

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4231

Appeal MA21-00502

Toronto Police Services Board

July 27, 2022

Summary: After disclosing records that were responsive to a request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), the Toronto Police Services Board (the police) received a request for correction, under section 36(2) of the *Act* in relation to some of the records the police had disclosed. The records at issue relate to the appellant and his involvement with the police. The police denied the request for correction, and the appellant appealed that decision. In this order, the adjudicator finds that parts two and three of the three- part test for section 36(2)(a) are not met, and as a result, she upholds the police's decision and dismisses the appeal.

Statute 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), and 36(2).

Orders Considered: Orders M-508, M-777, MO-1438, and MO-2741.

OVERVIEW:

[1] An individual made a request to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to his involvement with the police. After the police issued an access decision and disclosed some responsive records to the requester, the police received a request for correction in relation to some of the records, under section 36(2)(a) of the *Act*.

[2] In response, the police denied the request for correction and, under section 36(2)(b) of the *Act*, attached the requester's statement of disagreement to the record.

[3] The requester, now the appellant, appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC).

[4] The IPC appointed a mediator to explore resolution, but the parties could not reach a mediated resolution. Therefore, the appeal moved to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry.

[5] As the adjudicator of this appeal, I began an inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, to the police. I sought and received written representations from the police in response. I then sought and received written representations from the appellant in response to a Notice of Inquiry and the police's representations. The appellant would not consent to the sharing of his representations, so I will only refer to them in a very general manner in this order.

[6] For the reasons that follow, I uphold the police's decision because I find that the three-part test for section 36(2)(a) is not met, and I dismiss the appeal.

RECORDS:

[7] The records at issue are a Provincial Offences Notice and notes from a police officer notebook.

DISCUSSION:

[8] This appeal arises out of an incident involving the appellant, another individual, and the police. The fairness or unfairness of the underlying circumstances regarding this incident are outside the scope of this appeal; I do not have the legal authority to make findings about the incident itself and the circumstances that followed it.¹ The only issue to decide in this appeal is whether the police should correct the personal information of the appellant, under section 36(2) of the *Act*. This determination involves deciding whether the three-part test for section 36(2)(a) is met.

[9] Section 36(1) of the *Act* gives an individual a general right of access to their own personal information that an institution holds. Section 36(2) gives the individual a right to ask the institution to correct that personal information. It states:

Every individual who is given access under subsection (1) to personal information is entitled to,

¹ Orders M-777, MO-1438 and PO-2549.

(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...

Requirements for a request for correction to be granted

[10] An individual must first ask the institution to correct the information before the IPC will consider whether the correction should be made.

[11] Three requirements must be met before an institution (or, on appeal, the IPC) can grant a request for correction:

1. The information must be the requester's *personal information* (see above),
2. The information must be "inexact, incomplete or ambiguous," and
3. The correction cannot be a substitution of opinion – that is, it cannot simply replace one person's opinion with another person's opinion that the requester prefers.²

[12] In each case, the appropriate method for correcting personal information should be determined by taking into account:

- the nature of the record,
- the method of correction that the requester asked for, if any, and
- the most practical and reasonable method of correction in the circumstances.³

Personal information

[13] The right of correction can apply only to the *personal information* of the individual asking for the correction, which is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual." Due to my findings that parts two and three of the test for correction are not met, it is not necessary for me to discuss whether the record contains the appellant's personal information, as required by part one of the test.

Inexact, incomplete or ambiguous

[14] For there to be an error or omission in the personal information within the

² Orders P-186 and P-382.

³ Orders P-448, MO-2250 and PO-2549.

meaning of section 36(2)(a), the information must be "inexact, incomplete or ambiguous." If the information sought to be corrected is someone's opinion, section 36(2)(a) does not apply and there is no basis for correction.⁴

[15] Also, records of an investigatory nature cannot be said to be "incorrect," "in error" or "incomplete" if they simply reflect the views of the person whose impressions are being set out. In other words, the IPC must only decide whether the information accurately reflects the observations and impressions of the person whose impressions are being set out at the time the information was recorded or noted, and not whether the information is actually true or not.⁵

Representations

The police's representations

[16] The police acknowledge that with regards to the incident that gave rise to the police records, in the circumstances, it was recommended that the Provincial Offences Notice (PON) would be withdrawn, and it later was. However, the police say that the opinions of the officers in the records were based on the officers' observations and perspective at the time of the incident's investigation. The police submit that the appellant's request for correction indicates a disagreement and dissatisfaction with various aspects of how the incident was captured in police records, but this does not meet the requirements for correction of personal information under section 36(2)(a) of the *Act*. The police submit that while the appellant may not appreciate some of the officers' wording, the appellant's dissatisfaction with the investigation and its results do not amount to meeting the criteria for a correction under 36(2). The police submit that concerns regarding how an investigation is handled have a specific remedy that does not include a correction to existing records.

[17] In support of this position, the police submit that the appellant's request for correction indicates disagreement with the officers' account of the incident; for example, the appellant describes the officers involved as unprofessional in specified ways (which I will not set out in this order).

