

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3982

Appeal MA18-333

Peel Regional Police Services Board

December 10, 2020

Summary: Pursuant to section 36(2)(a) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) the appellant requested that the police correct information in two Occurrence Details Reports, or in the alternative, attach statements of disagreement to the reports in accordance with section 36(2)(b), or destroy them. The police agreed to attach a statement of disagreement to one occurrence report but not the other. The police did not destroy the records. In this order, the adjudicator finds that one of the Occurrence Details Reports does not contain the appellant's personal information. The adjudicator also finds that, in the circumstances, the police are not required to attach additional information to the report to which statements of disagreement have already been attached. He upholds the police's decision to not make corrections to the two reports and/or destroy them or to attach any further statements of disagreement to the Occurrence Details Report that contained the appellant's personal information.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) "definition of personal information", 36(1), 36(2)(a) and 36(2)(b).

Orders Considered: Orders M-777, MO-1700 and MO-2741.

OVERVIEW:

[1] The Peel 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 access to all occurrence reports related to the requester for a specified time period.

[2] The police identified four Occurrence Details Reports as being responsive to the request and issued an access decision. As set out in the decision letter, the police indicated that it would grant full access to one of the Occurrence Details Reports and partial access to the remaining three, relying on sections 38(a) (discretion to refuse requester's own information), in conjunction with sections 8(1)(g) (law enforcement intelligence information) and 8(1)(l) (facilitate commission of an unlawful act), as well as 38(b) (personal privacy), to deny access to the portions they withheld. However, despite being identified in the decision letter as an Occurrence Details Report that the appellant was granted partial access to, information in that report, hereinafter referred to as Occurrence #1, was not provided to the requester, because the police subsequently determined that it was not responsive to his request and did not contain any of his personal information.

[3] The requester then sought a correction of two of the four Occurrence Details Reports, hereinafter referred to as Occurrence #1 (discussed above) and Occurrence #2 under section 36(2) of the *Act*. The police denied the request but advised the appellant of his right to attach a statement of disagreement. The appellant submitted a statement of disagreement that the police attached to Occurrence #2¹. Because Occurrence #1 actually did not relate to the appellant, they did not attach the appellant's statement of disagreement to it.

[4] The requester (now the appellant) appealed the police's decision to deny his correction request. His position was that the two specified Occurrence Details Reports should be corrected and/or destroyed.

[5] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry under the *Act*.

[6] I commenced my inquiry by sending the police a Notice of Inquiry setting out the facts and issues in the appeal. The police provided representations in response. In their representations, the police confirmed that Occurrence #1 did not relate to the appellant. This is addressed in more detail below.

[7] A Notice of Inquiry was sent to the appellant along with a copy of the police's representations. The appellant ultimately provided a mix of representations by email, facsimile and by telephone message.²

¹ The police ultimately attached further statements of disagreement to Occurrence #2. This is discussed in more detail below.

² Amongst other things, in his representations, for the first time, the appellant requested an appeal of the police's initial access decisions relating to the undisclosed information in Occurrence #1 (withheld in full), Occurrence #2 and another identified Occurrence Details Report. As the appellant filed the appeal before me to address the correction of Occurrence #1 and Occurrence #2 and the issue of the appeal of the

[8] In this order, I find that Occurrence #1 does not contain the personal information of the appellant and he has no right to correct it. I also find that the police are not required to attach any additional statements of disagreement to the Occurrence #2. I uphold the police's decision not to correct the information at issue in the identified occurrence reports.

RECORDS:

[9] The records at issue are two Occurrence Details Reports.

ISSUES:

- A. A.Does the appellant have a right to request correction of Occurrence Details Report #1?
- B. Should the police correct the appellant's personal information in Occurrence Details Report #2? If not, are they required to attach additional statements of disagreement to the occurrence detail report?

DISCUSSION:

[10] Before I begin the analysis, a preliminary matter should be addressed. The appellant asks that if I do not find in his favour, I should order that the two Occurrence Details Reports be destroyed. I do not have the power to order the destruction of a record under the *Act* and I will not address this issue further in this order.

Issue A: Does the appellant have a right to request correction of Occurrence Details Report #1?

