

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## **ORDER MO-2741**

Appeal MA10-175

Peel Regional Police Services Board

May 28, 2012

**Summary:** The police received correction requests from an individual which were denied in large part. The appellant submitted a statement of disagreement which the police attached to two occurrence reports. The police refused to attach complete versions of subsequent additional statements of disagreement, but did agree to attach portions of an additional statement to a third occurrence report. This order upholds the decision of the police to deny the correction requests in part, and also finds that the police were entitled to refuse to attach complete copies of the additional statements of disagreement.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 36(2)(a) and (b).

**Orders and Investigation Reports Considered:** 186, P-382, PO-2258, M-777, MO-1438, PO-2549, MO-1700.

### **OVERVIEW:**

[1] The appellant submitted two correction requests on March 9 and April 1, 2010 to the Peel Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) seeking to have certain information deleted from occurrence reports, and other information added.

[2] In response to the requests, the police issued two decisions on March 19 and April 12, 2010, respectively, which identified occurrence reports #09-094682 and #09-

219512 as the two relevant records. In its decision of March 19, the police advised that they added the requested correction to the contact information contained in the portion of #09-219512 relating to an "involved person" and provided a copy of the revised record. The police also stated that the investigating officer reviewed the file and determined that no other changes or deletions would be made to the two records in question. The police advised the appellant that she could consider submitting a statement of disagreement, pursuant to section 36(2) of the *Act*, which requires that a statement of disagreement be attached to the information reflecting any correction that was requested but not made.

[3] In response to the April 1, 2010 correction request, which overlapped with the earlier one, the police's April 12, 2010 decision referred to their March 19 decision and advised that the police would not be making any other changes or deletions to the two records. The police advised the appellant once again that she could consider submitting a statement of disagreement, pursuant to section 36(2) of the *Act*.

[4] The police's two decisions of March 19 and April 12, 2010 were both appealed to this office, and the current appeal was opened to deal with both of these decisions. This office appointed a mediator to explore the possibility of resolution.

[5] As the issues in the appeal were considerably clarified or amended during the course of mediation, I find it useful to refer to the following summary, taken from the mediator's report:

*June 24, 2010 Statement of Disagreement*

On June 24, 2010, the appellant submitted a statement of disagreement to the police addressing records relating to occurrence reports dated June 1, 2009, December 2, 2009 and to an incident which took place on April 1, 2010.

*June 30, 2010 Statement of Disagreement Decision*

In response, the police issued a decision dated June 30, 2010 stating that "The following occurrences have been updated to include your statement of disagreement and are attached for your information; occurrence 09-094682 and 09-219512."

The Police also advised that:

Part of your statement of disagreement is for corrections to an occurrence which you have never requested. This occurred in April 2010 which is clearly after your initial request for information was submitted. Since you have not received this occurrence, we are unable to make any

corrections or add a statement of disagreement and therefore, this part of your letter has been denied.

The appellant then made several other requests under the *Act* for access to various police records and, as a result, received additional records.

*November 17, 2010 Correction Request*

On November 17, 2010, the appellant requested corrections relating to occurrences PR09094682, PR09219512, Supplementary Report PR09219512 and to records relating to an incident which occurred in April of 2010. The appellant also stated that she wants the police to make certain corrections and deletions to "... all occurrences".

*December 16, 2010 Correction Request Decision*

The police responded with a correction request decision dated December 16, 2010 advising that they will change the identification of the appellant's race and that they will change some information relating to the appellant's telephone number. The police went on to state that,

...there has already been a statement of disagreement added to occurrence PR09094682 and PR09219512. Since you have not requested any new information be changed and have not provided us with a new statement of disagreement differing from the one already added, we are not doing anything further in relation to these occurrences.

The police also advised the appellant that she may wish to consider submitting a statement of disagreement, as per section 36(2) of the *Act* in relation to occurrence PR10084537, dated May 19, 2010.

*February 1, 2011 and February 7, 2011 Statements of Disagreement*

The appellant subsequently sent two statements of disagreement to the police, both of which deal with occurrence reports 07-033963, PR-09094734, PR-09219512 and PR-10084537. The February 7, 2011 statement of disagreement also notes Supplementary Reports PR-10084537 and PR-09219512

*April 7, 2011 Statement of Disagreement Decision*

In response, the police issued a decision as follows:

... Upon reviewing these numerous faxes it was found that some of the occurrences you were requesting a statement of

disagreement be added to, already had a statement of disagreement from you in them. Also upon review, it was found that what you were requesting to be added were not truly statements of disagreement, but your opinion on matters which were not disagreeing with anything in particular. These were very ambiguous requests and due to that fact, we were unable to determine what exactly you wanted added to what occurrence.

Due to the fact that we have already added numerous statements of disagreement to various occurrences for you and the fact that there is no new information at this time, I would like to advise you that we will not be adding anything further to any of the occurrences involving yourself.

However, as per our letter to you on December 16, 2010, I have added your statements of disagreement to occurrence 10084537. This statement of disagreement has been reviewed to only include the actual statements from you and does not include questions or opinions from yourself. ...

