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

ORDER M-777

Appeal M_9600025

City of Toronto

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

Under the Municipal Freedom of Information and Protection of Privacy Act (the Act), the appellant submitted a request to the City of Toronto (the City) for correction of personal information. The request refers to a "security" file kept "against" the appellant during a specified period. It asks that the documents in this file, which the appellant obtained pursuant to a previous access request under the Act, be destroyed if proven inaccurate. A six-page letter described by the appellant as a "rebuttal" of the allegations against him was attached to the request.

The City responded by denying the correction request. In its decision letter, the City advised the appellant that he could require a statement of disagreement to be attached to his personal information reflecting the requested correction. The City also invited the appellant to inform its Freedom of Information Office if he wishes to have the letter which he included with his request appended to the personal information as his statement of disagreement.

The appellant filed an appeal of the City's decision to deny his correction request.

The records which are the subject of the appellant's correction request pertain to events at an athletic facility (the facility) involving the appellant, who was a member of the facility. The records contain allegations to the effect that the appellant exhibited abusive and threatening behaviour towards staff members.

The records are:

- a memorandum of telephone conversations kept by the facility's Manager of Administration and Operations;
- a memorandum pertaining to membership entry procedures;
- a letter from the appellant to the facility's Manager of Administration and Operations;
- an unserved notice under the Trespass to Property Act, addressed to the appellant;
- a report on a visit to the facility by the Police, and notes of a telephone conversation;
- typewritten notes of an incident, prepared by the facility's Recreation Supervisor;
- three letters to the appellant on letterhead of the facility;
- ten incident report forms completed by staff members of the facility;
- handwritten notes of a staff member;
- an internal memorandum;
- notes and a message slip regarding the appellant's membership dues instalments.

This office sent a Notice of Inquiry to the City and the appellant. In particular, the Notice of Inquiry invited the parties to submit representations on the following issues:

(1) whether the records contain the appellant's personal information;
(2) whether any personal information in the records should be corrected under section 36(2)(a) of the Act; and

(3) if the answer to the preceding question is yes, whether the correction should be effected by destroying the records.

In response to the Notice of Inquiry, both the appellant and the City submitted representations.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the Act provides, in part, that "personal information" means recorded information about an identifiable individual.

The City submits that the records contain the appellant's personal information because they include various combinations of the appellant's name, address and telephone number. The City also notes that some of the records contain the views or opinions of other individuals about the appellant. I have reviewed the records and I am satisfied that all of them contain the appellant's personal information.

CORRECTION OF PERSONAL INFORMATION

Sections 36(2)(a) and (b) of the Act provide for correction requests and statements of disagreement relating to one's own personal information. These sections state:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
> (a) request correction of the personal information if the individual believes there is an error or omission;
>
> (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made.

There is a difference in wording between sections 36(2)(a) and (b), and in my view, this difference is significant. Section 36(2)(a) indicates that individuals may **request** correction of their personal information, while section 36(2)(b) indicates that individuals may **require** a statement of disagreement to be attached to a record reflecting any correction which was requested but not made.

In particular, because section 36(2)(a) only provides a right to **request** a correction, it is my view that it gives the City a discretionary power to accept or reject the correction request. I am reinforced in the view that section 36(2)(a) confers a discretionary power on the City by the wording of section 36(2)(b), which compensates for the City's discretion to refuse a correction request under section 36(2)(a) by allowing individuals who do not receive favourable responses to correction requests to **require** that a statement of disagreement be attached instead.

The appellant submits that, in order to deal with his appeal from the City's decision not to grant a correction request under section 36(2)(a), this office is required to investigate his allegations that the contents of the records are incorrect, decide what actually transpired, and "correct" the records by destroying them.

The records to which the appellant has objected consist of "incident reports" completed by staff members, and other notes, letters and memoranda containing similar information. Some of this information consists of characterizations of the appellant by staff -- e.g. indications that his behaviour towards staff was "unacceptable" or "inappropriate", that he "became angry", etc. Staff also recorded that they "felt frightened" or had an "uneasy feeling" as a result of their interactions with him.

In this respect, the records have common features with witness statements in other situations, such as workplace harassment investigations and criminal investigations. If I were to adopt the appellant's view of section 36(2), the ability of government institutions to maintain whole classes of records of this kind, in which individuals record their impressions of events, would be compromised in a way which the legislature cannot possibly have intended.

