Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3394

Appeal MA14-489

Regional Municipality of Halton

December 22, 2016

Summary: The appellant asked for a large number of wide-ranging corrections to his Ontario Works/Ontario Disability Support Program file under section 36(2) of the *Act*. The region granted the correction request, in part and at mediation issued a supplementary decision allowing a statement of disagreement to be added to the appellant's file. The appellant maintained his position that further corrections should be made, which the region denied. This order upholds the region's denial to make further corrections 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 36(2)(a) and (b).

Order Considered: M-777, MO-1594 and PO-2549.

OVERVIEW:

[1] The Regional Municipality of Halton (the region) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for the correction of information contained in the requester's Ontario Works (OW)/Ontario Disability Support Program (ODSP) file. In this appeal the appellant has asked for a large number of wide-ranging corrections to his file. Accompanying the request was a 30-page attachment entitled "Detailed Description of Records to be Corrected" setting out what he viewed as errors and omissions in his OW/ODSP file.

[2] The requester also requested that the region "contact all government agencies

(including the Courts) they may have shared [named Eligibility Review Officer's] biased comments with …".

[3] The region issued a decision granting the correction request, in part. Along with the decision, the region issued a chart identifying the corrections requested and how the region addressed each one.

[4] The decision further stated:

> In terms of contacting the court regarding your correction request, … you may wish to provide this decision letter to the court as it outlines the new notes that will be appended to SDMT [Service Delivery Model Technology] as a result of your formal correction request. Alternatively, we can submit this letter to the court on your behalf or any portions of it that you wish, if you so advise us.

[5] The requester then asked for the region to make revisions to its correction decision. The region issued a supplementary decision letter granting the requester's revision request, in part.

[6] The requester (now the appellant) took the position that further corrections should be made and appealed the region's decisions. At mediation, the region complied with the appellant's request to sent a letter to the Milton Superior Court of Justice on his behalf[1] and issued a further supplementary decision indicating that it was granting the appellant's request to add a statement of disagreement to his OW file under section 36(2)(b) of the *Act*. The appellant maintained his position that the region ought to make other corrections he seeks.

[7] As mediation did not resolve the appeal, it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[8] During the inquiry into the appeal I sought and received representations from the region and from the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and Practice Direction 7.

[9] This order finds that the region has satisfied its obligations under section 36(2) of the *Act* and dismisses the appeal.

RECORDS:

[10] The records that the appellant seeks to correct consist of SDMT notes and an

---

[1] This is discussed in more detail below.

Eligibility Review Officer Report.

DISCUSSION:

SHOULD THE PERSONAL INFORMATION BE CORRECTED?

[11] Section 36(1) of the *Act* 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:

> 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.

[12] 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.

[13] The following passage from *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vol. 3[2] (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

[2] Toronto: Queen's Printer, 1980.

> 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.[3]

[14] 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.

[15] An appellant must first ask the institution to correct the information before this office will consider whether the correction should be made.

[16] 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[4].

[17] Section 36(2)(a) gives the institution discretion to accept or reject a correction

---

[3] At pages 709 to 710.

[4] Orders P-186 and PO-2079.

request.[5] 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.[6]

[18] 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.[7]

[19] 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.[8]

Representations

[20] In this appeal the appellant has asked for a large number of wide ranging corrections to his file and as mentioned above, his initial correction request was accompanied by a thirty-page document entitled "Detailed Description of Records to be Corrected" setting out what he viewed as errors and omissions in his OW/ODSP file and indicating the information he sought to be added or deleted.

[21] He is not satisfied with the manner in which the region addressed his request. In his representations the appellant provided extensive materials in support of his correction request and how he says he has been impacted by the region not granting the balance of the corrections he had requested.

The region's initial representations

[22] In its initial representations, the region explained that it had determined that the requested corrections were actually corrections to notes contained in his Service Delivery Model Technology (SDMT) file, some of which were also contained in the final Eligibility Review Officer (ERO) report.

