

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3016

Appeal MA13-98-2

Toronto Police Services Board

February 25, 2014

Summary: The appellant requested the correction of information contained in a specified police occurrence report pursuant to section 36(2)(a) of the *Municipal Freedom of Information and Protection of Privacy Act*. The Toronto Police Services Board denied the appellant's request on the basis that some of the information was factual and did not contain the appellant's personal information and that some of the information did not originate with the police. However, the police amended the occurrence report to describe some of the information that the appellant identified as incorrect. The appellant was not satisfied. He stated that he did not want a statement of disagreement attached to the police occurrence report and that he wanted the entire occurrence report to be "expunged." In this order, the adjudicator upholds the police's decision not to correct the occurrence report and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 36(2)(a) and 36(2)(b).

Orders and Investigation Reports Considered: Orders MO-2258, MO-2351 and MO-2370.

OVERVIEW:

[1] The Toronto Police Services Board (the police) received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a

correction to be made to a police occurrence report relating to an incident in which the requester was involved:

Please expunge this police report, correct the false information or attach my statement of disagreement to the report.

I disagree with the following information:

1. Suspect of a bomb threat.
2. "based on a TTC [Toronto Transit Commission] threatening report dated September 13, 2007." This TTC report is fraudulent. The TTC statement must be removed.
3. "it was learned that the suspect was convicted on an assault charge on a TTC driver in July 2007." This charge was dropped by the Ontario Court on 1 March, 2010.
4. "fired from the Canadian Forces." I was honourably discharged due to my disabilities from Operational Duties in Afghanistan.
5. "The suspect demanded the TTC employ him." This statement is false.
6. The remainder of this paragraph is also false.

[2] The police issued a decision advising the following:

Item 1 – suspect of a bomb threat

The information contained in the above-mentioned police occurrence report identifies you as a "possible suspect." This information is factual and/or police observation and there are no errors to your personal information. Therefore, it has been determined that section 36(2) of the *Act* would not apply to this portion of your request.

Item 2 – "...based on the TTC threatening report dated September 13, 2007."

Any reports generated by members of the Toronto Transit Commission (TTC) are not the property of the Toronto Police Service and therefore, this Police Service has no control to amend any such records. You may wish to contact the TTC regarding this portion of your request as they may have control or custody of this record or a greater interest in this record.

Item 3 – "...the suspect was convicted on an assault charge on a TTC driver in July 2007..."

Item 4 – "...fired from the Canadian Forces..."

Items 5 and 6 – “The suspect demanded the TTC employ him...”

After consultation with the office in charge [named officer], he has amended the police occurrence report to reflect the remaining information you identified as incorrect ... (page 4 of the attached (occurrence report)).

[3] The requester, now the appellant, appealed the police’s decision regarding their refusal to correct the occurrence report pursuant to section 36(2) (right of correction) of the *Act*.

[4] During mediation, the police explained that the police officer that authored the police occurrence report amended the report by adding the following information on page 4 of the report:

Further to a Freedom of Information Request, the person of interest in this occurrence [the appellant] has requested clarification on several points indicated in the original occurrence.

- The original occurrence incorrectly states he was convicted of assault on a TTC operator in 2007; There is no conviction on file for this incident.
- The original occurrence states that he was “fired” from the Canadian Forces. [The appellant] wants the occurrence to reflect he was honourably discharged from duty with the Canadian Forces.
- The original occurrence states he demanded employment from the TTC and made a potentially threatening statement. This statement cannot be confirmed and no report for threatening has been received regarding that remark.

[5] The appellant was not satisfied with the amendments. He explained that he wants the police to correct the information that he has identified as incorrect, including items 1 and 2 of his request. The appellant advised that he would no longer be satisfied with a statement of disagreement being attached to the police report. The appellant advised that he wants the entire report to be “expunged.”

[6] The police continue to take the position that they amended the report to reflect the appellant’s concerns and are not prepared to expunge the report, or change what is written in it.

[7] A mediated resolution of the appeal could not be reached, and it was moved to the adjudication stage of the appeal process for an inquiry. The sole issue to be determined in this inquiry is whether the police are required to correct the personal information at issue pursuant to section 36(2)(a) of the *Act*.

[8] During my inquiry into this appeal, I sought and received representations from the police and the appellant and shared these in accordance with this office's *Code of Procedure and Practice Direction Number 7*.

[9] For the reasons that follow, I uphold the decision of the police.

RECORDS:

[10] The record at issue in this appeal is a 7-page police occurrence report. The appellant has identified portions of the report as requiring correction.

DISCUSSION:

[11] As noted above, the sole issue to be determined in this appeal is whether the police are required to correct the appellant's personal information pursuant to section 36(2)(a) 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. Section 36(2)(a) and (b) states:

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.¹

[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.²

[16] In this appeal, the record at issue is a 7-page police occurrence report. The appellant has asked the police to "expunge" the occurrence report or correct the information contained within it that he submits is false. The police take the position that they have amended the occurrence report to reflect the appellant's concerns, but state that they are not prepared to either expunge it, or change what is written in it.

