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

ORDER MO-1594

Appeal MA-010142-4

Hamilton Police Services Board

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NATURE OF THE APPEAL:

This is an appeal from a decision of the Hamilton Police Services Board (the Police), made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester, now the appellant, made a request for the correction of personal information under subsection 36(2) of the *Act*. The Police denied the request, stating that they "believe(s) that the letter you provided does not have any personal information that requires correcting".

The appellant appealed from this decision.

The record to which the appellant seeks correction is a specified supplementary report to an occurrence report.

I sent a Notice of Inquiry to the appellant, initially, inviting him to make representations on the facts and issues raised by this appeal. The appellant provided representations dated September 24, 2002, accompanied by a number of attachments, including two affidavits. He also submitted an additional letter dated September 25, 2002, containing some clarifications to his earlier representations. Upon reviewing the appellant's representations, I have decided that it is unnecessary to seek the response of the Police to them.

DISCUSSION:

DOES THE RECORD CONTAIN THE PERSONAL INFORMATION OF THE APPELLANT?

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;

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

The record in question is, as stated above, a supplementary report to an occurrence report, written by a police officer. The officer summarizes certain allegations made by the appellant, actions taken to investigate the allegations, and the disposition of the investigation. I am satisfied, generally, that the record contains the personal information of the appellant. Although certain aspects of the report are not the personal information of the appellant (for instance,

incidental information such as the name of the officer's supervisor), the portions to which the appellant seeks correction contain his personal information.

SHOULD THE PERSONAL INFORMATION BE CORRECTED?

There is a difference in wording between sections 36(2)(a) and (b) which, in my view, 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 requested but not made.

In particular, because section 36(2)(a) only provides a right to **request** a correction, it gives the Police 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 Police by the wording of section 36(2)(b), which compensates for the Police'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 (see Order MO-1518).

I am also reinforced in this view by the discussion in *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission), at pages 709-710:

> Although the report refers to the individual's "right" to correct a file, we do not feel that this right should be considered absolute. Thus, although we recommend rights of appeal with respect to correction requests, agencies should not be under an absolute duty to undertake investigations with a view to correcting records in response to each and every correction request. The privacy protection schemes which we have examined adopt what we feel to be appropriate mechanisms for permitting the individual to file a statement of disagreement in situations where the governmental institution does not wish to alter its record. In particular cases, an elaborate inquiry to determine the truth of the point in dispute may incur an expense which the institution quite reasonably does not wish to bear. **Moreover, the precise criteria for determining whether a particular item of information is accurate or complete or relevant to the purpose for which it is kept may be a matter on which the institution and the individual data subject have reasonable differences of opinion**. (emphasis added)
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> If the request for correction is denied, the individual must be permitted to file a statement indicating the nature of his disagreement. We recommend that an individual who has been denied a requested correction may exercise rights of appeal to an independent tribunal. The tribunal, in turn, could order correction of the file or simply leave the individual to exercise his right to file a statement of disagreement.

Within this context, former Commissioner Tom Wright set out, in Order 186, 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.

I have already determined that the portions of the record to which the appellant seeks correction contain his personal information; therefore, the first requirement has been satisfied.

With respect to the second and third requirements, in Order M-777, former Adjudicator John Higgins discussed the application of section 36(2)(a) to information in "incident reports" (which I find similar to the record before me), as follows:

> 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.
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> 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 behavior 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.
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> 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.
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> 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.
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> . . .
>
> 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.

Similarly, in Order MO-1438, Adjudicator Laurel Cropley stated:

> Although I noted that the entries appear to be consistent with the matters at issue at the time they were created, this finding is not central to the issue to be determined. In this case, the question is, do the statements reflect the views or observations of the case supervisor as they existed at the time they were created?