[23] The region initially explained that its refusal to delete or strike out the appellant's

---

[5] Order PO-2079.

[6] Order PO-2258.

[7] Orders P-186 and P-382.

[8] Order P-448.

personal information was because the SDMT system did not have the capability to do this[9] and it is not the region's common practice to delete information that has been documented in the course of a law enforcement investigation.

[24] The region added:

> … Nonetheless, each requested correction was thoroughly reviewed and addressed with a response. The responses included: 1) no correction made, with an explanation as to why (e.g. no way to verify that the information is incorrect); or 2) the addition of a new SDMT note that either a) clarified that the appellant provided the information he said he provided to staff regarding his eligibility for OW assistance, or b) clarified that some of the information documented about the client had no relevance to the ERO investigation, or c) documented the appellant's disagreements with the information recorded about him.

[25] The region explains that while the information qualifies as the appellant's personal information, in its view it is not inexact, incomplete or ambiguous:

> The personal information at issue is the investigatory notes and final report of an ERO who is considered a law enforcement officer for the purposes of *MFIPPA*. The original decision letter dated September 26, 2014, explained to the appellant that EROs are law enforcement officers who, as part of the investigation process, need to collect personal information indirectly in order to identify clients that may not be representing themselves accurately or honestly. The appellant was advised that under *MFIPPA* EROs are permitted to collect personal information indirectly … .
>
> Halton Region did create a new SDMT note to attempt to address some of the appellant's concerns about the accuracy of the ERO records. However, it is the Region's view that the SDMT notes and final report that the appellant requested to be corrected accurately reflect the information that the ERO obtained during the investigation. We also believe that the notes and final report accurately reflects the ERO's impression of the client's eligibility for social assistance at the time she created the records. Based on this, the information contained in the SDMT notes and final ERO report cannot be viewed as being inaccurate, incomplete or ambiguous.

---

[9] The SDMT system has since been replaced by the more flexible Social Assistance Management System (SAMS). In Order PO-3571 evidence was led before Adjudicator Frank Devries that the SDMT system can be edited and modified, however in light of the region's submissions regarding the nature of the changes requested it is not necessary to decide this issue.

> Furthermore, OW clients have the right to challenge an ERO's decision, including the facts and information that an ERO decision is based upon, through the legislated Internal Review process. Although every individual has the right under *MFIPPA* to submit a Correction Request, as stated above, law enforcement officers are excluded from the requirement to ensure personal information is accurate prior to using it. For this reason, the Internal Review process is the most appropriate channel for OW clients to use to request a review of their information in relation to ERO investigations.

[26] The region explained that during mediation, the appellant was provided with the opportunity to submit a statement of disagreement regarding his OW file under section 36(2)(b) of the *Act*, and that after he sent the statement of disagreement, it was included in his file.

[27] The region added that in his initial correction request, the appellant also asked the region to contact all government agencies, including the Courts, to request that they return his personal information, including the ERO report (that was disclosed during a court proceeding), or ask them to strike the information from their records. The region submitted that the Milton Superior Court of Justice was the only body that received some of the information that the appellant had requested to be corrected and that it sent portions of the new SDMT note[10] to that body. The region advises that it was not asked to send the statement of disagreement to the Milton Superior Court of Justice.

The appellant's representations

[28] The appellant acknowledges that some corrections were made to the SDMT entries in his OW file but that the region has not corrected the ERO report regarding his eligibility for OW. He submits that "[t]he flawed report forms part of the Family Court record and has been referred to extensively since Halton Region submitted to the Court …. ." He states that this has had a devastating negative impact upon him but that the issue could be resolved if the region submitted a letter to the court that the appellant had prepared to be signed by the region. The letter addresses a number of facts that the appellant sought to be substantiated by the region.