[11] In an affidavit included with their representations, a law clerk for the police states that Occurrence #1 does not relate to the appellant and was originally identified as a responsive record in error. The police advise that no statement of disagreement was attached to Occurrence #1 because there is no reference to the appellant contained in that report. They submit that as that Occurrence details report is not responsive to the request there are no grounds for correction.

[12] I agree. As discussed in more detail below, section 36(1) gives an individual a general right of access to his or her own personal information held by an institution.

police's initial access decisions relating to all three Occurrence Details Reports is not an issue before me, I will not be addressing it in this order.

Section 36(2)(a) 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. I have reviewed Occurrence #1 and it does not contain any information that qualifies as the personal information of the appellant as defined in section 2(1) of the *Act*. Accordingly, the appellant has no right to request that it be corrected.

[13] I now turn to the remaining Occurrence Details Report.

Issue B: Should the police correct the appellant's personal information in Occurrence #2? If not, are they required to attach additional statements of disagreement to Occurrence #2

[14] The remaining issue to be determined in this appeal is whether the police should correct the appellant's personal information in Occurrence #2 and, if not, whether they are required to attach any additional statement of disagreement to it. For the reasons set out below, I uphold the police's decision not to correct the personal information in the occurrence report as requested by the appellant and I find that they are not required to attach any additional statements of disagreement to it.

[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)(a) 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 under section 36(2)(b). The relevant portions of section 36(2) 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
[.]

The requests for correction do not meet the necessary requirements

[16] This office has previously established that in order for an institution to grant a request for correction under section 36(2)(a), all three of the following requirements must be met:

1. the information at issue must be personal 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

Requirement 1: information must be personal information

[18] 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*. Personal information includes recorded information about an identifiable individual.

[19] The police acknowledge that the information that the appellant requests to have corrected is his personal information. On my review of the occurrence report, I agree with the police and find that the information that the appellant seeks to have corrected is his own personal information as set out in section 2(1) of the *Act*. I also find that the information contains the views or opinions of individuals about the appellant as contemplated by paragraph (g) of that definition.

[20] The first requirement of the test has been met.

Requirement 2: information must be inexact, incomplete or ambiguous

[21] With regard to the second requirement, the information to be corrected must be inexact, incomplete or ambiguous. I note that section 36(2)(a) gives the police the discretion to accept or reject a correction request. 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.

[22] The police submit that the information that the appellant wishes to have corrected is not "inexact, incomplete or ambiguous" as set out in the second requirement of the test for a correction to be granted. They point to Orders M-777 and MO-2741, in particular, to support their position that records such as occurrence reports that contain allegations concerning a subject cannot be said to be "incorrect" or "in error" or "incomplete" if they simply reflect the view of the individuals whose impressions are being set out, whether or not those views are true. They submit that both of those orders support their view that in those circumstances, the "truth or falsity of the views is not an issue, but rather whether the reports accurately reflect the author's observations and impressions at the time the record was created."

³ Orders P-186 and P-382.

⁴ Orders P-448, MO-2250 and PO-2549.

[23] Specifically, the police submit that the information that the appellant seeks to have corrected “accurately reflects the reason for the call for service, the legal grounds for the interaction with the appellant, the persons involved in the call and the views of the individuals whose impressions are set out in them.” The police submit:

A note in a police occurrence referring to possible mental health issues is not intended to be a definitive medical diagnosis, but rather a reflection of observed behaviour. Such notations provide important information to officers in future interactions, for officer safety, public safety and the wellbeing of the appellant himself.

[24] The appellant’s submissions with respect to his correction request, as supplemented by correspondence he provided to this office by email and facsimile, set out his position that the report contains fabricated misrepresentations that are without foundation and do not contain his side of the events. He submits that the reports are based on improper calls that the police should not have acted on. He asserts that he is a victim of police profiling and that the report was created in bad faith. He states that the report is adversely impacting his health and causing him distress. He takes the position that it should be corrected or destroyed.

[25] This office has 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.⁵

[26] I have reviewed the parties’ submissions, the record at issue and have considered the information that the appellant requests to have corrected. I am satisfied that the officer who recorded the information in the occurrence report based that information on information they received and their own observations and impressions at the time of the incident and when the occurrence report was written. I also accept the police’s position that the notes in the record referencing mental health issues is not intended to be a definitive medical diagnosis. Therefore, I accept that the record reflects the views of the officer responsible for preparing the occurrence report based on information they received or observed and I find that it is not inexact, incomplete or ambiguous.