Adjudicator Cropley found that in the circumstances of that appeal, the information in the records was an accurate reflection of the author's perception of the events as they existed at the time they were created. Further, with respect to the third requirement, she stated:

> [T]he contents of these records can best be characterized as statements of opinion, as they reflect the subjective perspective and views of the authors, and in particular, the case supervisor, with respect to events that have occurred. Although the appellant disagrees, he is in effect asking that his opinion be substituted for that of the case supervisor, which is precluded by the third requirement outlined above. Accordingly, I find that the third requirement has also not been met.

I agree with the analysis in the above decisions, and find it applicable here. It is also worth repeating that the legislature has found it appropriate to give institutions the discretion to decide whether or not to accept a correction request. As proposed by the Williams Commission, an appeal may be brought from an institution's discretionary decision to deny such a request and, on appeal, it is open to this office to order a correction. In order for a correction to be found appropriate, at a minimum, the requirements established by Order 186 must be met. However, there may well be situations where it is not necessary to make a conclusive determination on whether information is "inexact, incomplete or ambiguous", where the exercise of discretion appears reasonable, and the attachment of a statement of disagreement is a sufficient response to a dispute about the correctness of a record.

Thus, certain orders of this office have refused to overturn an institution's denial of a correction request, even where information was arguably "inexact, incomplete or ambiguous". For example, in Order PO-1785, Assistant Commissioner Tom Mitchinson declined to order correction of a date where the "substance of the letter would remain unchanged". In Order 722, former Adjudicator John Higgins declined to order the correction of the spelling of the appellant's name on certain records.

I now turn to the correction request before me.

The portions of the record at issue in this appeal are:

- reference to
- a telephone answering machine tape, and the officer's observations on the condition of the tape;
- reference to the appellant's allegations;
- reference to suspects;
- reference to information provided by the appellant to the Police
- reference to two particular telephone calls;
- the officer's description of his investigation;
- the officer's conclusion about the allegations.

I am satisfied that the information in these portions of the record is not inexact, incomplete or ambiguous, in the whole context of the record and given the purpose for which the information is recorded and, further, that the appellant's suggested corrections reflect a substitution of opinion. In some cases, the record sets out the officer's summary or description of certain facts, such as the nature of the allegations, or the nature of the information provided by the appellant. Such a summary or description necessarily involved some judgment and interpretation of the information before the officer, and in this sense, reflects a combination of objective fact and the subjective perspective of the author. It should be noted that the officer was attempting to condense a large volume of information from the appellant in his description of the allegations, and it is perhaps not surprising that the appellant would have chosen to describe them differently himself. The appellant's disagreements with the manner in which the officer has summarized or recorded the information is, in my view, a reflection of "reasonable differences of opinion" (in the words of the Williams Commission), rather than doubt about the correctness of the information.

In other cases, the record sets out the officer's views or perceptions about a state of events, such as his comment on the condition of a tape. In these cases, the analysis in Orders M-777 and MO-1483 is applicable. From my review of the information before me, there is no reason to doubt that the record is an accurate reflection of the officer's understanding of the state of events being described, and the request for correction is in essence a request to substitute one person's understanding for another.

Even if there are portions of the record which might be said to be "inexact" or "ambiguous" when viewed in isolation (such as the use of the term "the three suspects" instead of "three suspects", or the use of the word "culminating"), when considered in the context of the whole record these portions are not misleading and do not alter the substance of the information presented.

Finally, some of the portions to which the appellant seeks correction are clearly the opinion of the officer (such as his characterization of his investigation as "thorough", or his conclusion about the validity of the appellant's allegations), and the appellant is in effect asking that his opinion be substituted for that of the officer.

In sum, having regard to the requirements established in Order 186 as well as the approach applied in the prior orders cited above, I am not persuaded that the Police have exercised their discretion inappropriately in refusing correction to the record. The appellant is at liberty to submit a statement of disagreement under section 36(2)(b) of the *Act*.

ORDER:

I uphold the decision of the Police to deny the appellant's correction request.

Original signed by: November 29, 2002
Sherry Liang
Adjudicator