



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2125

Appeal PA-020112-1

Ontario Civilian Commission on Police Services



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NATURE OF THE APPEAL:

The Ministry of Public Safety and Security (the Ministry), formerly the Ministry of the Solicitor General, received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the correction of certain records contained in a file held by the Ontario Civilian Commission on Police Services (OCCOPS). The correction request, made pursuant to section 47(2)(a) of the *Act*, was contained in the requester's February 9, 2002 letter to the Ministry and was described in two parts, as follows:

1. The decision letter dated August 21, 2001 respecting the outcome of the OCCOPS review of a decision of the Hamilton Police (the Police) is inaccurate as the original complaint made to the Police was not limited to the conduct of a single named officer, but rather, involved other officers as well as the service provided to the requester by the Police. The August 21, 2001 letter describes the appellant's complaint as having been made against one named officer. The appellant submits that the characterization of the complaint as being limited to a review of the conduct of only one named officer is, accordingly, inaccurate, in his view.
2. The requester's address indicated in the August 21, 2001 and a subsequent letter dated September 12, 2001 are incorrect.

The requester also asked that the Ministry notify any parties to whom the records may have been disclosed of the fact that corrections to it were requested.

It should be noted that the Minister of Public Safety and Security is the "head" of OCCOPS for the purposes of the *Act*, and that the Ministry processes requests and appeals made under the *Act* on behalf of OCCOPS, which is to be considered the institution which received the request for correction of personal information under the *Act*.

The Ministry advised the appellant that the records would not be corrected pursuant to his request as, in its view, "no errors or omissions are evident in the records". The requester, now the appellant, appealed this decision.

During the mediation stage of the appeal, the Ministry confirmed that it would not make the corrections requested in part one of the appellant's correction request. With respect to the second part of the correction request, the Ministry indicated that it was prepared to attach a memorandum to each of the two records at issue addressing the specific item the appellant wished to have corrected in them (an incorrect address). The Ministry also advised the appellant that it would notify the three individuals who have received a copy of the correspondence of the correction.

The appellant advises that he is not satisfied with the wording contained in the memorandum which the Ministry proposes be attached to the records. As a result, the Ministry did not forward the correction information to the three individuals who have received copies of it.

Accordingly, the correction request contained in part one of the appellant's February 9, 2002 letter remains at issue. In addition, the appellant takes issue with the wording of the

memorandum prepared by the Ministry addressing the second part of his correction request, claiming it to be inadequate.

I provided a Notice of Inquiry to the Ministry seeking its representations on the facts and issues contained therein. The Ministry provided me with representations in response to the Notice, which were shared with the appellant, in their entirety. The appellant also made submissions in response to the Notice.

RECORDS:

The records at issue consist of two letters addressed to the appellant from OCCOPS dated August 21, 2001 and September 12, 2001.

DISCUSSION:

DOES THE RECORD CONTAIN THE PERSONAL INFORMATION OF THE APPELLANT?

Sections 47(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 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

Section 2(1) of the *Act* provides, in part, that "personal information" means recorded information about an identifiable individual. The August 21, 2001 letter which the appellant wishes to have corrected is a letter addressed to him by OCCOPS setting out the disposition of request for a review made by the appellant with respect to a complaint made against the Police. The second letter, dated September 12, 2001, simply re-iterates the information in the first letter. The records contain the appellant's name and a former address and set forth the decision of the review panel regarding the complaint which he brought against the Police. In my view, these records contain the personal information of the appellant within the definition of that term contained in sections 2(1)(d) and (f) of the *Act*.

SHOULD THE PERSONAL INFORMATION BE CORRECTED?

In Order 186, former 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.

I adopt this test for the purposes of the present appeal.

Representations of the Ministry

Part One of the Request

The Ministry submits that:

. . . there is no substantive error or omission in respect to the content of the August 21, 2001 letter. The intent of this letter was not to provide a detailed description of the appellant's complaint but only to communicate the decision of the OCCPS to confirm the decision of the Hamilton Police Service dated June 6, 2001.

. . . it is not appropriate to use the correction to personal information provisions of the *FIPPA* as a mechanism to require the OCCPS to revise the content of the August 21, 2001 letter in the circumstances of this appeal. The Ministry submits that a statement of disagreement would achieve the appellant's objectives in terms of the correction request.

Part Two of the Request

The Ministry indicates that the letters addressed to the appellant were sent to the wrong address in error and that they were redirected and received by the appellant once this oversight had come to the attention of OCCOPS staff. It further indicates that the appellant was advised that the Ministry agreed to make the requested correction to the letters by attaching to them a Memorandum to File setting out the fact that they had originally been sent to the wrong address but had been redirected and received by the appellant. The Ministry also agreed to send copies of the Memorandum to File to the other recipients of the August 21, 2001 letter. However, as noted above, the appellant objected to the contents of the Memorandum to file.

Representations of the Appellant

Part One of the Request

The appellant has made extremely lengthy and detailed submissions to me concerning what he perceives to be an inaccurate and incorrect characterization of the nature of his original complaint. The appellant has provided with his representations copies of various documents received by him from OCCOPS which describe the nature of his complaint as involving "Members of the Hamilton Police Service". He has also provided me with a detailed description of the manner in which his complaint was processed by OCCOPS and its characterization

throughout that process as involving more than one member of the Police. The appellant argues that this evidence supports his contention that the description of the nature of his complaint in the August 21, 2001 letter is both inaccurate and incorrect.

