

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3197

Appeal MA14-24

York Regional Police Services Board

May 11, 2015

Summary: The appellant requested the correction of a record under section 36(2)(a) of the *Act* through the removal of a “flag record”. The police issued a decision letter denying the request. This order upholds the decision.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, s. 36(2)(a); *Regulated Health Professionals Act*, 1991, S.O. 1991, c. 18 ss. 27(1) and 27(2)1.

BACKGROUND:

[1] The York Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for the correction of personal information in a specified General Occurrence Report, by “remov[ing] Flag of mentally ill person”.

[2] The police issued a decision denying the correction request.

[3] The requester (now the appellant) appealed the police’s decision.

[4] Mediation did not resolve the matter and it was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*.

[5] I commenced my inquiry by sending a Notice of Inquiry setting out the facts and issues in the appeal to the police. The police provided responding representations. I then sent the appellant a Notice of Inquiry along with the police's representations. The appellant provided representations in response.

DISCUSSION:

Personal Information

[6] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the General Occurrence Report, which the appellant seeks to have corrected, contains "personal information" and, if so, to whom it relates. "Personal information" is defined in the *Act*, in part, to mean recorded information about an identifiable individual, including 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) of the definition in section 2(1) of the *Act*). In my view, the General Occurrence Report contains information that qualifies as the personal information of the appellant, as that term is defined under the *Act*.

Correction of Personal Information

[7] Section 36(2)(a) of the *Act* provides that a person who is given access under section 36(1) of the *Act* to personal information has a right of correction, in certain circumstances.¹ Section 36(2)(a) reads as follows:

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

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

[8] For section 36(2)(a) to apply, the information must be personal information and must be "inexact, incomplete or ambiguous". This section will not apply if the information consists of an opinion.²

[9] Section 36(2)(a) gives the institution discretion to accept or reject a correction request.³ 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.⁴

¹ The appellant may also require the police to attach a statement of disagreement pursuant to section 36(2)(b) of the *Act* reflecting any correction that was requested, but not made. However, that is not at issue in the appeal before me.

² Orders P-186 and PO-2079.

[10] The appellant submits that there are no grounds for the flag and that it should be removed from the General Occurrence Report.

Are the grounds for correction present in this case?

[11] I have already found that the record contains personal information of the appellant.

[12] The police submit:

The appellant has requested the flag record be removed from the [police] records management system. The flag record was entered onto the police records management system based on the observations of an officer investigating [a matter]. It is under the discretion of the officer whether or not to enter a flag based on his opinions and his interaction with an individual. The records management system is an in-house database that only York Regional Police members have access to and flag records are entered for officer safety and to assist other officers whom may have subsequent interventions with the subject of the flag record. ... It is the opinion of the police that the record does not have to be corrected or removed as requested by the [appellant]

[13] In her representations, the appellant argues that only a medical doctor can diagnose an individual as mentally ill, not a police officer. In that regard, the appellant refers to sections 27(1) and 27(2)1 of the *Regulated Health Professionals Act*⁵. Those sections read:

27(1) No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,

- (a) the person is a member authorized by a health profession Act to perform the controlled act; or
- (b) the performance of the controlled act has been delegated to the person by a member described in clause (a).

(2) A "controlled act" is any one of the following done with respect to an individual:

³ Order PO-2079.

⁴ Order PO-2258.

⁵ 1991, S.O. 1991, c. 18.

1. Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis.

Analysis and finding

[14] As previously mentioned, the appellant requested that specific information be removed from police records. The appellant argues that there are no grounds for the flag record to be noted on the General Occurrence Report and that only a medical doctor can diagnose an individual as mentally ill, not a police officer.

[15] Section 27(1) of the *Regulated Health Professionals Act* provides that “[n]o person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual”. The short answer is that the police officer was engaged in policing and was not engaged in providing health care services to the appellant under the *Regulated Health Professionals Act*, at the time the notation was made.

[16] In addition, based on the evidence of the police, I accept that the flag record to which the appellant seeks correction consists of an opinion. As set out above, section 36(2)(a) will not apply if the information consists of an opinion.⁶

[17] Furthermore, based on the interpretation of section 36(2)(a) developed in the orders cited above, I am not persuaded that the police have exercised their discretion inappropriately in refusing correction to the record at issue. Therefore, I uphold the decision of the police not to correct it through deletion of information under section 36(2)(a) of the *Act*.

ORDER:

I uphold the decision of the police.

Original Signed By: _____
Steven Faughnan
Adjudicator

_____ May 11, 2015

⁶ Orders P-186 and PO-2079.