In my view, records of this kind cannot be said to be "incorrect" or "in error" or "incomplete" if they simply reflect the views of the individuals whose impressions are being set out, whether or not these views are true. Therefore, in my view, the truth or falsity of these views is not an issue in this inquiry.

In Order 186, Commissioner Tom Wright set out the requirements necessary for granting a request for correction as follows:

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.

Requirement 1 refers to the information being "personal and private" information. As noted above, I am satisfied that the records contain the appellant's personal information, and therefore, requirement 1 is met.

Requirement 2 refers to the information being "inexact, incomplete, or ambiguous". Above, I indicated that records of the type at issue here cannot be said to be "incorrect" or "in error" or "incomplete" if they simply reflect the views of the individuals whose impressions are being set out. In my view, these same considerations apply to whether the records can be said to be "inexact" or "ambiguous". There has been no suggestion that the records do not reflect the views of the individuals whose impressions are set out in them. The City submits that they are an accurate reflection of the views of these individuals. I find that requirement 2 has not been met.

Moreover, in my view, the contents of these records can best be characterized as statements of opinion, even though they relate to past events. It is well known that individuals often vary widely in their recollection of the same incident. In my view, these records set out opinions about the events which took place, and their correction is precluded by requirement 3.

Accordingly, I will uphold the City's decision to refuse the appellant's correction request. In these circumstances, it is not necessary for me to decide whether destruction is an appropriate means for the correction of personal information under the Act.

OTHER MATTERS

Section 48(1) of the Act

In his representations, the appellant has asked that I make a finding concerning a comment in a letter from the President of the facility, which was copied to him, and which appears to contradict a notation in one of the records at issue. In particular, the appellant has urged me to find, on this basis, that there has been an attempt to mislead this inquiry. This appears to be a reference to the offence created by section 48(1)(e) of the Act (wilfully making a false statement to mislead or attempt to mislead the Commissioner).

The statements to which the appellant refers had no bearing on my decision in this inquiry. While I am not persuaded by the appellant's argument concerning this letter, I expressly decline to make a finding on this issue, and on the other parts of section 48(1) raised by the appellant, because they are not properly before me in this appeal. In my view, a ruling on section 48(1) would properly be made by the court dealing with a charge under that section, should the appellant decide to initiate one.

Other Matters Raised by the Appellant

In his representations, the appellant also asked me to make findings on issues such as whether he engaged in any illegal conduct during the events in question, and whether the director of the facility had any legal right to telephone him at home. These matters are outside my jurisdiction, and entirely irrelevant to the issues I had to decide. I expressly decline to make findings in this regard.

Throughout the inquiry, the appellant has also been most insistent that I hear from witnesses who would, according to the appellant, verify his version of the events mentioned in the records. Most recently, the appellant has written to this office requesting that I not issue this order until he has been given "... the most basic assurance that a proper investigation of the factual issues dealt with in [his] previous correspondence has been conducted". As noted above, it is my view that where, as in this case, the records simply reflect the views of other individuals, the truth or falsity of those views is not an issue in this inquiry. For this reason, I have not called on the witnesses suggested by the appellant. Moreover, in my view, the procedures followed in this inquiry have been sufficient and appropriate to deal with the issues properly before me.

Section 36(2)(b) of the Act

This section, reproduced above, refers to the right of individuals to require that a statement of disagreement be attached to records which contain their personal information.

At the conclusion of his written representations, the appellant indicates that, if the records are not to be destroyed, his six-page letter of rebuttal should accompany them as a statement of disagreement. The City, in its representations, expresses a willingness to treat this letter as a statement of disagreement. Under the circumstances, and because, in my view, section 36(2)(b) exists to accommodate individuals whose correction requests under section 36(2)(a) are denied, I will order the City to attach this letter to the records as the appellant's statement of disagreement.

ORDER:

1. I uphold the City's decision to deny the appellant's correction request.

2. I order the City to attach to the records the appellant's six-page letter of rebuttal, previously sent to the City, as his statement of disagreement, on or before **June 20, 1996** and to send the appellant a written confirmation that this has been done, no later than **June 20, 1996**. I further order the City to send me a copy of this written confirmation no later than **June 20, 1996**.

Original signed by: May 30, 1996
John Higgins
Inquiry Officer