[6] The decisions issued by the police respecting her requests for correction, as well as the police's April 7, 2011 correspondence regarding the most recent statements of disagreement submitted, were not satisfactory to the appellant and she advised the mediator that she wished to proceed to adjudication. Accordingly, since it was not possible to resolve this appeal through mediation, it was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*.

[7] The adjudicator assigned to conduct the inquiry initially invited representations from the appellant, who provided representations that she consented to sharing in their entirety with the police. The police then submitted representations in response. Based on my review of the submissions received, it was not necessary to seek additional representations from the appellant.

[8] Much of the appellant's representations consist of an expansion of her requests for correction. The police provided submissions in response to these representations which are akin to a decision on her expanded request and in the discussion below, I will also consider whether the police properly responded to this expanded request.

## **DISCUSSION:**

### **Correction of personal information**

[9] Sections 36(2)(a) and (b) of the *Act* 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;

[10] Section 36(1) gives an individual a general right of access to his or her own personal information held by an institution. Section 36(2) gives the individual a right to ask the institution to correct the personal information. If the institution denies the correction request, the individual may require the institution to attach a statement of disagreement to the information.

[11] Where the institution corrects the information or attaches a statement of disagreement, under section 36(2)(c), the appellant may require the institution to give notice of the correction or statement of disagreement to any person or body to whom the personal information has been disclosed within the year before the time the correction is requested or the statement of disagreement is required.

[12] The right to correction in section 36(2) is not absolute. Section 36(2)(a) entitles individuals to *request* that their own personal information be corrected; institutions have the discretion to accept or reject a correction request. On the other hand, where a request for correction is denied, section 36(2)(b) entitles the individual to *require* an institution to attach a statement of disagreement to the information at issue.

[13] In order for an institution to grant a request for correction, all three of the following requirements must be met:

1. the information at issue must be personal and private information;
2. the information must be inexact, incomplete or ambiguous; and
3. the correction cannot be a substitution of opinion [Orders 186 and P-382].

### ***Personal Information***

[14] It is not disputed and, on my review of the occurrence reports and supplementary reports at issue, I find that they contain the personal information of the appellant and other identified individuals.

### ***Grounds for correction***

[15] For section 36(2)(a) to apply, the information must be "inexact, incomplete or ambiguous". Section 36(2)(a) gives the institution discretion to accept or reject a correction request. Thus, even if the information is "inexact, incomplete or ambiguous", this office may uphold the institution's exercise of discretion if it is reasonable in the circumstances [Order PO-2258].

[16] Records of an investigatory nature cannot be said to be "incorrect", "in error" or "incomplete" if they simply reflect the views of the individuals whose impressions are being set out. In other words, it is not the truth of the recorded information that is determinative of whether a correction request should be granted, but rather whether or not what is recorded accurately reflects the author's observations and impressions at the time the record was created [Orders M-777, MO-1438 and PO-2549].

[17] In her representations, the appellant takes issue with the contents of occurrence reports generated during their investigation of complaints made by her. She asks for "an expungement of all statements in all occurrences dating to June 1, 2009" and their replacement with a statement she provides with her representations. The statement contains the appellant's description of an individual the appellant alleges assaulted her and her son, and her account of the assaults. She describes previous interactions with the alleged assailant, makes allegations of criminal misconduct, and describes in detail certain events which took place on November 30, 2009 and April 1, 2010.

[18] In their representations, the police describe the appellant's numerous overlapping requests for correction and numerous submissions of overlapping statements of disagreement. They state that the officers involved reviewed their notes upon receipt of the correction requests. Some personal information pertaining to the appellant was corrected in the occurrence reports. Other aspects of the requests were denied as the officers believed the information was accurate in reflecting the information provided by the appellant to the officers.

[19] The police submit that some of the appellant's correction requests were denied as they repeated earlier requests, and argue that the information in the reports is not inexact, incomplete or ambiguous. The police take the position that the appellant's requests amount, in effect, to a substitution of opinion.

### *Findings*

[20] Previous orders of this office have considered the issue of correction requests for records similar in nature to those at issue in this appeal, that is, records in which the police have recorded information reported to them about specific events by individuals, including allegations about the actions of other individuals. In Order M-777, for example, former Senior Adjudicator John Higgins dealt with a correction request involving a "security file" which contained incident reports and other allegations concerning the appellant in that case. Former Senior Adjudicator Higgins stated:

...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 municipal equivalent of section 47(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 [emphasis added].

...

... 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.

[21] In PO-2549, in which similar issues were raised, former Adjudicator Daphne Loukidelis considered a correction request involving an occurrence report. In concluding that there were no grounds for correction, she emphasized that:

"it is not the truth of the recorded information that is determinative of whether a correction request should be granted, but rather whether or not what is recorded accurately reflects the author's observations and impressions at the time the record was created."

[22] To the extent that such an occurrence report reflects the investigating officer's views and the information gathered at the time of the investigation, adjudicator Loukidelis found that such information cannot be characterized as "incorrect", "in error" or "incomplete", as contemplated by the second part of the test for granting a correction request.