The appellant also has made extensive submissions in support of his view that the correction request would not be simply a “substitution of his opinion for that of the author” of the August 21, 2001 letter.

He summarizes his position as follows:

I have provided very strong evidence that my complaint was against the Hamilton Police Service with reference to the conduct of a number of officers, and not just against a single officer. My submissions to OCCOPS, prior to its decision to remit my complaint back to the Police for further action, and prior to the inception of the police investigation, explicitly complained of the conduct of more than one officer.

...

. . . there is nothing in the Ministry’s representations, neither in its direct statements nor in the documentation it cites, to support the claim that my complaint was ‘against [the named officer]’.

Part Two of the Request

Again, the appellant has gone to great lengths to set forth in detail what he describes as the “significance of this part of the request”. In addition to setting out what he perceives to be the reasons behind the misaddressing of his correspondence from OCCOPS, the appellant also provides the reasons behind his refusal to accept the Memorandum to File which the Ministry is prepared to attach to these records in an attempt to remedy the error.

In my view, no useful purpose would be served by reproducing the arguments raised by the appellant with respect to the second part of his correction request.

Findings

The First Request

From the outset, I note that the reference line in the August 21, 2001 letter to the appellant from OCCOPS read as follows:

**Your Complaint against Hamilton Police Service
Ontario Civilian Commission on Police Services File No [a file number]**

The body of the letter then describes the request to OCCOPS for a review of a decision by an Inspector with the Hamilton Police “regarding your complaint against [a named officer] of the

Hamilton Police Service.” The letter itself advises the appellant that that “there are not sufficient grounds or reasons to change the decision” of the Hamilton Police in this matter.

I have found that the two records described above which the appellant is seeking to have corrected contain his personal information, thereby satisfying the first part of the test described in Order 186.

In Order PO-2079, a decision involving the same institution and appellant as is the case in the present appeal, Adjudicator Sherry Liang set out in some detail the rationale behind the provisions in the *Act* regarding the correction of personal information. She found that:

There is a difference in wording between sections 47(2)(a) and (b) which, in my view, is significant. Section 47(2)(a) indicates that individuals may **request** correction of their personal information, while section 47(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 47(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 47(2)(a) confers a discretionary power on the Police by the wording of section 47(2)(b), which compensates for the Police’s discretion to refuse a correction request under section 47(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)

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.

In my view, these comments apply equally to the appeal before me. The correction sought by the appellant to the August 21, 2001 letter is not, in my view, warranted. The letter describes the disposition of the appellant's request for a review of a decision of the Hamilton Police respecting a complaint filed by the appellant. The letter is clear and unambiguous as to the manner in which OCCOPS disposed of the review request. In my view, the reference line in the letter clearly indicates that it related to the appellant's complaint against the Hamilton Police Service. While the reference in the text of the letter to a complaint against an individual officer may have only represented part of the actual complaint filed by the appellant, there was no uncertainty about how OCCOPS resolved the request for review.

I accept the Ministry's arguments that there is no *substantive* error in the letter. It was not intended to serve as a detailed statement of the complaint, rather, it was meant to advise the appellant of the disposition of the complaint. That disposition was stated clearly and unambiguously.

I also agree with the suggestion by the Police that this is an appropriate case where the appellant may chose to exercise his right to file a statement of disagreement under section 47(2)(b) of the *Act*. The excerpts referred to above from the Williams Commission Report *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) also support this view. I find that the present appeal represents one of those correction requests where the institution is not under an "absolute duty" to undertake investigations with a view to correcting information contained in its record-holdings. I specifically find that, in the present circumstances, the appropriate mechanism to address the appellant's concerns about the accuracy of the information in the record ought to be the filing of a statement of disagreement under section 47(2)(b).

The Second Request

As noted above, the Ministry has proposed to attach a Memorandum to File describing the circumstances surrounding OCCOPS misaddressing the two letters to the appellant. In my view, the language suggested by the Ministry is perfectly appropriate and I reject the arguments made by the appellant that they do not convey all of the facts. The appellant's objections to the wording of the Memorandum to File are without merit and need not be addressed further in this decision. I will order the Ministry to attach the proposed Memorandum to File dated September

17, 2002 to the letters dated August 21, 2001 and September 12, 2001 which form the records at issue in this appeal. In addition, I will order the Ministry to send a copy of the Memorandum to the three individuals who were copied on the August 21, 2001 correspondence. In my view, this will resolve the appellant's correction request with respect to this portion of the appeal.

ORDER:

1. I uphold the Ministry's decision to deny the appellant's correction requests.
2. I order the Ministry to attach its Memorandum to File dated September 17, 2002 to the records at issue in this appeal and to send a copy of the Memorandum to the three individuals who were copied on the August 21, 2001 correspondence within thirty (30) days of the date of this order.

Original signed by: _____
Donald Hale
Adjudicator

_____ March 11, 2003 _____