



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1624

Appeal MA-020017-2

London Police Service



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NATURE OF THE APPEAL:

The London Police Services Board (the Police) received a request for the correction of certain personal information about the requester which appears in its record-holdings. This request for correction was made pursuant to section 36(2)(a) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). When the Police asked the requester to supply the correct information to amend the records, the requester refused to do so. The Police then declined to make the corrections to the records.

The requester, now the appellant, appealed the decision of the Police not to correct the information contained in its record-holdings. The mediation of the appeal was not successful and the appeal was moved to the adjudication stage of the process. I decided to seek the representations of the appellant, initially. The appellant submitted representations, which were then shared with the Police, in their entirety, along with a copy of the Notice of Inquiry. The Police made representations which were also shared with the appellant, who was invited to make additional submissions by way of reply. The appellant did not do so.

The sole issue for adjudication in this appeal is whether the Police are obliged to correct the reference in its record-holdings to the fact that the appellant appears to be “living in his car.”

RECORDS:

There are 37 references contained in 157 pages of records to the appellant “living in his car” contained primarily in the “remarks” section of the records. The Police indicate that this reference represents a single entry which was made in its computerized information systems and that every time a “General Occurrence Hardcopy” or “Street Check/Field Interview Hardcopy” is generated, the personal information data of the individual who is the subject of the report, in this case the appellant, is included in the document. It is this data which contains the reference to the appellant “living in his car” in the place of an actual street address.

DISCUSSION:

DOES THE RECORD CONTAIN THE PERSONAL INFORMATION OF THE APPELLANT?

Section 36(2)(a) of the *Act* provides for correction requests relating to one’s own *personal information*. This section states:

Every individual who is given access under subsection (1) to personal information is entitled to,

request correction of the personal information where the individual believes there is an error or omission therein;

Section 2(1) of the *Act* provides, in part, that “personal information” means recorded information about an identifiable individual. I have reviewed the contents of the records which the appellant seeks to have corrected. The records contain information about the appellant including his age, national origin, race, age, sex, occupation, appearance, criminal record, driver’s license number

and other identifying information. Although portions of the records contain information that is not personal, I find that the portions which the appellant seeks to have corrected do qualify as personal information within the meaning of sections 2(1)(a), (c) and (h).

SHOULD THE PERSONAL INFORMATION BE CORRECTED?

Introduction

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 Appellant

In response to the Notice of Inquiry and the questions posed therein, the appellant submits that:

[he]did not refuse to provide the London Police with correct information when requested by the London Police after filing a request for the correction of personal information.

. . . the London Police were not satisfied with the information which he provided them, since it did not include a precise street address.

As a matter of law, the appellant submits that he is not required to supply new information, in amendment of incorrect information.

...

[an] individual who is given access to personal information is entitled to have it corrected solely on the basis of his belief that there is an error or omission. There is no requirement for the supply of additional or alternative information.

The word 'correction' used in s. 36 implies a change affected to information, whether by simple deletion, or the replacement thereof, or the adding thereto.

...

Such information contained in the London Police record is false, incorrect and deceptive.

The basis of the request for correction is that the information is incorrect, vehemently prejudicial and deceptive.

The appellant has informed the London Police as to what may be appropriately substituted for the incorrect information. The appellant requests that the incorrect information be replaced with either:

- a) nothing;
- b) that the appellant resides in London; or
- c) that the appellant resides at no fixed address

The appellant would be satisfied if the information he considers inaccurate were replaced in the manner indicated above.

As a matter of law, an appellant is not required to provide proof of the institution's information's inaccuracy to request its correction. On the statutory construction, only a belief is required.

In the alternative, the appellant submits that a verbal or written statement of the appellant is sufficient in regards to the standard of proof.

Furthermore, the appellant notes that evidence which may tend to establish that the inaccurate information about the appellant may have been accurate at some point in the past has no relevance in this matter, since the concern addressed is whether the inaccurate information may be retained by the London Police as being current or presently accurate, which it is not.

The appellant states that he is not 'living in his car', and does not admit to ever 'living in his car'.

The appellant has also raised a number of other issues which do not relate directly to the correction request which is the subject of this appeal.

