

[3] The Commissioner has jurisdiction over the Department of Education and the Department of Human Resources: ATIPPA, s 2, definition of “public body”.

Issues

- [4]** The issues in this review are:
- a. Is the FFM summary the Applicant’s “personal information”?
 - b. Did the public body properly correct the error and omission identified by the Applicant?
 - c. What is the extent of the public body’s duty to produce accurate notes of the FFM?
 - d. Did the public body meet its duty to produce accurate notes of the FFM?

Facts

[5] This file, which should have been straightforward, has taken a long and winding road to a conclusion.

[6] The Applicant is a teacher. They were summoned to a “fact-finding meeting” (commonly referred to as an FFM) by management. An FFM is an employee-relations technique used by the Government of Nunavut (GN) when management has concerns about an employee’s conduct. The purpose of the meeting is for management to lay out its concerns, and for the employee to give their side of the story. An FFM does not necessarily result in discipline, but it can be a step on the road to discipline.

[7] The meeting was held by teleconference on December 10, 2019. The attendees were the teacher, the teacher’s union representative, the school district superintendent, and a human resources staff person. There was no audio recording of the meeting.

[8] In keeping with the usual practice, the questions for the FFM were prepared in advance by the HR staff person, using a template that included boxes for certain background information. The superintendent

used the questions as a script to guide the meeting. The teacher and their union rep did not have the questions in advance.

- [9] The HR staff person took notes of the teacher's answers to the questions, and later typed them up. The questions and answers thus formed a summary of the meeting, which I will call "the FFM summary". It is that FFM summary that is at the heart of this case.
- [10] As a result of the FFM, the teacher filed numerous information requests and privacy complaints under the ATIPPA. The information requests sought more information about each of the allegations raised at the FFM, plus information about the FFM itself. These requests were filed at different times, and sometimes had multiple parts. Different pieces were repeated or amended in later requests.
- [11] One of the Applicant's requests was for a "transcript" of the FFM. The Department of Human Resources told the Applicant that a transcript did not exist, because the FFM was not recorded. The Applicant eventually received a copy of the FFM summary.
- [12] The Applicant almost immediately pointed out one error and one omission in the FFM summary. (They also raised other questions about the FFM summary, but those questions were eventually answered to the Applicant's satisfaction, and I will say no more about them.)
- [13] The error was that certain information had been entered into the "previous discipline" box. The teacher had not been previously disciplined. The Applicant requested that this information be deleted.
- [14] The omission was that the list of attendees was missing the name of the union representative. The Applicant requested that this omission be fixed by adding the representative's name.
- [15] For some reason, HR did not address the Applicant's request for correction. It is not clear why. Perhaps it was because requests for correction are uncommon, and the ATIPP Coordinator did not know what

to do. Or perhaps it was because the request for correction got buried in a shifting set of requests from the Applicant. Whatever the reason, the department did not deal with the request for correction. The Applicant repeated the request for correction every couple of months, and the department still did not deal with it.

- [16] When I assumed the role of Information and Privacy Commissioner in January 2021, there were several files in progress concerning the Applicant. Among other things, I became aware that the Applicant's request for correction was languishing. In an attempt at case management, I asked the department's ATIPP Coordinator to address the correction issue.
- [17] Not long after, a senior official with HR did make the requested corrections. The information in the "previous discipline" box was deleted. The name of the missing attendee was added. They sent the corrected document to the department's ATIPP Coordinator.
- [18] The ATIPP Coordinator notified the Applicant that the corrections had been made. The Applicant asked to see the corrected FFM summary. Again, the file languished. The Applicant reminded the department at least twice, over the course of several months, that they were waiting to see the corrected summary. Nothing happened. Eventually the Applicant filed for review.
- [19] After the Applicant's request for review was filed, and after more prompting from me, the department did send the corrected summary to the Applicant.
- [20] I then asked the Applicant if they were satisfied with the corrections. If the answer was yes, I intended to discontinue my review, because the issue would be moot. But the Applicant said no, they were not satisfied. They said "the department has made the corrections I requested... and has now changed the FFM notes and have omitted the following: (i) some of the

questions posed to me by [the superintendent] and my responses to those questions; (ii) remarks made to me by [the superintendent].”

- [21] I understood this submission to mean that the department had, in the course of making the corrections, introduced more changes.
- [22] At that point I did not have the original FFM summary. I asked the department if they had made any new changes to the FFM. They said no. I received from them a copy of the original FFM summary, and I compared the original version and the corrected version. There were no changes, except for the two corrections requested by the Applicant.
- [23] I asked the Applicant to explain what “changes” they were alleging had been made to the FFM summary. The Applicant responded that the notes were not a proper record of what had transpired at the FFM. The Applicant argues that the notes “are not the true transcript. The GN is fully aware of what they have omitted. Only the true copy/transcript of the conference call will definitely show what has been omitted.”
- [24] Essentially, the Applicant has circled back to their original position, which was that there must have been a transcript, or there should have been a transcript, and the Applicant would not be satisfied until they got it. To summarize the Applicant’s position: the FFM summary is incomplete, and the omissions should be corrected under s 45.