[18] The police submit that it is not the mandate of the IPC, or within the scope of the *Act*, for police officer's notes to be rewritten or corrected after the fact, in order to satisfy parties to an incident, who may disagree with how they may be portrayed. The police rely on Order M-508, in which the IPC found that the appellant disagreed with the police officer's version of his actions and statement, but that this did not meet the second part of the test (that the personal information be "inexact, incomplete or ambiguous").

[19] Furthermore, the police submit that the appellant seeks to substitute his opinion

⁴ Orders P-186, PO-2079 and PO-2549.

⁵ Orders M-777, MO-1438 and PO-2549.

of what happened in the incident (having offered his own summary of events), in the place of the complaint of another individual and the notes of the attending officers. The police submit that the information that the appellant wishes to have corrected is not "inexact, incomplete or ambiguous," as required by part two of the test for a correction. In this regard, the police also rely on Order MO-2741, where the IPC found that reports that simply reflected the views of the officers were not "inexact, incomplete or ambiguous," and that the request for correction of records simply reflecting the officers' views amounted to a substitution of opinion. An example of this noted in Order MO-2741 was the appellant's objection to an officer's observation that she exhibited mental instability.

[20] In addition, the police submit that the third part of the test is not met in the circumstances. They rely on the reasoning in Order MO-1438, which also involved disagreement with records that captured subjective views, and where the IPC found that such a disagreement with the content of records capturing views is in effect asking for a substitution of opinion, which is not allowed under the third part of the test. The police also rely on the reasoning in the following passage from Order M-777, which discussed the application of section 36(2)(a) to information in an incident report:

The appellant submits that in order to deal with his appeal from the city's decision not to grant a request for correction under section 36(2)(a), this office is required to investigate his allegations that the contents of the records are incorrect, decide what actually transpired, and "correct" the record by destroying them.

The records to which the appellant has objected consist of "incident reports" completed by staff members, and other notes, letters and memoranda containing similar information. Some of this information consists of characterizations of the appellant by staff – e.g. indicates that his behaviour towards staff was "unacceptable" or "inappropriate", that he "became angry", etc. Staff also recorded that they "felt frightened" or had an "uneasy feeling" as a result of their interactions with him.

In this respect, the records have common features with witness statements in order situations, such as workplace harassment investigation 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 the way which the legislation 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 an issue in this inquiry.

[21] In conclusion, the police submit that denying the request for correction was reasonable in the circumstances. They reiterate that the records created during the investigation of the incident reflect the observations and impressions of the officers at the time, along with the opinion, fact and the dynamics of the situation as they unfolded and were interpreted by the officers. The police say that the issue is not the veracity of the information contained in the records, but whether the criteria for a correction has been met, and they submit that it has not.

The appellant's position

[22] As mentioned, the appellant would not consent to the sharing of his representations. Therefore, I can only refer to them in a very general manner in this public order by saying that the appellant provided me with his version of the events that occurred, and that, as the appeal is at adjudication, he takes the opposite view of the police: that the requirements of the three-part test for section 36(2) *have* been met. In other words, his position is that the information at issue *is* "inexact, incomplete or ambiguous," and that it is *not* a substitution of opinion. He explains this position further in his confidential representations.

Analysis/findings

[23] For the reasons that follow, I find that parts two and three of the test for correction under section 36(2)(a) are not met, and therefore, I uphold the decision of the police.

[24] Based on my review of the records at issue, I find that they relate to the police's investigation of circumstances involving the appellant, on a specified date.

[25] As discussed, records of an investigatory nature cannot be said to be "incorrect," "in error," or "incomplete" if they simply reflect the views of the person whose impressions are being set out. I am satisfied by my review of the records that the information accurately reflects the observations and impressions of the person whose impressions are being set out at the time the information was recorded or noted.

[26] Having reviewed the appellant's representations and request for correction, I find that the basis of his request is disagreement or dissatisfaction with the way that the incident was captured in police records, and other matters (which do not relate to section 36(2) of the *Act*). However, as the IPC held in past orders such as Orders M-508, M-777, and MO-2741 (cited by the police), such disagreement or dissatisfaction in records capturing the writer's views or observations does not meet part two of the test (that the information be inexact, incomplete or ambiguous). I agree with the reasoning in those orders, and adopt it in this appeal. In addition, as discussed, when dealing with records of an investigatory nature, the IPC is not to decide whether the information is

actually true or not.⁶ Furthermore, I agree with and adopt the reasoning in Order MO-1438, that what the appellant is essentially doing is asking for a substitution of his opinion, and this does not meet part three of the test.

[27] For these reasons, I find that parts two and three of the test for section 36(2)(a) are not met; as a result, it is not necessary for me to discuss whether part one applies, since all three parts of the test must be met for section 36(2)(a) to apply. Therefore, I uphold the police's decision and dismiss the appeal.

ORDER:

I uphold the police's decision, and dismiss the appeal.

Original Signed by: _____

Marian Sami
Adjudicator

July 27, 2022 _____

⁶ Orders M-777, MO-1438 and PO-2549.