The region's reply

[29] The region states that it is of the opinion that the letter the appellant provided contains inaccuracies and that it is not willing to prepare the letter that the appellant had requested. To help explain its position, it noted the inaccuracies in a table attached to its reply. It also attached a copy of the Internal Review decision and the Social

---

[10] That the appellant consented to be disclosed.

Benefits Tribunal decision and states that these attachments demonstrate that the ERO report is not faulty or inaccurate.

[30] The region further advised that "[w]ith respect to the Summary of Corrections table that [the appellant] attached to his letter, we are also not willing to amend this. Doing so would change our position on his Correction Request."

[31] It explains that:

> To point out, [the region] has made attempts to assist [the appellant] with his Family Court case in a manner that we consider reasonable. Our Supervisor of Program Integrity recently authored a letter confirming that [the appellant] was never found to have committed social assistance fraud (even though the ERO report never stated that he did). We feel this letter should have assisted him greatly.

The appellant's sur-reply

[32] The region's reply representations were shared with the appellant. In response, the appellant expressed his disappointment with the region's position. He submits that he reviewed the Summary of Corrections table prepared by the region and that "… it is my view that they are splitting hairs with their analysis". Finally, he again attached another form of a letter that he says addresses the region's concerns, which he asks the region sign or, in the alternative "negotiate the additional corrections to my record".

Analysis and Findings

[33] 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 an individual has recorded information reported to them about specific events by other individuals. For example, in Order M-777, 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. 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 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 at issue in this inquiry.** [emphasis added]

[34] Adjudicator Daphne Loukidelis considered similar issues in Order PO-2549 and found 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.

[35] Furthermore, the decision to correct information is a discretionary decision of the region. As stated by Assistant Commissioner Sherry Liang in Order MO-1594:

> … It is also worth repeating that the legislature has found it appropriate to give institutions the discretion to decide whether or not to accept a correction request. As proposed by the Williams Commission, an appeal may be brought from an institution's discretionary decision to deny such a request and, on appeal, it is open to this office to order a correction. In order for a correction to be found appropriate, at a minimum, the requirements established by Order 186 must be met. However, there may well be situations where it is not necessary to make a conclusive determination on whether information is "inexact, incomplete or ambiguous", where the exercise of discretion appears reasonable, and the attachment of a statement of disagreement is a sufficient response to a dispute about the correctness of a record.

[36] I agree with the statements made by the adjudicators and Assistant Commissioner Liang set out above.

[37] Furthermore, as identified in the quotation from the *Williams Commission Report* set out above, in certain circumstances, permitting an individual to file a statement of disagreement is an appropriate mechanism to address a correction request. The Report also stated:

> … 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]

[38] Given the circumstances of this appeal, I find that the region's decision to deny any further correction request ought to be upheld. I have reviewed the appellant's request for correction, the region's responses and the appellant's representations. I find that the region reasonably concluded that the records were not "inexact, incomplete or ambiguous", so as to merit any further correction request. In any event, I am also of the opinion that this qualifies as one of the situations where it is not even necessary to

make a conclusive determination on whether information is "inexact, incomplete or ambiguous"; rather, on my review of the circumstances of the appeal (including the requested correction, the nature of the records, and the impact of allowing the requested correction), I find that this is a situation where the region's exercise of discretion is reasonable, and the attachment of the statement of disagreement under section 36(2)(b) is a sufficient response to a dispute about the remaining correctness of the records. Accordingly, I find that the region's denial of any further correction request should be upheld.

[39] Finally, it should be noted that this order deals with the further correction request only. In that regard, the issue of the letters that the appellant sought to have the region sign is outside the scope of this appeal. I do note that the region did actually send a form of a letter to the Milton Superior Court of Justice, but that the appellant remained dissatisfied with the region's decision not to take any further steps. As set out above, however, in my view the region has satisfied its obligations under sections 36(2)(a) and (b) of the *Act*.

ORDER:

I uphold the decisions of the region, and dismiss the appeal.

Original Signed by: December 22, 2016

Steven Faughnan
Adjudicator