Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3720

Appeals MA18-200 and MA18-202

Peel Regional Police Services Board

January 17, 2019

Summary: An individual asked the police to correct her personal information contained in occurrence reports and officers' notes regarding two incidents under section 36(2)(a) of the *Act*. The police issued two decision letters, one regarding the occurrence reports and the second regarding the officers' notes. The police granted the appellant's request in part, but refused to make certain corrections on the basis that the information is not inexact, incomplete, or ambiguous and the requested corrections would constitute a substitution of opinion. The appellant declined to attached a statement of disagreement to the records in accordance with section 36(2)(b) of the *Act* and appealed the police's decisions to this office resulting in two separate appeals. The adjudicator finds that the information at issue in both appeals is not inexact, incomplete, or ambiguous, and that the requested corrections would constitute a substitution of the officers' opinions. The adjudicator upholds the police's decisions.

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

OVERVIEW:

[1] The Peel Regional Police Services Board (the police) received two requests under section 36(2)(a) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the correction of information found in police records relating to two incidents.

[2] Regarding the first incident, the requester sought correction of:

- the requester's date of birth;

- the listed "involved persons;"
- the date of a separation;
- the incident date and time; and
- references to the requester's mental health status and behaviour.

[3] Regarding the second incident, the requester sought correction of:

- the requester's date of birth;
- the word "alias" appearing on page two of the occurrence report; and
- references to the requester's mental health status and behaviour.

[4] The police issued a decision granting the correction requests relating to both incidents, in part. Specifically, the police corrected the date relating to the first incident, and the requester's date of birth recorded in the records for both incidents.[1]

[5] Regarding the references to "alias" and the alias' date of birth on page 2 of the occurrence report for the second incident, the decision noted:

> … our Records Management System does not allow for the deletion of information originally input and therefore, the original date of birth of [date] has been corrected to reflect as a "Variant" as that is what an officer had originally added, possibly in error. Your "Primary" date of birth has been corrected as requested.

[6] With respect to the remaining correction requests, the police indicated that:

> … the information contained … is not inexact, incomplete or ambiguous and therefore would constitute a substitution of opinion. Therefore, no further corrections will be made …

[7] The police further noted that a statement of disagreement could be attached to the records reflecting any corrections that were requested but not made. The requester declined the offer of attaching a statement of disagreement to the records, and appealed the police's decision to this office, resulting in Appeal MA18-200.

[8] During the mediation stage of the appeal process, the appellant advised that she was seeking corrections to the officers' notes and occurrence reports relating to both incidents. The police took the position that their original decision letter pertained only to

[1] The police provided copies of the corrected records to the appellant with severances that the appellant does not dispute.

the officers' notes, and not the occurrence reports.[2] The police issued a revised decision, which also addressed the occurrence reports. In their revised decision, the police reiterated its denial of the correction requests on the same grounds set out in its original decision letter. This decision was also appealed by the appellant, resulting in Appeal MA18-202.

[9] The mediator discussed the appellant's right to have a statement of disagreement attached to the records pursuant to section 36(2)(b) of the *Act,* and once again, the appellant advised that she did not wish to have a statement of disagreement attached to the records.

[10] As no further mediation was possible, the appeals were transferred to the adjudication stage of the appeal process, where an adjudicator conducts a written inquiry under the *Act*. Given the similarity of facts and issues in the two appeals, I decided to conduct a joint inquiry. I began my inquiry by seeking the representations of the police on the issues set out in the Notice of Inquiry. The police provided representations, which were accompanied by an affidavit. Both documents were shared with the appellant in their entirety when I sent the appellant a Notice of Inquiry inviting representations. The appellant provided representations for my consideration. I then invited reply representations from the police.

[11] For the reasons that follow, I uphold the police's decisions not to correct the information at issue.

RECORDS:

[12] The records at issue in Appeal MA18-200 consist of four pages of officers' notes from the first incident and two pages of officers' notes from the second incident.

[13] The records at issue in Appeal MA18-202 consist of three pages of occurrence reports from the first incident and three pages of occurrence reports from the second incident.

DISCUSSION:

Should the police correct personal information under section 36(2) of the *Act*?

[14] The sole issue in these appeals is whether the police are required by section 36(2) of the *Act* to correct the appellant's personal information in the records relating to the two incidents.

[2] I note that the police's first decision appears to implicitly also address occurrence reports, as the reference to "alias" only appears in the occurrence reports and not the officers' notes. However, nothing turns on this since the police's original and revised decisions are consistent with one another.

[15] 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 correction request, the individual may require the institution to attach a statement of disagreement to the information. Section 36(2) 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; 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.

[16] 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;
2. the information must be inexact, incomplete or ambiguous; and
3. the correction cannot be a substitution of opinion.[3]

[17] 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]

Representations

[18] Both parties agree that the information at issue consists of the appellant's personal information.

[19] The police submit that the information at issue accurately reflects the reason for the calls for service, the legal grounds for the interactions with the appellant, the persons involved in the calls, and the views of the individuals whose impressions are set out in the records. Similarly, the police submit that the references in the records to the appellant's mental health accurately reflect the views of the officers who observed the

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[3] Orders P-186 and P-382.
[4] Orders P-448, MO-2250 and PO-2549.

appellant's behaviour. The police maintain that the views are not intended to be a definitive medical diagnosis; they simply reflect observed behaviour. The police state that such notations provide important information to officers in future interactions, and are beneficial for officer safety, public safety, and the well-being of the appellant herself.

[20] The police submit that the truth or falsity of the opinions set out in the records is not at issue in these appeals, but rather, the appellant seeks to substitute her opinion with that of the individuals who authored the records. The police maintain that the opinions in the records should not be substituted as they appropriately and accurately reflect the authors' observations and impressions of the appellant at the time the records were created. The police provided affidavit evidence in support of this position.

