

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4040

Appeal PA18-241

Tribunals Ontario

April 15, 2020

Summary: The appellant sent a letter to a tribunal requesting that certain “disagreements” be filed with the tribunal. The tribunal treated part of the letter as a request to file a statement of disagreement under the *Freedom of Information and Protection of Privacy Act* but refused to treat the remainder of the letter in the same way. The appellant was dissatisfied with the tribunal’s response and appealed to this office. In this order, the adjudicator finds that the letter sent by the appellant was not a request for correction nor a request to file a statement of disagreement under the *Act* and dismisses the appeal.

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

Orders and Investigation Reports Considered: Order MO-1700.

OVERVIEW:

[1] This appeal is about a letter sent by the appellant to a tribunal requesting it to file “disagreements” with that tribunal (the appellant’s letter). The tribunal involved in this appeal is the Child and Family Services Review Board (the CFSRB), which is part of

Tribunals Ontario.¹ The CFSRB has jurisdiction under the *Child, Youth and Family Services Act, 2017*² to review certain complaints related to services provided by and decisions made by children's aid societies.³ The appellant is a party to a matter before the CFSRB regarding a children's aid society (the CAS).

[2] Tribunals Ontario treated the appellant's letter as a request to file a statement of disagreement pursuant to section 47(2)(c) of the *Freedom of Information and Protection of Privacy Act*, R.S.O., c. F.31 (the *Act*).

[3] The specific content of the appellant's letter is of relevance to the disposition in this order. The "re: line" of the appellant's letter refers to a CFSRB case file number. The first line states (emphasis added), "Due to new information regarding my casefile, we are forwarding further disagreements to comments made by [the CAS]." The appellant's letter then refers to a new complaint he made to the CFSRB where he expanded his open complaint to include two other workers from the CAS. The appellant's letter continues (emphases added):

Furthermore, the many delays of not getting details to questions in other letters is quite concerning, for I wish to proceed, but my legal counsel needs to have a complete picture of the situation for mediation. Since these comments are made by [the CAS], the flow of answers should be quite simple. The following information that we are bringing to your attention will further explain why we wish to have questions answered, but why we extended the complaint to the questionable conduct of the other two workers, disagree to the following and wish to have issues corrected.

We disagree

1. The [date], 2005 letter from Children's Aid Society (marked exhibit A with the [name of city] Courts), it stated information regarding the police and myself that is protected under the PRIVACY ACT and concerned how this was obtained. I don't recall signing a release form to give them this information from the police which clearly violates my civil rights and have asked the [CFSRB] to supply a copy of this form for mediation.

¹ Prior to January 1, 2019, the CFSRB was part of Social Justice Tribunals Ontario (SJTO). After January 1, 2019, the SJTO became part of Tribunals Ontario. References to Tribunals Ontario in this order include references to the SJTO prior to January 1, 2019.

² S.O. 2017, c. 14, Sched. 1.

³ General information about the CFSRB's jurisdiction can be found at <http://www.sjto.gov.on.ca/cfsrb/what-we-do/> (last accessed at the date of this order).

2. We disagree with how information was obtained by Children's Aid Society, see letter [date], 2017 enclosed and explanations of release of certain information in appreciating our concerns. We have also forward a complaint against the O.P.P. in regards to the release of said information.

3. We also disagree with the release of information protected by the PRIVACY ACT and find it puzzling that there is no mention of the alleged assault and alleged conviction in this letter by Children's Aid Society dated [date], 2005 presented to the courts by [an individual], since release of information would have come from the police since they were mentioned in the letter. Documentation presented by the O.P.P. and Privacy Agency showed there is no such charge or conviction of alleged assault exists.

4. We also wish to disagree that [name of two individuals] of the Children's Aid Society in no way did their job properly when it came to verifying facts and should have presented this information of the alleged assault and conviction in their letter of [date], 2005 to the courts and would like to know why years later, it now has been presented in comments in another letter dated [date], 2017 to the [FSRB] even though it doesn't exist.

5. We also disagree that Children's Aid Society or these workers at that time to the present date care about the protection concerns involving my [child], had even verified statement's by my [child] for years, but [mised] lawyers and courts with inaccurate information that should have been brought to their attention and been aware by myself, so I could keep my [child] safe from clearly is emotional abuse and lies by [the other parent]. Since [individuals] are supervisors and mentioned in different letters dated [date], 2005 and [date], 2014 supplied by Children's Aid Society, it is also disturbing that they didn't monitor or verify facts by their social workers more closely and therefore disagree with their comments, that they have no concerns regarding the [other parent] or verified facts prior to presenting them to the CFSRB.

If you could forward disagreements on my behalf and present a copy to myself, it would be appreciated, thank you.

[4] On its face, the appellant's letter does not contain a request for a correction or statement of disagreement under section 47(2) of the *Act*; rather, it is connected to both an ongoing and new complaint filed with the CFSRB. However, as will be elaborated on in the next section of this order, Tribunals Ontario treated the appellant's letter as a request to file a statement of disagreement under section 47(2) of the *Act*.