Law

- [25] Section 45 of the ATIPPA deals with the right of correction of personal information:

45. (1) An individual who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

- [26] There are only a few previous Review Reports in which s 45 has been considered. *Review Report 16-105 (Re)*, 2016 NUIPC 9 (CanLII) is the most complete discussion of how s 45 should be interpreted. As part of that

discussion, the former Commissioner quoted the following passage from *Order 98-10*, 1998 CanLII 18622(AB OIPC) at paragraphs 22 and 25:

In order to prove a term should be corrected under section 35(1), the Applicant must fulfill a two-part test. He must prove that the information which is the subject of the correction is personal information, and that there is an error or omission in that information.

....

As the terms "error" and "omission" are not defined in the Act, I have used the ordinary dictionary definitions to define these terms. The Concise Oxford Dictionary, Ninth Edition, defines "omission" as something missing, left out or overlooked. "Error" is defined to mean a mistake, or something wrong or incorrect. Furthermore, the Concise Oxford Dictionary defines "incorrect" to mean not in accordance with fact, or wrong, while the term "correct" is defined as meaning, to set right, amend, substitute the right thing for the wrong one.

I adopt the former Commissioner's analysis, including the quoted passage from the Alberta decision. I will have more to say on this topic later.

[27] The right of correction does not extend to opinions or interpretations: *Review Report 16-105 (Re)*, 2016 NUIPC 9 (CanLII); *Review Report 02-05 (Re)*, 2002 NUIPC 3 (CanLII).

[28] Administrative bodies, even quasi-judicial tribunals, "are normally under no obligation to make verbatim transcripts or recordings of their proceedings": *Canadian Union of Public Employees, Local 301 v. Montreal (City)*, 1997 CanLII 386 (SCC), [1997] 1 SCR 793, at paragraph 75.

Analysis

[29] I will begin with some comments on the ATIPP and human resources within the GN. I will then turn to the interpretation of s 45 and its application to this case.

The ATIPPA and the GN's human resources

- [30]** This is the eighteenth final decision I have written since becoming Commissioner in January 2021. Of those eighteen, fifteen come from present or former GN employees and arise from the GN workplace – ten of twelve on the access side, and five of six on the privacy side. The ATIPP review system in Nunavut has come to be dominated by human resources issues.
- [31]** GN employees are entitled to use the ATIPPA if they want to. But the ATIPPA is sometimes a blunt instrument for dealing with the nuances of the workplace: *Department of Executive and Intergovernment Affairs (Re)*, 2021 NUIPC 13 (CanLII) at paragraph 26. I do not believe the drafters foresaw that the ATIPPA would be used primarily as a proxy battleground for labour relations issues.
- [32]** In this case, the Applicant has been unusually relentless in trying to get to the bottom of all the allegations raised at the FFM. They are within their rights to do so. They really had no alternative if they wanted to find out what was behind the allegations.
- [33]** Along the way, this office has been called upon six times to settle matters on which the parties could not agree. This is the seventh, and the Applicant's requests for information are not yet completed.
- [34]** In my view, the Department of Human Resources and the public-sector unions would be well-advised to work out a basic protocol for the disclosure of information when there are allegations that might justify discipline. The present system, which forces GN employees into the ATIPPA system if they want reasonable disclosure, is not serving anyone well.

Section 45 – Personal information

- [35] As stated in the Law section of this decision, there is a two-step process to a s 45 correction. The first step is to ask whether an FFM summary is “personal information”.
- [36] In my view, the FFM summary as a whole is not “personal information”. An FFM summary almost certainly contains personal information. If it does, that personal information can be handled in the normal way, especially under s 23, if there is an ATIPP request, or if there is a request for correction under s 45. Each item has to be looked at individually to see if it meets the ATIPPA definition of “personal information”.
- [37] In this case, the Applicant requested three corrections to the FFM summary.
- [38] The first requested correction was to delete the information in the “previous discipline” box. An employee’s disciplinary record is part of their employment history and is therefore their personal information: s 2, definition of “personal information”, paragraph (g). The Applicant had no previous discipline, but the FFM summary implied there was. That is an error subject to correction under s 45. HR did, eventually, correct the error.
- [39] The second requested correction was to add the union representative’s name to the list of attendees. A list of attendees at a government meeting is not the personal information of an attendee. It is not subject to correction under s 45. Of course I expect the author of the document, and the GN in general, would want to have accurate records. That is just good administration. HR did, eventually, correct the omission.
- [40] The third requested correction was, in essence, to capture more fully the exchanges between the Applicant and the school district superintendent. This request is less specific than the other two. It was not made at the same time as the other requests, and has emerged in its current form only in recent discussion between the Applicant and this office.

- [41] Undoubtedly elements of the exchanges during the FFM were not captured. The FFM summary is not a transcript. But does the Applicant have a right under the ATIPPA to require HR to amend the FFM summary to capture more of the conversation? In my view, they do not.
- [42] The conversation between the Applicant and the school district superintendent at the FFM is not the Applicant's "personal information". It may contain personal information, which can be vetted if there is an ATIPP application. It can also be corrected if need be. But the exchange itself is not personal information.
- [43] I expect the author of any meeting summary, and the GN itself, would want to correct any obvious omission so that the GN's meeting summaries are accurate. Again, that is just good administration. But the GN, in my view, is not bound under s 45 to make a correction, or to include in the record the applicant's version of what happened in the meeting.
- [44] Even if I am wrong on this first step, I find that the Applicant's case also fails at the second step.

