Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3707

Appeal MA16-585

York Regional Police Services Board

December 18, 2018

Summary: The appellant asked for a number of corrections to occurrence reports pertaining to her under section 36(2) (right of correction) of the *Act*. The police granted the correction request, in part, and suggested that the appellant could request that a statement of disagreement be added to the occurrence reports if she wished. The appellant maintained her position that further corrections should be made. This order upholds the police'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).

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

OVERVIEW:

[1] This appeal relates to a request under section 36(2) (right of correction) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) to correct three specified occurrence reports pertaining to the appellant. The York Regional Police Services Board (the police) granted the correction request, in part, and suggested that the appellant could request that a statement of disagreement be added to the occurrence reports if she wished. The appellant took the position that other corrections should be made.

[2] Mediation did not resolve the appeal and it was moved to the adjudication stage

of the appeals process where an adjudicator conducts an inquiry under the *Act*.

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

[4] This order finds that the police have satisfied their obligations under section 36(2) of the *Act* and dismisses the appeal.

RECORDS:

[5] The appellant wants information corrected in three specified occurrence reports.

DISCUSSION:

Should the Personal Information be Corrected?

[6] 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.

[7] 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.

[8] The following passage from Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980, vol. 3[1] (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 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.[2]

[9] 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.

[10] For section 36(2)(a) to apply, the information must be "inexact, incomplete or

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[1] Toronto: Queen's Printer, 1980.
[2] At pages 709 to 710.

ambiguous". This section will not apply if the information consists of an opinion[3].

[11] 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]

[12] 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.[6]

[13] 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.[7]

The appellant's representations

[14] In this appeal the appellant has asked for a number of corrections to the occurrence reports and her initial correction request set out what she viewed as errors and omissions in the occurrence reports, indicating the information she sought to be added or deleted.

[15] Although the police made a requested correction and provided some information to address some of her enquiries, the appellant is not satisfied with the manner in which the police addressed her request. In her representations, the appellant provided materials in support of her correction request and set out her concerns.

The police's representations

[16] In their representations, the police explained the nature of the corrections requested and submitted that:

> The statements and comments of the officers are not inexact, incomplete or ambiguous as they reflect the subjective perspective and views of the

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[3] Orders P-186 and PO-2079.
[4] Order PO-2079.
[5] Order PO-2258.
[6] Orders P-186 and P-382.
[7] Order P-448.

> officers with respect to their interactions with and observations of the appellant and the situation.
>
> [The police] did correct their records in relation to the appellant being referred to as […] rather than […]. They did not correct the statements or comments of the officers as this information was considered to be opinions.
>
> The appellant was advised that she could request that a statement of disagreement be attached to the information reflecting any correction that was requested but not made. No statement of disagreement was provided by the appellant to the police.

Analysis and Findings

[17] The correction provisions in section 36(2) apply to "personal information". "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*). The specified occurrence reports contain information that qualifies as the personal information of the appellant, as that term is defined under the *Act*.

[18] Previous orders of this office have considered the issue of correction requests for records similar in nature to those at issue in this appeal. 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]

[19] 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.

[20] 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.

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

[22] 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]

[23] Given the circumstances of this appeal, I find that the police's decision to deny any further correction request ought to be upheld. I have reviewed the appellant's request for correction, the police's responses and the parties representations. I find that the police reasonably concluded that the records were not "inexact, incomplete or ambiguous", so as to merit any further correction. 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 corrections, the nature of the records, and the impact of allowing the requested corrections), I find that this is a situation where the police's exercise of discretion is reasonable, and the invitation to attach a statement of disagreement under

section 36(2)(b) is a sufficient response to a dispute about the correctness of the remaining information in the records. Accordingly, I find that the police's denial of any further correction request should be upheld.

[24] In my view, the police have satisfied their obligations under section 36(2) of the *Act*.

ORDER:

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

Original Signed by: December 18, 2018

Steven Faughnan
Adjudicator