[27] As noted above, all three requirements must be met in order to qualify for a correction. As the second requirement for correction has not been met, I do not need to consider the third requirement - whether the requested correction is a substitution of opinion. Accordingly, I find that the corrections requested by the appellant do not satisfy the requirements of the three-part test for granting correction under section

⁵ See, for example, Orders M-777 and MO-2741.

36(2)(a) of the *Act*.

[28] As a result, I uphold the police's decision to refuse the appellant's request to have his personal information in Occurrence #2 corrected.

The police are not required to attach additional information to the occurrence report

[29] As set out above, sections 36(2)(a) and (b) provide two different remedies for individuals wanting to have their own personal information corrected in records held by institutions governed by the *Act*. While section 36(2)(a) entitles an individual to request that their personal information be corrected, an institution has the discretion to accept or reject a correction. 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 an individual's correction request. Thus, section 36(2)(a) is discretionary, whereas section 36(2)(b) is mandatory.

The parties' representations

[30] The police do not dispute that section 36(2)(b) requires that they attach a statement of disagreement to any record containing personal information that they have declined to correct in response to a request under section 36(2)(a). However, they submit that they have met their obligation under section 36(2)(b) as they have attached the appellant's statements of disagreement to Occurrence #2 on a number of occasions.

[31] The police forwarded a letter to this office in the course of adjudication indicating that in addition to previous statements of disagreement, they have attached further information to Occurrence #2 at the appellant's request.

Analysis and findings

[32] I have reviewed Occurrence #2, the correction request, the statements of disagreement attached to Occurrence #2, the police's representations and the appellant's representations. Based on the evidence before me, I find that the police are not required to attach any additional information to Occurrence #2.

[33] Previous orders of this office have discussed the nature of an appellant's right to require an institution to attach a statement of disagreement to a record. Those orders have determined, based on the wording of the provision, that although a requester has a right to request the institution to attach a "statement of disagreement," that right does not permit the attachment of information in any format or of any content.⁶

⁶ Orders MO-1700 and MO-3356.

Considering the language of the provision, the right in section 36(2)(b) to require an institution to attach a statement of disagreement to the information is limited to information that reflects a correction that was requested but not made.⁷ As noted above, section 36(2)(a) permits an individual to request the correction of personal information where they believe there is an error or omission.

[34] In Order MO-1700, the adjudicator accepted that the police were required (as they had already done), to attach to the record an 8-page statement of disagreement. That statement identified in great detail specific sentences, phrases and words in the records that the appellant contended were incorrect and detailed the basis for the appellant's contention. However, he did not accept that a 13-page appendix could reasonably be construed as reflecting any correction that was requested but not made. He stated that had the police decided to correct the information contested by the appellant, the information would have been changed in accordance with the requested corrections set out in the 8-page statement but would not have included any of the information contained in the appendix. The adjudicator stated:

The determination as to what constitutes a statement of disagreement is not based on whether the information is "relevant" to the records, rather, the issue to be decided is whether the statement of disagreement reflects any correction requested by the requester but not made by the institution.

[35] I agree with the adjudicator's reasoning and find it relevant to my analysis here.

[36] Based on the occurrence report, the appellant's correction request, and the multiple statements of disagreement already attached to Occurrence #2, I do not accept that any additional information that the appellant may seek to have attached reflects proper corrections to the report that he requested but the police declined to make.

[37] Moreover, from my review of the evidence, I accept that the statements of disagreement that have already been attached sufficiently reflect the corrections that the appellant requested be made to Occurrence #2 that the police declined to make and meet the police's obligations under section 36(2)(b).

ORDER:

1. I uphold the police's decision to deny the appellant's requests for correction and/or destruction of the occurrence reports.

⁷ Order MO-1534.

2. I uphold the police's decision not to attach additional statements of disagreement to Occurrence #2.
3. I dismiss the appeal.

Original Signed by: _____
Steven Faughnan
Adjudicator

December 10, 2020 _____