Representations of the Police

In their submissions, the Police responded to each of the arguments raised by the appellant. The Police indicate that, when asked what was the correct information to be inserted in place of the "incorrect" personal information in the records, the appellant stated that "he would rather not provide that information, at this time." The Police take the position that "any person requesting the correction of their personal information must provide evidence that the information is incorrect, before any *consideration* would be given to the correction of the information". [emphasis of the Police] They submit that while the appellant is entitled to request correction of

personal information, he is not entitled to have it corrected solely on the basis of his belief that there is an error or omission.

The Police also point out that the existing records indicate that the current address shown for the appellant is “no fixed address Ontario” and that it is only in the remarks section of some of the records where reference is made to the fact that the appellant is “living in his car”. It suggests that the listing of the appellant’s address as being “no fixed address Ontario” is in keeping with his suggested correction.

The Police agree with the position taken by the appellant that he is not required to submit “proof” of the inaccuracy of the information which he seeks to correct in order to make a request for correction, “but where a requester does not provide evidence to substantiate the claim that the information is incorrect, the institution, clearly, is not required to make the correction.” It further submits that the appellant has not provided any “proof” of the incorrect nature of the information. It also argues that information collected in the past about an individual retains its relevance.

The Police indicate that they will not consider “replacing, changing or deleting information collected during the course of law enforcement based solely on the fact that a member of the public requests this be done.” It suggests that “there must be clear evidence to indicate an error has been made before any consideration would be given.” The Police also rely on previous decisions of the Commissioner’s office, particularly Order M-777, which have determined that the decision to correct personal information is discretionary on the part of the institution holding the records and that where the institution chooses not to exercise its discretion in favour of making a correction, the requester has the option of requiring it to attach a Statement of Disagreement to the record.

The Police conclude their arguments as follows:

. . . the appellant provides no evidence to support his claim that the information at issue is in error. It is the position of the London Police Service that the personal information at issue is not considered to be in error and may also be considered to be the opinion of the police officer[s]. It is the decision of the London Police Service that the comments, “LIVING IN HIS CAR” contained in the “Remarks” field of the subject’s particulars are not in error and will not be replaced, altered or deleted, and, further, clearly there would not be any replacing, altering or deleting parts of the police statements found within the body of some of the police reports. However, as stated in my decision letter of May 17, 2002, the appellant may wish to have a ‘Statement of Disagreement’ attached to the record.

Findings

In Order PO-2125, I reviewed some recent decisions regarding the nature of the equivalent of section 36(2)(a) in the provincial *Act* respecting the obligations of institutions receiving requests for the correction of personal information. I found that:

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.

The Police have indicated that they have specifically asked the appellant to provide them with evidence to substantiate his position that the personal information contained in the "Remarks" section of the records is inaccurate or incorrect. The appellant simply states that he wished to have the references in that portion of the records amended to read either nothing, no fixed address or residing in London. I note that the address field included in a different section of the records in fact already indicates that the address of the appellant is "no fixed address".

In my view, the records simply indicate the views of the officers who included this information initially in the Police databank. In the opinion of the officers who entered the information, the appellant appeared to be "living in his car". The appellant objects to the accuracy of that statement. I note that it appears in the "Remarks" field of the database, along with other information recorded by the officers.

The Police have provided me with their reasons behind their belief that the information is accurate and their decision to exercise their discretion not to correct it in accordance with the wishes of the appellant. I have also received the representations of the appellant describing his reasons for wanting it corrected. In my view, this is precisely one of those cases envisioned by the drafters of the Williams Commission Report where an institution and a data subject, in this case the appellant, have a difference of opinion with respect to the accuracy of certain personal information which has found its way into the Police record-holdings. I find that the present appeal also represents one of those correction requests where the institution is not under an "absolute duty" and is therefore not obliged to undertake investigations with a view to ensuring that the information in the record is accurate. For this reason, I find that this is not a proper case for ordering the Police to correct the personal information.

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 a request that the Police attach a statement of disagreement to the records under section 36(2)(b).

ORDER:

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

Original Signed By: _____

Donald Hale
Adjudicator

_____ March 19, 2003