments" concerning you, which explain, from the supervisor's viewpoint, the recommendation that you not be rehired.

During the course of mediation, the supervisor who authored the record in issue was contacted in order to ascertain whether or

not he would reconsider his position regarding you. He indicated that having had no dealings with you in the ten years since you had voluntarily resigned your position at the institution, he stood by his original recommendation that you not be rehired. He went on to reiterate the views he had set out in the second page of the

record, ten years before. In those comments, he had made reference to the negative views of other unidentified co_workers concerning you. He said he would not reveal their names now, even if he could remember them, which he could not.

Settlement of the issues in this appeal was not achieved during mediation. Accordingly, an Appeals Officer's Report was prepared and sent to you and the institution on May 2, 1990, together with a Notice of Inquiry. You and the institution were invited to make representations concerning the subject matter of this appeal.

Representations were received from you and the institution. I have considered these representations in reaching my decision.

The section of the Act under which this appeal must be considered is section 47 which reads as follows:

> (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 reasonably 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) 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 to be notified of the correction or statement of disagreement.

Further, section 2 of the Act provides that:

"personal information" means recorded information about an identifiable individual, including the following:

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

> (d) the address, telephone, symbol, or other number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

In my view, the information in issue in this appeal qualifies as personal information under any of subparagraphs (b), (g) or (h) of

the definition of personal information. Accordingly, having been given access to this personal information, you were entitled, under subsection 47(2)(a) of the Act, to request correction of this information.

Guidance for dealing with this provision of the Act can be found in other jurisdictions having similar legislative provisions. Section 89 of the Québec Act (An Act respecting Access to documents held by public bodies and the Protection of personal information, R.S.Q., chapter A-2.1) corresponds to subsection 47(2)(a) of the Ontario Act. Section 89 states:

> Every person who receives confirmation of the existence of nominative information concerning him on a file may request that the file be corrected if the information is inaccurate, incomplete, equivocal, or if the collection, release or keeping of the information is not authorized by law.

The Québec Commission has interpreted the word "correction" as used in section 89 to necessarily incorporate certain elements. These elements are: the information in issue must be personal and private information; the information must be inexact, incomplete or ambiguous; and the correction cannot be a substitution of opinion. The case of M. c. Centre hospitalier régional de l'Outaouais, (1984-86) 1 C.A.I. 120, concerned a requester who wanted a correction of a medical evaluation that recommended that he be given less stressful jobs. In that case, Commissioner Pepin of the Québec Commission concluded that in the face of the doctors' recognition of the record and their affirmation of the contents of the record, he was precluded from ordering a correction of the opinion.

I concur with Commissioner Pepin's reasoning and I believe it is applicable to the facts of this case. In my view, one of the purposes of this Act is to promote better governmental record keeping, including the accuracy of records. However, opinions are

subjective and absent the agreement of the opinion holder, it may not be appropriate or even possible to correct them.

In this case, you disagree with your former supervisor's conclusions as contained in your exit performance review and contend that they are not factually correct. However, you do

not contend that these were not the statements made by the supervisor and, in fact, your supervisor has confirmed to this office that he did write the statements, that the statements accurately reflected his views at the time and that he remains of the same view to this day.

As such, it is my view that this record accurately sets out the views of your former supervisor. In addition, the record sets out the basis for the views of the supervisor. Accordingly, as you have been given access to this information, you have available to you a basis from which to draft a statement of disagreement, if you wish to do so. If a statement of disagreement was to be attached to the record, this would leave it open to anyone who obtains access to the record to formulate his or her own view as to the validity of the supervisor's opinion.

In conclusion, while the Act provides for a review of the accuracy of the personal information contained in the record, I feel that, generally speaking, it does not contemplate substituting my judgment or opinion for that of your former supervisor, concerning your performance evaluation. In this type of situation, the solution which is more appropriate and which is provided for under subsection 47(2)(b) of the Act, is for you to exercise your right to require a statement of disagreement be attached to the record. If, as you contend, there is little or no foundation for the opinion contained in the record, the basis for your contention could be the subject of a detailed statement of disagreement, which would serve the purpose which you seek yet ensure that the file remains a coherent historical record.

It has been brought to my attention that the usual practice of the institution regarding personnel files of employees who have left the institution is to purge the files within 13 months of the employees' departure. The institution does keep a record of the employee's service in order that the employment may be confirmed for the purpose of reference checks; a short yes or no answer to the question concerning rehire is maintained on the record for future internal use only.

In this case, the entire record has been maintained because of various complaints that you have made during the ten years since you left the employ of the institution. In light of the institution's usual records disposal policy, I recommend, if you choose to exercise your right to attach a statement of disagreement, that the institution not dispose of the comments of your former supervisor when the usual disposal date is reached. Instead, if you agree, those comments should be preserved to ensure the cogency of your statement of disagreement to any potential reader.

In conclusion, I have decided to uphold the decision of the institution not to change or remove the record from its file.

Yours truly,

Tom A. Wright
Assistant Commissioner

cc. Mr. Lawrence E. Leonoff,
General Counsel and Secretary
Ontario Hydro

Ms Sheila Leng, FOI Co-ordinator