

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-3042

Appeal MA13-515-2

Toronto Transit Commission

April 28, 2014

**Summary:** The appellant appealed the TTC's denial of his correction request and asked that all of his personal information held by the TTC be expunged. The TTC's decision to deny the correction request is upheld and the appeal is dismissed.

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

### BACKGROUND:

[1] The Toronto Transit Commission (TTC) received the following correction request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

I am requesting the expunging of all my information from the Toronto Transit Commission (TTC) and all of my information the TTC has provided to all police services. The TTC system contains my personal and private information which is harassment, fraudulent, a result of a conspiracy, inexact, incomplete, ambiguous and an invasion of privacy. The TTC viciously targeted me and attacked me with a clear intent to damage my career, reputation, credibility and character . . .

[2] In a three-page letter, the appellant outlined the reasons for his correction request and provided the TTC with details of the records he asked it to expunge. All of these records relate to three previous requests he made to the TTC under the *Act*. The appellant included various documents with his letter to support his position.

[3] The TTC issued a decision denying the correction request. In its decision, the TTC explained:

The correction was not made to the personal information. In reaching this decision we considered the following three elements:

- 1) whether the information is personal and private;
- 2) whether the information is inexact, incomplete or ambiguous; and
- 3) whether the correction would be a substitution of opinion

You are entitled to require that a statement of disagreement be attached to the record and that the statement of disagreement be sent to any person to whom the record was disclosed over the past 12 months.

[4] The appellant appealed the TTC's decision to deny his request for the correction of the records.

[5] During mediation, the appellant explained that he wanted the TTC to expunge all of the records it holds about him, including those records that were shared with external police services. The appellant believed that the records were fraudulently created or inexact and provided the TTC with documentation to support this belief. The appellant advised the mediator that he would not be satisfied with a statement of disagreement being attached to the records. Instead, the appellant wanted all of the records to be expunged.

[6] Also during mediation, the TTC advised that due to an administrative error, its 2009 case files relating to the appellant's access requests of that year, which fall within the scope of the request, were destroyed. Therefore, the TTC provided this office with copies of the records relating to the appellant's 2009 requests that remained in its electronic database.

[7] A mediated resolution was not possible and the appeal was moved to the adjudication stage of the appeal process for an inquiry under the *Act*.

[8] I sought and received representations from the parties and shared these in accordance with section 7 of this office's *Code of Procedure and Practice Direction Number 7*.

[9] In this order, I uphold the TTC's decision and dismiss the appeal.

## **RECORDS:**

[10] The records that are at issue relate to the appellant's three previous access requests and are comprised of the following:

### Access Request 09-17

- Request for Information dated July 14, 2009
- Decision of the TTC dated August 4, 2009
- Appellant's complaint statement of September 26, 2007
- Appellant's complaint statement of September 12, 2007 (5 pages)
- Letter from TTC Claims/Legal dated September 21, 2007
- Incident Report of September 29, 2007 (2 pages)
- General Occurrence Report of September 12, 2007
- Supplementary Report of September 13, 2007

### Access Request 09-19

- Request for Information dated August 18, 2009
- Decision of the TTC dated September 1, 2009 (2 pages)

### Access Request 12-26

- Freedom of Information Request dated August 23, 2012
- Index of Records for Request 12-26

## **DISCUSSION:**

[11] The sole issue for my determination in this appeal is whether the appellant is entitled to require the TTC to correct the personal information at issue by expunging the records under section 36(2) of the *Act*.

[12] Section 36(1) gives an individual a general right of access to his own personal information held by an institution, while 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. Sections 36(2)(a) and (b) 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;

[13] 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.

[14] This office has previously established that 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; and
2. the information must be inexact, incomplete or ambiguous; and
3. the correction cannot be a substitution of opinion.<sup>1</sup>

[15] 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.<sup>2</sup>

[16] In this appeal, the records consist of letters between the appellant and the TTC, and reports prepared by the TTC, all of which form part of the TTC's files responding to the appellant's multiple access requests. The appellant asks that the TTC expunge his personal information contained in the records because in his opinion, the TTC collected his personal information under false pretences and included opinions about him in the records which are not based on fact. The appellant argues that the allegations against him recorded by the TTC in the records are inexact, ambiguous, incomplete and unfounded. Although the TTC has advised the appellant that he is entitled to file a statement of disagreement which it will attach to the records and send to any individuals to whom the record was disclosed in the past year, to date, the appellant has not submitted a statement of disagreement to the TTC.

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<sup>1</sup> Orders 186 and P-382.

<sup>2</sup> Orders P-448, MO-2250 and PO-2549.

[17] For the reasons that follow, I uphold the TTC's decision to deny the appellant's correction request and his request that the records be expunged.