Section 45 – The meaning of "omission"

- [45] The second step under s 45 is to ask whether the Applicant has shown there was an "error or omission" in their personal information.
- [46] In the Law section above, I quoted a passage from an Alberta decision defining the words "error" and "omission". An "error" refers to a mistake, or something that is wrong or incorrect. An "omission" is something missing, left out, or overlooked.
- [47] In my view, the dictionary definition of "omission" needs to be further refined for purposes of s 45 of the ATIPPA. A government record, or indeed any record, represents only a thin sliver of what might possibly be included. I have already noted that the ATIPPA review process in Nunavut has largely become a proxy battleground for GN labour relations. I am loathe to open s 45 to an interpretation that would allow an employee to

contest any employee-relations meeting record that is not a verbatim transcript. There have to be some boundaries about what is and is not eligible for inclusion under s 45.

- [48]** I therefore propose that something is an “omission” for purposes of s 45 if it is personal information that is missing, left out, or overlooked, and that (a) has the character of a fact, as opposed to an opinion or interpretation, and (b) is relevant to the subject-matter of the record. The requested correction must also be specific enough to permit evaluation of its factual nature and its relevance.

Section 45 – Application to this case

- [49]** In this case, the Applicant originally asked that a specific error and a specific omission in the FFM summary be corrected. It took HR too long to do it, and then too long to send the corrected document to the Applicant, but it was eventually done. The only remaining correction requested by the Applicant is another omission: the Applicant wants an FFM summary that captures more of the exchanges in the FFM.
- [50]** As noted in the Law section above, even a quasi-judicial tribunal is not required by law to record its hearings or produce a transcript. That is so much more the case, then, for a first-level, internal employee-relations meeting like an FFM.
- [51]** The HR consultant took notes at the FFM, and those notes were the basis for the FFM summary that was provided to the Applicant. There is no evidence of another record that has not been provided to the Applicant, or (despite the Applicant’s assertion) that the note-taker deliberately omitted anything. The FFM summary is not, and was never intended to be, a transcript. Inevitably, some of what was said at the FFM was going to be omitted.
- [52]** An employee who is the subject of an FFM is at a disadvantage. They typically have not seen the questions in advance, and typically have received little or no disclosure about what will be raised at the FFM. They

nevertheless have some options. They can take their own notes, or have their union representative do so. Or after the meeting is over, they can write down their recollection of the meeting. Or they can propose that the meeting be recorded (that is easier than it used to be, since almost everyone carries a phone that is also a recording device).

[53] Most importantly, if discipline is imposed on a unionized employee after an FFM, it is open to the employee to grieve the discipline and challenge the FFM summary by way of oral evidence or affidavit. This should take care of any omission in an FFM summary that has actual consequences for the employee.

[54] In this case, the Applicant has not been very specific about what they would like to see included in the FFM summary. The Applicant says there were exchanges between the Applicant and the superintendent that did not find their way into the FFM summary. Beyond that, the Applicant is not specific. In my view, that is not the sort of correction contemplated by s 45. In addition to not being the Applicant's "personal information", the Applicant's requested correction is not specific enough to permit an evaluation of its factual nature or its relevance. It does not meet the threshold for an "omission" that can be corrected.

Conclusion

[55] The FFM summary, as a whole, is not the Applicant's "personal information". There are portions of the FFM summary that contain the Applicant's personal information. A statement of previous discipline is the Applicant's personal information. A list of attendees is not the Applicant's personal information.

[56] The Department of Human Resources properly corrected the specific error identified by the Applicant. It also corrected the specific omission identified by the Applicant, although it was not s 45 of the ATIPPA that obliged it to do so.

- [57] The Department of Human Resources was not legally obliged to record the FFM, or produce a verbatim transcript. The taking of meeting notes arises from sound administration, not from a legal obligation under the ATIPPA. When notes are taken, they are a record subject to the ATIPPA and therefore subject to a request for correction under s 45.
- [58] Something is an “omission” for purposes of s 45 if it is personal information that is missing, left out, or overlooked, and that (a) has the character of a fact, as opposed to an opinion or interpretation, and (b) is relevant to the subject-matter of the record. The requested correction must be specific enough to permit evaluation of its factual nature and its relevance.
- [59] In this case, the omission alleged by the Applicant is not the Applicant’s personal information. Moreover, the requested correction is not specific enough to permit evaluation of its factual nature or its relevance. The Department of Human Resources is therefore not required to correct the FFM summary more than it already has.

Recommendations

- [60] I recommend that the Department of Human Resources consider the desirability of entering into an FFM disclosure protocol with public-sector unions.
- [61] I make no recommendation about the correction of the FFM summary in this case, beyond the corrections already made by the Department of Human Resources.

Graham Steele

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