ORDER MO-1775

Appeal MA-020197-2

Hamilton Police Services Board

NATURE OF THE APPEAL:

The requester made a request to the Hamilton Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for correction of "inaccurate personal information" in a record. More specifically, the requester asked the Police to make a number of corrections to a decision letter he received from a named police inspector (the inspector). The decision letter responded to a complaint the requester had previously made against the Police.

The Police issued a decision to the requester denying the request, claiming that section 52(3) (labour relations and employment) excludes the record from the scope of the *Act*.

The requester (now the appellant) appealed the Police's decision.

During mediation, the Police issued a new decision to the appellant, again denying his request for correction. In that decision, the Police took the position that the record does not contain personal information.

Mediation did not resolve this appeal, and the file was transferred to adjudication. This office sent a Notice of Inquiry to the appellant, initially, outlining the facts and issues and inviting the appellant to make written representations. The appellant submitted representations in response. After reviewing the appellant's representations, I decided that it was not necessary to seek representations from the Police.

RECORD:

The record is a four-page letter from the inspector to the appellant.

BRIEF CONCLUSION:

The appellant has not provided a sufficient basis for me to reverse the Police's decision to refuse to correct the record.

DISCUSSION:

SHOULD CORRECTIONS BE MADE TO THE RECORD?

General Principles

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 36(2) permits individuals to seek correction of their own personal information:

> 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; and
>
> (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

Sections 36(2)(a) and (b) provide two different remedies for individuals wishing to correct their own personal information. Section 36(2)(a) entitles individuals to *request* that their personal information be corrected; institutions have the discretion to accept or reject a correction request. Section 36(2)(b), on the other hand, entitles an individual to *require* an institution to attach a statement of disagreement to the information at issue when the institution has denied the individual's correction request. Thus, section 36(2)(a) is discretionary, whereas section 36(2)(b) is mandatory.

The following passage from *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vol. 3 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) is helpful in understanding the purpose and operation of the *Act*'s correction provisions:

> The ability to correct information contained in a personal record will be of great importance to an individual who discovers that an agency is in default of its duty to maintain accurate, timely and complete records. In this way, the individual will be able to exercise some control over the kinds of records that are maintained about him and over the veracity of information gathered from third-party sources.
>
> 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.
>
> 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. (pp. 709-710)

One of the purposes of section 36(2) is to give individuals some measure of control over the accuracy of their personal information in the hands of government. Both the *Act* and the Williams Commission Report support the view that the right to correction in section 36(2) is not absolute.

This office has previously established that in order for an institution to grant a request for correction, the following three requirements must be met:

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 (Orders 186, P-382).

In each case, the appropriate method for correcting personal information should be determined by taking into account the nature of the record, the method indicated by the requester, if any, and the most practical and reasonable method in the circumstances (Order P-448).

Does the record contain the appellant's personal information?

Under section 2(1) of the *Act*, personal information is defined, in part, to mean recorded information about an identifiable individual, including the individual's address (section 2(1)(d)), or the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual (section 2(1)(h)).

The appellant submits that the record contains his own personal information. Among other things, he submits that "the entire record refers to [his] police complaint." He submits that the Police's decision letter was written to him personally and that the information in the letter is "about" him within the meaning of section 2(1).

The record contains detailed information about the appellant's complaint and the surrounding circumstances, all of which can be considered to be "about" the appellant. I find that the entire record constitutes the appellant's personal information.

The first requirement for granting a correction request has therefore been satisfied. I will now turn to the second requirement.

Is the record inexact, incomplete or ambiguous?

In his nineteen-page request for correction, the appellant asked the Police to make twenty-one specific corrections to the record. In his representations to this office, he elaborates on his initial request, and he retracts one of his specific correction requests. He also refers to and relies upon additional documentary evidence.

The appellant seeks to make corrections to almost every paragraph in the record. The corrections include adding and deleting text, and changing some of the inspector's wording. The appellant submits:

> … the information I deem to be inaccurate is either inexact, incomplete or ambiguous, on the basis of documentary evidence that was provided to the Police, and ought to have been considered by those responsible for the decision letter …

Based on the materials before me, I am not persuaded that the information in the record is inexact, incomplete or ambiguous.

The record is a formal response from the Police to the appellant's complaint. It describes the complaint as well as the inspector's understanding of the events and issues in question, and it concludes with the inspector's findings. It sets out the pertinent facts and issues from the inspector's own perspective and in his own words. Altogether, the record explains how the inspector arrived at his findings. It does not purport to provide an exhaustive account of every detail pertaining to the appellant's complaint. Although the appellant may disagree with the inspector's views and impressions of the matter, that alone does not make the letter inexact, incomplete or ambiguous (see also Orders M-777, MO-1594, PO-2079).

The only information in the record that is arguably inexact, incomplete or ambiguous is the statement of the appellant's address near the top of the first page. The appellant has provided evidence that his address at the relevant time was different from that appearing in the record. Based on this evidence, I find that it is possible that the record misstates the appellant's address. Even if this is the case, however, I find that the Police did not err in exercising their discretion not to correct this information. Correcting the appellant's address would not change the substance of the record in any meaningful way (see Orders PO-1785, PO-2079, MO-1594). In the circumstances, the "most practical and reasonable" method of redressing any such error would be for the appellant to require the Police to attach a statement of disagreement to the record pursuant to section 36(2)(b) (see Order P-448, referred to above).

Because the appellant has not met the second requirement for granting a correction request under section 36(2)(a), it is not necessary for me to address the third requirement.

Finally, in his representations the appellant requests, as an alternative remedy, an order requiring the Police to attach a statement of disagreement to the record. The appellant did not specifically ask the Police to attach such a statement in his initial correction request, and he indicates in his representations that he may wish to draft a statement that is distinct from his correction request. In the circumstances, I will make no ruling regarding any statement of disagreement in this order. Notwithstanding my decision to deny the appellant's correction appeal, however, it is still open to him to exercise his right under sections 36(2)(b) and (c) to require the Police to attach a statement of disagreement to the record and make the appropriate notifications.

ORDER:

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

March 31, 2004

Shirley Senoff
Adjudicator