[5] In its response to the appellant's letter, Tribunals Ontario said that it would provide the CFSRB with a complete copy of the appellant's letter, deeming that the first enumerated "disagreement" pertaining to the August 5, 2005 letter contained the appellant's personal information and was, accordingly, eligible to be treated as a statement of disagreement under the *Act*. Tribunals Ontario's letter states, "I am providing the CFSRB with a Statement of Disagreement related to the letter dated August 5, 2005 submitted to the file by the Children's Aid Society (the CAS). This is point 1 of your request. You set out that you disagree with the contents of this letter and are concerned about how it was obtained."

[6] Tribunals Ontario also told the appellant that even though it was forwarding the appellant's letter to the CFSRB, section 47(2) of the *Act* could not be used to disagree with actions taken by an organization. It said, "This means that you can use s. 47(2) ... to set out your disagreement with the personal information related to you included in the August 5, 2005 letter, but you cannot use s. 47(2) to disagree with the process by which the CAS obtained the information included in the August 5, 2005 letter."

[7] Regarding the balance of the appellant's letter, Tribunals Ontario said:

The remaining points in your letter set your [sic] objections to the actions the CAS has taken in the past with respect to you, disagreements with respect to how the CAS conducted themselves when investigating issues related to you and your family, and concerns that the CAS do not care about how their actions affect your family and the welfare of your [child]. As set out above, I cannot apply s. 47(2) of FIPPA to include a Statement of Disagreement on your CFSRB file to address these types of concerns. However, since your March 13, 2018 letter serves as your statement of disagreement with respect to information included in the August 5, 2005 letter, the additional concerns will be incorporated into the file and copied to the CAS.

[8] The appellant appealed Tribunal Ontario's decision to this office.

[9] Mediation could not resolve the issues under appeal, although the mediator attempted to refer the appellant to other avenues to address some of the underlying concerns. The file was transferred to adjudication, where an adjudicator may conduct a written inquiry. The parties made representations which were shared in accordance with this office's *Code of Procedure*.

[10] In this order, I find that the appellant's letter was neither a request for correction nor a request to file a statement of disagreement within the meaning of section 47(2) of the *Act*, and that there is no stand-alone right to file a statement of disagreement in the *Act* without first making a correction request, and I dismiss the appeal.

DISCUSSION:

[11] The issue in this appeal is whether Tribunals Ontario should be ordered to take any further action pursuant to the *Act* in response to the appellant's letter.

[12] I wish to first briefly address the application of the *Act* to adjudicative records in general. As a result of amendments that came into force on June 30, 2019, section 65(16) of the *Act* now provides that the *Act* "does not apply to adjudicative records, within the meaning of the *Tribunal Adjudicative Records Act, 2019*, referred to in subsection 2(1) of that *Act*." This exclusion was not in force as of the date of the appellant's letter, which was received in early 2018.

[13] Tribunals Ontario has not claimed that the exclusion applies retroactively to the circumstances of the present appeal, nor do I have any representations before me about whether the records at issue are adjudicative records within the meaning of the section 65(16) exclusion.

[14] Tribunals Ontario was correct not to argue that the section 65(16) exclusion should have a retroactive application to the circumstances of this appeal. There is a strong presumption that legislation is not intended to have retroactive or retrospective application unless it is clearly indicated by the legislature.⁴ There is nothing contained in the legislation⁵ that introduced the section 65(16) exclusion to suggest that it has a retroactive or retrospective application. Although the section 65(16) exclusion will require consideration in future appeals involving tribunal records, it is not relevant to this appeal because it was not in force at the relevant time.

Submissions of the parties

[15] Tribunals Ontario submits that the records that the appellant seeks to correct or disagree with are not eligible for either a correction or a statement of disagreement under the *Act*. It says that it was incorrect to treat the appellant's letter and previous similar letters from the appellant as requests for statements of disagreement under the *Act*.

[16] Tribunals Ontario provided the following context. Starting in 2017, the appellant made requests to correct information contained in the submissions of the CAS in proceedings that he initiated before the CFSRB. Tribunals Ontario consistently refused to make the requested corrections but when the information at issue pertained to the appellant, it agreed to provide the CFSRB with "statements of disagreement" pursuant to section 47(2) of the *Act* and it notified and provided the CAS with the statements.

⁴ The issue of retroactive or retrospective application was examined in more detail in the context of another exclusion in the *Act* in Order PO-3862.

⁵ S.O. 2019, c. 7, Sched. 60, s. 9.

[17] In reference to the circumstances leading to this appeal, Tribunals Ontario says the records referred to in the appellant's letter are records filed by other parties in the CFSRB proceeding commenced by the appellant. Tribunals Ontario asserts that tribunals, such as the CFSRB, are under a statutory duty to maintain the record of proceedings⁶ and that a party to a "proceeding cannot alter the record unilaterally." Tribunals Ontario says that harms would be caused if parties were so permitted to file statements of disagreement into the CFSRB record. It says that the statements of disagreement would distort the tribunal record and impair the ability of a reviewing court which would have before it a copy of the record in a judicial review.