[21] The police also refer to Order M-777, in which former Adjudicator John Higgins found that records "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." The police maintain that the issue is whether the records accurately reflect the authors' observations and impressions at the time the records were created.

[22] With respect to the decision letters that she received from the police, the appellant notes that her requested corrections regarding the involved persons, dates, times, and references to her mental health were not made. In her representations, the appellant reiterates that she wants the incorrect information deleted and corrected, and she does not wish to have a statement of disagreement attached. The appellant also maintains that she never received a decision letter regarding her correction requests for the police notes, but only received a "revised decision."

[23] The appellant's representations explain the circumstances that led to the creation of the records at issue. The appellant maintains that the officers who authored the records did so with incorrect information. In addition, the appellant maintains that certain information in the records does not constitute an opinion, but is instead an insult to her.

[24] The appellant explains her reasons for requesting each of the corrections at issue in both appeals. For example, regarding the records at issue in Appeal MA18-200, she takes issue with the occurrence type, "verbal domestic", appearing in the records, as she submits that the parties involved were a court room clerk, her husband's lawyer, and a third party. She also points to various instances where she believes the officer received incorrect information, such as how she was behaving, and the individuals involved. Further, she takes issue with a reference to the *Mental Health Act*, as she submits that she does not suffer from a mental health issue.

[25] Regarding the records at issue in Appeal MA18-202, the appellant takes issue with dates and times contained in the records, such as the date that she and her ex-spouse filed for divorce and the time that a case conference commenced. She also objects to a statement regarding her mental health and comprehension, as she states

that she does not suffer from a mental health issue and the notation is insulting.

[26] In response to the appellant's representations, the police clarified a typographical error in its original submissions, which was noted by the appellant in her representations.

[27] Regarding the appellant's concerns about the occurrence type of one record, the police maintain that the record was appropriately classified as a verbal domestic incident given that it arose in the context of an ongoing proceeding involving the appellant's ex-spouse. The police explain that the incident falls under the definition of "domestic incident" because the definition of "domestic" incident includes "any incident between family members where, even though no criminal office has occurred, the police have been called to the scene."[5]

[28] In response to the rest of the appellant's representations, the police rely on their original submissions.

Analysis and findings

[29] As mentioned above, 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;

2. the information must be inexact, incomplete, or ambiguous; and

3. the correction cannot be a substitution of opinion.[6]

[30] The right of correction applies only to an appellant's personal information. The term "personal information" is defined in section 2(1) of the *Act*.[7] Personal information includes recorded information about an identifiable individual.

[31] There is no dispute between the parties that this first requirement has been satisfied. I have reviewed the records, and I find that they contain the appellant's personal information.

[32] With regard to the second requirement, section 36(2)(a) gives the police the discretion to accept or reject a correction request.[8] Therefore, even if the information is "inexact, incomplete or ambiguous", this office may uphold the institution's exercise of discretion to reject a correction request if it is reasonable in the circumstances.[9]

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[5] For the purpose of the police's Directive on Domestic/Family Disputes (I-B 713(F)), as it was named at the time.
[6] Orders P-186 and P-382.
[7] Order P-11.
[8] Order PO-2079.
[9] Order PO-2258.

[33] 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.[10]

[34] The records at issue in these appeals are of an investigatory nature, as they relate to police involvement in various occurrences involving the appellant. In addition, based on the records before me and the parties' submissions, I am satisfied that the officers who recorded the information at issue did so based on their observations and impressions at the time the records were created. I also accept the police's position that the notes in the records referencing mental health issues is not intended to be a definitive medical diagnosis, but rather a reflection of observed behaviour or the authors' opinions. Accordingly, I find that the records simply reflect the views of the officers whose impressions are set out therein, and therefore, cannot be said to be "inexact, incorrect, or incomplete."

[35] With regard to the third requirement, I find that correcting the records in the manner requested by the appellant would result in a substitution of the appellant's opinion for that of the investigating officers who created the records. A long line of orders from this office has held that a correction will not be made if the information to be corrected consists of an opinion.[11] This requirement exists because it is not appropriate to substitute the opinion of an individual requesting the correction for that of the individual who actually recorded the information.

[36] Accordingly, for the reasons above, I find that the requested corrections do not meet the second and third requirements. As a result, I uphold the police's decisions to refuse the appellant's correction requests.

[37] Regarding the appellant's concern about only receiving a "revised" decision letter regarding the officers' notes, I note that the police's original decision letter only pertained to the occurrence reports at issue in Appeal MA18-202. The police's "revised" decision addressed the officers' notes in Appeal MA18-200. In its revised decision, the police reiterated its denial of the correction requests on the same grounds set out in its original decision letter regarding the occurrence reports. Therefore, I am satisfied that, notwithstanding the police's use of the word "revised", the appellant received adequate decisions in response to her requests to correct both the police notes and occurrence reports.

[38] The appellant has affirmed that she is not interested in having a statement of disagreement attached to the records. However, given my finding that the corrections requested will not be made, I note, once again, that section 36(2)(b) of the *Act* requires the police to attached a statement of disagreement to the record upon request,

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[10] Orders M-777, MO-1438, and PO-2549.
[11] See for example, Orders P-186, PO-2079, MO-2258, MO-2351, MO 2370, and PO-2549.

reflecting any correction that was requested but not made. This option remains available to the appellant.

ORDER:

I uphold the police's decisions to deny the appellant's requests for correction and dismiss the appeals.

Original Signed by: January 17, 2019

Jaime Cardy
Adjudicator