[23] In this appeal, I find it useful to refer to The Williams Commission Report (*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)) in understanding the purpose and operation of the *Act's* correction provisions. That Report states, at pages 709-710:

...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]

[24] I have reviewed the appellant's request for correction, and the responses by the police. I find that the police reasonably concluded, with respect to certain matters, that the reports were not "inexact, incomplete or ambiguous", as they simply reflected the views of the officers. As such, the request for correction amounts to a substitution of opinion. An example of this is the appellant's objection to an officer's observation that she exhibited mental instability.

[25] In her representations, the appellant also objects to parts of the reports that paraphrase her statements to the police, and believes they amount to misrepresentations of her concerns. Examples are statements in the reports that the appellant believed the police were engaged in a conspiracy against her, and that she believed an individual was part of a group intent on ruining her life. I find that these portions of the records are also not "inexact, incomplete or ambiguous" in that they reflect the police officers' interpretation of the appellant's statements, and are a mixture of opinion and fact as understood by the officer.

[26] Some of the "corrections" sought amount to the appellant's desire to add more detail about the events than is present in the reports. They also describe the appellant's views about what she perceives as an uncaring or dismissive attitude exhibited by the police officers. These parts of her correction requests reflect her dissatisfaction with the police investigation of her complaints and her belief that they were negligently conducted. I find that these are not issues of correction of her personal information as much as issues about her perception of the quality of the police services she received.



[27] Further, it is also clear that some of the corrections sought by the appellant do not relate to her own personal information, such as where she seeks to provide information about two alleged assailants.

[28] As I have indicated, the appellant requested that the entirety of certain reports be deleted and replaced by her own statements. This remedy clearly extends beyond the intent and scope of the correction provision. It is not the purpose of section 36(2) of the *Act* to allow an individual to replace police reports with his or her own report, thus usurping the function of police officers in responding to complaints, and recording their observations, impressions and actions in the form of occurrence reports.

[29] In sum, in the circumstances of this appeal, I uphold the decision by the police to deny, in part, the correction request.

### **Statement of disagreement**

[30] Upon request, section 36(2)(b) requires an institution to attach a statement of disagreement to a record containing information reflecting any correction that was requested but not made.

[31] As indicated above, the police agreed to attach a statement of disagreement to two occurrence reports. They denied subsequent requests to attach additional statements of disagreement on the basis that they consisted of differences of opinion rather than fact, that the matters in the additional statements were already addressed in the previous statements and that the additional statements were "convoluted" and unclear. However, during the course of mediation, the police agreed to attach a statement of disagreement to an additional occurrence report. Rather than attaching the entirety of the appellant's additional letters, which were voluminous, the police decided to attach excerpts from those letters in which issue is taken with specific aspects of the occurrence report.

[32] In MO-1700, Adjudicator Frank DeVries discussed the process to be followed by an institution which is required to attach a statement of disagreement, and the nature of the information to be included in such a statement. In addressing the issues, the adjudicator rejected a requester's contention that, because it is "the individual who is requiring that a statement of disagreement be attached to certain information, it is clearly the individual's decision what his or her statement will contain". Rather, he concluded, "the issue to be decided is whether the statement of disagreement reflects any correction requested by the requester but not made by the institution."

[33] In this appeal, the police accepted a statement of disagreement and have attached it to two occurrence reports. On my review of the additional statements the appellant wishes to have attached, I agree that they partially cover matters already

addressed in the prior statement. Further, some of the additional statements do not seek to correct the reports, but rather, to amend the appellant's own prior statements of disagreement.

[34] Some of the additional statements set out the appellant's detailed account of the events and do not amount to a statement of disagreement so much as a self-drafted witness statement. In fact, in her representations, the appellant refers to her statements of disagreements as her "witness testimony" that she felt she had not been afforded an opportunity to give.

[35] Many parts of the statements have no clear connection to a correction request within the meaning of section 36(2), as they amount to her perceptions about the adequacy of the police investigations.

[36] As I have stated, in the appellant's representations she submits that the entire contents of the occurrence reports should be expunged and replaced with her statement of disagreement/witness statement.

[37] In the circumstances, I am satisfied that the police properly determined whether the additional statements of disagreement reflected corrections requested by the appellant but not made by the institution. Given the initial decision to attach a statement of disagreement, the numerous additional statements submitted, the overlap between them, and the substantial degree to which they do not truly address issues of correction of personal information, I find that the police were not required to attach the additional statements, in their entirety, to the occurrence reports as requested. In the circumstances, I find that the police fulfilled their obligation to attach a statement of disagreement when they attached portions of the appellant's correspondence which addressed corrections requested but not made.

**ORDER:**

I uphold the decision of the police to deny the correction request in part. I further find that the appellant was not entitled to require the police to attach additional statements of disagreement. I therefore dismiss the appeal.

Original signed by: \_\_\_\_\_  
Sherry Liang  
Senior Adjudicator

\_\_\_\_\_ May 28, 2012