

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3522

Appeal MA16-386

Niagara Regional Police Services Board

November 21, 2017

Summary: The appellant seeks a number of corrections to an occurrence report relating to a complaint she made to the police. The police attached her statement of disagreement to the report but take the position that the appellant did not submit a formal correction request. This order finds that the police's decision to attach the appellant's statement of disagreement suffices as its correction decision denying the appellant's request. Given that the appellant seeks to correct the views and opinions of the investigating officers, the adjudicator upholds the police's decision to not 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 36(2)(a) and (b).

OVERVIEW:

[1] The appellant submitted a request to the Niagara Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a "copy of the full report" of a specified incident. The police located an occurrence report and granted the appellant access to most of the report but withheld portions claiming that disclosure would constitute an unjustified invasion of personal privacy of other individuals under section 38(b).

[2] The appellant appealed the police's access decision to this office and a mediator was assigned to the appeal. At the start of mediation, the mediator advised the police that the appellant would be sending them a letter to request a correction. The appellant subsequently sent a letter to the police citing section 36(2). In the letter, the appellant

states "this letter is a statement of disagreement" and goes on to explain why she believes the police should continue to investigate her complaints.

[3] Upon their receipt of the letter, the police advised the mediator that the appellant did not submit a correction request form.¹ However, the police subsequently sent a letter to the appellant stating:

You have requested to have a statement of disagreement attached to [the occurrence report]. Please be advised that this has been done.

[4] At the end of mediation, the appellant confirmed that she was not interesting in pursuing access to the portions of the records withheld under section 38(b). However, the appellant continued to seek the requested corrections and the appeal was moved to the adjudication stage of the appeals process in which an adjudicator conducts an inquiry.

[5] During the inquiry, the parties were given an opportunity to provide their written representations. In its representations, the police take the position that the appellant did not submit a proper correction request. Upon my receipt of the police's representations, I provided them an opportunity to make supplemental representations to address whether they should be required to correct the requested information. The police did not respond to my request for supplemental representations and did not file any additional materials in support of their position. I subsequently wrote to the appellant and invited her representations. She indicated that she did not wish to make representations but confirmed that she continues to seek correction of the report.

[6] In this order, I find that the police's decision to attach the appellant's statement of disagreement to the record constitutes its correction decision denying the appellant's request. However, I uphold the police's decision to deny the appellant's correction request on the basis that the appellant seeks to substitute the investigating officers' views and opinions with that of her own.

RECORDS:

[7] The records at issue in this appeal consist of an 8-page occurrence report.

PRELIMINARY ISSUE:

Did the appellant make a correction request?

[8] 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

¹ The police make available on its website a "Information Request Freedom & Privacy" form which can be used to submit a correction request.

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;

[9] 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.

[10] In their representations, the police take the position that the appellant did not "submit a formal correction request" and state:

The appellant in this instance did not submit a formal correction request. The appellant advised that she wished a statement of disagreement added to the general occurrence report which she thought was a correction request. The appellant provided a copy of the general occurrence report that she received with brackets around certain sentences and provided a three-page letter with the heading of "section 36(2) subsection correction. This letter is a statement of disagreement".

[11] The police's representations did not address the issue of whether or not the record should be corrected and the appellant did not provide a response to the police's claim that she failed to submit a formal correction request.

[12] I have reviewed the file and am satisfied that the appellant's 3-page letter along with her marked up copy of the record suffices as her request to the police to correct the record. Though the appellant's request is not in the form available on the police's website, I am satisfied that it contains sufficient information for the police to understand her request to correct certain portions of the record. Furthermore, I note that the police's response to the appellant's request refers to the appellant's right to appeal their decision, suggesting that the police considered the appellant's request as a request for correction of personal information.²

[13] In my view, an individual's right to request that a statement of disagreement be

² Section 39 of the *Act* identifies a requester's right to appeal an institution's decision to this office. Section 39(1)(c) provides that a requester has a right to appeal an institution's decision to deny a correction request.

placed on a record containing their personal information is triggered by the institution's refusal to correct the record. The wording of section 36(2)(b) is that any individual who is given access to their personal information has a right to require that a statement of disagreement be attached to the information reflecting *any correction that was requested but not made*. Though the police in this case took the position that the appellant did not submit a formal correction request, they responded by issuing a decision advising the appellant that they would attach her statement of disagreement.

[14] Having regard to the circumstances of this appeal, I am satisfied that the appellant asked the police to correct the information at issue and that the police's response in attaching the appellant's statement of disagreement constituted their denial of her correction request. Accordingly, I will go on to determine whether the police should have corrected the information the appellant identified in her letter and marked up copy of the record.

DISCUSSION:

[15] 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.³

[16] 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.⁴

[17] 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.⁵

[18] Section 36(2)(a) gives the institution discretion to accept or reject a correction request.⁶ 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.⁷

[19] 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

³ Orders P-186 and P-382.

⁴ Orders P-448, MO-2250 and PO-2549.

⁵ Orders P-186, PO-2079 and PO-2549.

⁶ Order PO-2079.

⁷ Order PO-2258.

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.⁸

[20] There is no dispute between the parties that the records contain the appellant's personal information. I am satisfied that the records contain the personal information of the appellant as defined in paragraph (a), (d), (e) and (h) of section 2(1) of the definition of that term. The record is an occurrence report prepared by police in response to a complaint filed by the appellant. The police interviewed the appellant and attended the premises where she had advised the police she was assaulted. The police subsequently determined that no further police action was required.

[21] I have reviewed the record and the appellant's correction request and am satisfied that there is no basis to conclude that the record contains "inexact, incomplete or ambiguous" information. In my view, the appellant's correction request seeks to substitute the investigating officers' views and opinions with those of her own.

[22] Having regard to the above, I uphold the police's decision to deny the appellant's correction request.

ORDER:

The appeal is dismissed.

Original signed by: _____
Jennifer James
Adjudicator

November 21, 2017 _____

⁸ Orders M-777, MO-1438 and PO-2549.