[18] Tribunals Ontario says that the appellant's letter is a collateral attack on the CFSRB's determination of the merits of the appellant's complaints filed with that board. Tribunals Ontario submits that it would be an inappropriate interference with the procedures enacted by a properly constituted administrative tribunal to allow the appellant to invoke the rights in section 47(2) of the *Act* and require that a statement of disagreement be filed.

[19] In response, the appellant provided information to support his assertion that statements made about him were incorrect and his concerns with the conduct of the CAS. In his representations to this office, the appellant indicates that he has and continues to make complaints to the CFSRB regarding the conduct of the CAS. He disagrees with Tribunals Ontario's assessment that his requests are a collateral attack, stating that in order for the CFSRB to make a fair determination about the matter before it, the information provided by the CAS must be corrected.

Correction Requests and the Right to file a Statement of Disagreement

[20] Section 47(1) of the *Act* 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.

[21] The complete text of section 47 is (emphasis added):

47 (1) Every individual has a right of access to,

...

(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

⁶ Tribunals Ontario says that this duty arises from section 20 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 that defines and explains a "record of proceeding."

able to provide sufficiently specific information to render it reasonably retrievable by the institution. R.S.O. 1990, c. F.31, s. 47 (1).

(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 be notified of the correction or statement of disagreement. R.S.O. 1990, c. F.31, s. 47 (2).

[22] The rights to request and correct personal information and to file a statement of disagreement under sections 47(1) and (2) are connected, and relate, to each other. Adjudicating whether an institution has responded properly to a request to file a statement of disagreement under section 47(2)(b) requires consideration of the correction request made under section 47(2)(a). As explained by the adjudicator in Order MO-1700, “[t]he determination as to what constitutes a statement of disagreement is not based on whether the information is ‘relevant’ to the records, rather, the issue to be decided is whether the statement of disagreement reflects any correction requested by the requesters not made by the institution.”

[23] There is no stand-alone right to file a statement of disagreement; it is a specific right that exists in relation to particular pre-existing records, not a generic right to file information with institutions.

Analysis and Findings

[24] There are features of this appeal that make it challenging to apply the ordinary analysis that one would expect to see in an appeal about section 47(2) of the *Act*.

[25] In my view, there is merit to Tribunals Ontario’s position that section 47(2) does not contemplate a tribunal being required to correct or attach a statement of disagreement to evidence filed by a party before it. However, in the circumstances of this appeal, I do not need to decide that question, because of the other issues with the appellant’s letter.

[26] First, the appellant did not make a request to the CFSRB or Tribunals Ontario for his personal information under section 47(1); he obtained the information in the

ordinary course of being a party (complainant) to a proceeding before the CFSRB. Second, although the language in the appellant's letter is imprecise, it is clear that he did not first request a correction and then, in response, assert his right to file a statement of disagreement.

[27] There are other challenges. The appellant's letter does not specify which statements in which documents are incorrect and how. Importantly, it does not specify to which record a statement of disagreement should be attached; he wishes for the disagreements to be placed in the file. This defect poses a significant challenge because, as described above, the rights to request and correct personal information and to file a statement of disagreement under sections 47(1) and (2) are connected, and relate, to each other. There is no stand-alone right to file a statement of disagreement.

[28] In my view, the appellant's letter must be viewed in its totality, not as a series of requests that can be parsed into possible correction requests. While this office encourages institutions to apply broad and liberal interpretations to requests made, this approach does not extend to converting a request into something that it is not.

[29] I make the following observations about the content of the appellant's letter. It refers predominantly to the issues that the appellant understands to be the subject of the CFSRB proceedings. It says, "The following information that we are bringing to your attention will further explain why we wish to have questions answered, but why we extended the complaint to the questionable conduct of the other two workers, disagree to the following and wish to have issues corrected."

[30] The list of "disagreements" in the letter describe the appellant's opinions about the actions of employees of the CAS and the arguments he may make about the merits of a matter before the CFSRB. Some examples of this are:

- "We disagree with how information was obtained ..."
- "We also disagree with the release of information protected by ... and find it puzzling..."
- "We also wish to disagree that [name of two individuals] of the Children's Aid Society in no way did their job properly..."
- "We also disagree that Children's Aid Society or these workers at that time to the present date care about the protection concerns involving..."

[31] I have also considered Tribunals Ontario's prior dealings with similar requests made by the appellant. In my view, these prior dealings help to put the appellant's letter in context and likely provided the appellant with an expectation, which turns out to be erroneous, that he had a stand-alone right to file "disagreements."

[32] Taking the nature of the rights in sections 47(1) and (2) into account and

considering the content of the letter on its face and in substance, I find that the appellant's letter was neither a request for correction nor a companion statement of disagreement as those concepts are understood in section 47(2) of the *Act*.

[33] Having found that the appellant's letter is not a request under section 47 of the *Act*, Tribunals Ontario was not obligated to take any steps pursuant to the *Act*. As a result, this appeal is dismissed.

ORDER:

I dismiss the appeal.

Original Signed by: _____
Valerie Jepson
Adjudicator

_____ April 15, 2020