"Personal information" definition: The information must be personal and private information

[17] The right of correction only applies to the 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 (c)), information relating to the criminal history of the individual (paragraph (b)), the views and 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)).

[18] The police submit that the information relating to Item 1 of the appellant's request (suspect of a bomb threat) does not amount to the appellant's personal information. They submit: "In stating the type of occurrence, it does not contain any personal or private information belonging to the appellant." The police do not specifically address whether the information that the appellant wishes corrected identified in items 2 through 6 amounts to his personal information.

[19] The appellant also does not specifically address whether the information that he wishes to have corrected amounts to his personal information.

¹ Orders P-186 and P-382.

² Orders P-448, MO-2250 and PO-2549.

[20] I have reviewed the police occurrence report that is the record at issue and find that the information that the appellant wants corrected constitutes his personal information as that term is defined in section 2(1) of the *Act*. The occurrence report relates entirely to an incident in which the appellant was involved and, therefore, includes his name together with other personal information about him (paragraph (h)), including the fact that he was named as a possible suspect in the incident. It also includes the views or opinions of other individuals about him (paragraph (g)), as well as information that can be characterized as relating to his criminal history (paragraph (b)). From my review of the information that the appellant disputes, I accept that all of it amounts to his "personal information" within the meaning of the definition of that term in section 2(1).

Grounds for correction: The information must be inexact, incomplete or ambiguous and the correction cannot be a substitution of opinion

[21] For section 36(2)(a) to apply, the information must be "inexact, incomplete or ambiguous." Also, this section will not apply if the information consists of an opinion.³

[22] Section 36(2)(a) gives the institution discretion to accept or reject a correction request.⁴ 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.⁵

[23] 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.⁶

[24] The police submit that it amended the police occurrence report to identify the information in items 3 to 6 that the appellant submits is incorrect but that now the appellant wishes to have the entire report "expunged." The police submit that they do not have the power to expunge records, nor is that a remedy under the *Act*. The police also submit that some of the information that the appellant wishes to have corrected comes from a report generated by the Toronto Transit Commission (the TTC) and the police have neither custody nor control of that record and, therefore, cannot make any corrections to the information that it used from the TTC's record. The police submit that the appellant was advised to contact the TTC regarding any issues he has regarding information contained in its report.

³ Orders P-186, PO-2079 and PO-2549.

⁴ Order PO-2079.

⁵ Order PO-2258.

⁶ Orders M-777, MO-1438 and PO-2549.

[25] The appellant submits that the occurrence report “contains fraudulent and exaggerated material that the [Toronto Transit Commission] provided to [the police]...” and that the police relied on this “false information” without further investigation on their own part. He submits that the false information was used to name him as a suspect in a subway bomb threat. He states that he wants the police occurrence report to be “expunged.”

[26] I have reviewed the police occurrence report at issue, including the specific information that the appellant wishes to have corrected. In my view, the occurrence report contains information of an investigatory nature and reflects factual information. Although the occurrence report includes information about the appellant that originated from a TTC report and was subsequently relied upon by the police, in my view this information represents a factual record of prior allegations that were received by the police during the course of their investigation into the incident documented in the occurrence report.

[27] As noted above, 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. In keeping with this statement, I find that the information at issue in the occurrence report is the opinion information of the police officer who investigated the incident and cannot be said to be inexact, incorrect or ambiguous, as it simply reflects the views of the police officer whose impressions are set out in the report.

[28] Accordingly, I find that the information that the appellant disputes cannot be characterized as inexact, incorrect or ambiguous. As this prerequisite for this office to order a correction under section 36(2)(a) has not been met, in accordance with a long line of orders of this office confirming the factual nature of occurrence reports,⁷ I uphold the police’s decision to refuse to correct the information at issue.

Requirement that that a statement of disagreement be attached to the information

[29] Pursuant to section 36(2)(b), upon request, an institution must attach a statement of disagreement to the information reflecting any correction that was requested but not made. An appellant must first ask for a correction, and then ask that a statement of disagreement be attached to the information.

[30] Although I have found that the police are not required to correct the occurrence report in the manner desired by the appellant, under section 36(2)(b) of the *Act*, they

⁷ Orders MO-2258, MO-2351 and MO-2370.

are required to attach a statement of disagreement to the record at issue should the appellant request that they do so. Despite mentioning a statement of disagreement in his initial request, during mediation the appellant indicated that he was no longer satisfied with a statement of disagreement being attached to the occurrence report.

[31] While the police have amended the occurrence report at issue to reflect the appellant's concerns, specifically with respect to items 3 through 6 of his correction request, I remind the appellant that should he change his mind, he is entitled to require the police to attach a statement of disagreement to the information reflecting any correction that was requested but not made, including his concerns reflected in items 1 and 2 of his original request.

[32] Accordingly, I uphold the police's decision not to correct the occurrence report.

ORDER:

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

Original Signed By: _____
Catherine Corban
Adjudicator

_____ February 25, 2014