[18] The right of correction may apply only to personal information of the appellant. The term "personal information" is defined in section 2(1) as "recorded information about an identifiable individual." The types of information that qualify as "personal information" include information about an individual's race, national or ethnic origin, colour, age and sex (paragraph (a)), information about an individual's education, medical, criminal and employment history (paragraph (b)), an individual's address and telephone number (paragraph (c)), the views or opinions of another individual about the individual (paragraph (g)), and 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 (paragraph (h)).

[19] Having reviewed the records at issue, I find that they contain the personal information of the appellant as that term is defined in the paragraphs of section 2(1) of the *Act* noted above.

[20] For section 36(2)(a) to apply, the information must be "inexact, incomplete or ambiguous." This section will not apply if the information consists of an opinion.<sup>3</sup> Section 36(2)(a) gives the institution discretion to accept or reject a correction request.<sup>4</sup> 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.<sup>5</sup> Records of an investigatory nature 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 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.<sup>6</sup>

[21] The TTC submits that the contents of the correspondence and reports are factual and not inexact, incomplete or ambiguous. The TTC states that the records that document specific reports of security related occurrences on TTC property contain the opinions and views of law enforcement representatives at the time of the occurrences and contain a proper and correct recording of the information provided. The TTC submits that the remaining records are correspondence from the TTC that repeat or refer to the opinions and views from the law enforcement reports, and correspondence from the appellant. For these reasons, the TTC argues that the records cannot be characterized as incorrect or incomplete which would provide the necessary grounds for

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<sup>3</sup> Orders P-186, PO-2079 and PO-2549.

<sup>4</sup> Order PO-2079.

<sup>5</sup> Order PO-2258.

<sup>6</sup> Orders M-777, MO-1438 and PO-2549.

correction under section 36(2) of the *Act*. The TTC asserts that expunging the records would result in a substitution of the opinion of law enforcement with that of the appellant, and therefore, its refusal to expunge all the information is reasonable.

[22] The appellant alleges that the TTC collected his personal information under false pretences. He states that he has not had inappropriate contact with the TTC and, therefore, there is no reason for the TTC to hold any information about him. The appellant also denies that the incidents described in the records occurred, including the records that describe an assault and uttering threats to a TTC employee. The appellant complains that the TTC did not provide him with information to support its opinion about him or with the opportunity to challenge the TTC's allegations about him in court. Along with his representations, the appellant includes an excerpt from a court transcript that confirms charges against him were stayed at the discretion of the Crown. He submits that this transcript excerpt confirms the assault charge against him was withdrawn and therefore, provides evidence that the information in the records relating to the allegation of assault is inexact, incomplete and unfounded.

[23] I do not agree with or accept the appellant's assertions in this appeal. To begin, the one page transcript excerpt submitted by the appellant is dated 2012 and relates to a legal proceeding against the appellant that proceeded the creation of the records by a number of years. The excerpt, which does not provide information on the charges being dealt with, is not evidence of any inaccuracy in the records; it is simply evidence of the fact that the Crown decided not to proceed with certain charges that were laid against the appellant. Even if these charges resulted from the allegation of assault that is documented in the records, the ultimate stay of the charges does not make the information obtained during the investigation of the assault incident inaccurate, incomplete or unfounded. I find that the information in the reports included in the records consists of the TTC officers' opinions and facts which they obtained in the course of their investigation into the actions of the appellant. I accept the position of the TTC that the reports contained in the records accurately reflect the opinions of the investigating officers and their observations at the time that the records were created. I further find that there is no evidence before me that the remaining information contained in the correspondence at issue is incorrect or inexact such that correction is appropriate. I reject the appellant's assertions that the records were created under false pretences and that they contain inaccurate information, as these allegations are unsupported by the evidence and they contradict what is clearly documented in the records as fact. In accordance with a long line of orders of this office confirming the factual nature of occurrence reports and investigating officers' notes,<sup>7</sup> I uphold the police's decision to refuse to correct the information at issue.

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<sup>7</sup> See for example Orders MO-2258, MO-2351 and MO-2370.

[24] As for the appellant's request that the records all be expunged, this is not an option available to him under the *Act*. I have no legislated authority to order the TTC to expunge the records. Accordingly, the remedy requested is beyond my jurisdiction and I will not address it further in this order.

[25] As a result of my finding that the appellant's correction request was properly denied, the only remaining remedy available to the appellant is the right under sections 36(2)(b) and (c) of the *Act* to require the TTC to attach a statement of disagreement to the records at issue and provide a copy of the statement to persons to whom the personal information was disclosed in the previous year. I find that the TTC has appropriately advised the appellant of his rights under sections 36(2)(b) and (c), and it need not take any further action.

**ORDER:**

I uphold the decision of the TTC and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Stella Ball  
Adjudicator

\_\_\_\_\_ April 28, 2014