

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4279

Appeal MA19-00752

Cornwall Police Service

November 23, 2022

**Summary:** A requester sought and received access to records under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), including occurrence reports (general and arrest reports) related to contacts made between the requester and the Cornwall Police Service (the police). After receiving the records, the requester made a request to the police under section 36(2)(a) (correction of personal information) for corrections to her personal information contained in the records. The police made some corrections to the records but denied others, which the requester (now the appellant) appealed to the Information and Privacy Commissioner of Ontario (the IPC). In this order, the adjudicator upholds the police's decision to not make further corrections to 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) and 36(2); *Personal Health Information Protection Act, 2004*, SO 2004, c 3 Sched A, section 55(8).

**Orders Considered:** Orders MO-3974, MO-3982, MO-4231 and PHIPA Decision 135.

### OVERVIEW:

[1] This order disposes of the sole issue (correction of personal information) raised as a result of a decision made by the Cornwall Community Police Service (the police) to refuse to make certain corrections requested by the requester. The requester had obtained, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), various police records relating to her during a specified time period.

[2] The requester then submitted a request to the police under section 36(2) of the *Act* to correct some personal information contained in the records that were disclosed to her. The police did not initially issue a decision in response to the correction request and the requester (now the appellant) filed this appeal with the Information and Privacy Commissioner of Ontario (the IPC).

[3] During the mediation of this appeal, the police issued a decision to the appellant, granting the correction request in part. The decision letter outlined why the police would not be correcting the remaining portions of the records.

[4] The appellant advised that she did not agree with the police's decision and further, that she did not wish to have a statement of disagreement attached to the records, provided for in section 36(2)(b). The appellant maintained her position that further corrections should be made to the records.

[5] The appeal was then transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator assigned to the file sought and received representations from the police and the appellant. The file was then transferred to me to continue the inquiry.

[6] For the reasons that follow, I uphold the police's decision to not make further corrections to the records, and I dismiss the appeal.

## **RECORDS:**

[7] There are four police records that the appellant seeks to correct. Three of the records are entitled "General Report" and one is entitled "Arrest Report" (the reports).

[8] In addition to seeking corrections to the reports, the appellant also seeks to add a significant amount of information to the reports, including descriptions, observations and opinions of her contacts with health care providers, other police services, lawyers, a pharmacy, as well as detailed information about her health. I will discuss this in more detail below.

## **DISCUSSION:**

[9] The sole issue in this appeal is whether the police should correct the appellant's personal information under section 36(2) of the *Act*. Section 36(1) 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, stating:

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...

[10] 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." "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.<sup>1</sup> Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual.

[11] Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.<sup>2</sup>

[12] Section 2(1) of the *Act* gives a list of examples of personal information:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,

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<sup>1</sup> See the definition of "record" in section 2(1).

<sup>2</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) 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.

[13] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."<sup>3</sup>

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

[15] 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.<sup>4</sup>

[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 of correction that the requester asked for, if any, and
- the most practical and reasonable method of correction in the circumstances.<sup>5</sup>

## **Representations**

[17] The police submit that they reviewed the appellant's request for correction of her personal information and made some corrections of factual information contained in the records. In response to the request for correction, the police provided the appellant

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<sup>3</sup> Order 11.

<sup>4</sup> Orders P-186 and P-382.

<sup>5</sup> Orders P-448, MO-2250 and PO-2549.

with a colour-coded legend to explain why most portions of the request were denied. In their decision letter, the police explained the reasons why many of the corrections were denied, as follows:

- some of the information the appellant wishes to be corrected would be a substitution of the officer's opinions and/or observations with those of the appellant,
- the change of the category of the records that the appellant requested<sup>6</sup> would contravene Statistic Canada's Canadian Centre for Justice and Community Safety Statistics regulations under the Uniform Crime Reporting Survey,
- some of the information the appellant wishes to add goes beyond what the records are meant to address, which is the police's attendance at the appellant's address,
- some of the information the appellant wishes to be added to the records belongs to another police service and is unrelated to the Cornwall Police Service, and
- some of the information the appellant wishes to be corrected is an expression of the appellant's own thoughts, opinions and personal views.

[18] With few exceptions, the police argue the request is a composition of the appellant's own thoughts and opinions, acting as a rebuttal to police observation and opinion, rather than a request to amend specific facts and information. The police go on to state:

Much of the appellant's request contains supplemental information and/or offerings of additional context which go beyond the scope of [the] reason for police attendance. It is of great concern that any further changes as outlined in the appellant's request would act as a complete rewrite of the police officers' reports versus a correction.

[19] The appellant's representations were wide-ranging, touching on an array of topics unrelated to her contacts with the police. For example, the appellant provided to the IPC copies of correspondence she had with Health Canada, several records of her personal health information, including medical consultations, medical notations and lists of medications, records relating to complaints the appellant has made to regulatory colleges about certain regulated health professionals, and a press clipping about a "mafia boss."

[20] Overall, it appears from the appellant's representations that her position is that further extensive corrections to the police reports should be made.

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<sup>6</sup> The appellant requested that the category of records be changed to "police reports" and that any characterization of these reports as dealing with health issues be removed.

## **Analysis and findings**

[21] As previously stated, 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.<sup>7</sup>

### ***Requirement 1: information must be personal information***

[22] Turning to the first part of the three-part test, I have reviewed the four reports at issue and I find that they contain the appellant's personal information. The reports describe contacts made between the appellant and the police. In particular, I find that the reports contain information about the appellant, including the following:

- information about the appellant's medical history, which qualifies as her personal information as defined in paragraph (b) of the definition in section 2(1) of the *Act*,
- her name and address, which qualifies as her personal information as defined in paragraph (d) of section 2(1),
- the views or opinions of an officer about the appellant, which qualifies as her personal information in paragraph (g) of section 2(1), and
- the appellant's name where it appears with other personal information relating to her, which qualifies as her personal information in paragraph (h) of section 2(1).

[23] I also find that the information the appellant seeks to correct qualifies as her personal information under the paragraphs described above. For these reasons, I find that the first requirement of the three-part test has been met.

### ***Requirement 2: information must be inexact, incomplete or ambiguous***

[24] Regarding the second requirement, the information to be corrected must be inexact, incomplete or ambiguous. In addition, 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," the IPC may uphold an institution's exercise of discretion to deny a correction request if it is reasonable in the circumstances.

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<sup>7</sup> Orders P-186 and P-382.

[25] For there to be an error or omission in the personal information within the 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.<sup>8</sup>

[26] 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.<sup>9</sup>

[27] Past IPC orders have held that records of an investigatory nature such as occurrence reports<sup>10</sup>, cannot be said to be inexact, incomplete or ambiguous as required by part two of the test if they simply reflect the views of the individual whose impressions are being set out. The IPC 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.<sup>11</sup> I agree with this reasoning and find it relevant to the circumstances of this appeal.

[28] I have reviewed the parties’ representations, the reports at issue, and have considered the information that the appellant requests to have corrected. I accept that the general and arrest reports before me are properly described as records of an investigatory nature as they relate to police involvement in specific occurrences involving the appellant. I am satisfied that the investigating officers who recorded the information in the respective reports based that information on their own observations and impressions at the time of the incidents and when the reports were written. I also find that the notes in the reports referencing health issues are a reflection of observed behaviour or the authors’ opinions at the time of the incidents. Therefore, I accept that the reports reflect the views of the officers responsible for writing them and I find that they are not inexact, incomplete or ambiguous. My finding applies also to the officers’ categorization of the reports, which the appellant seeks to change.

[29] For these reasons, I find that the second requirement of the three-part test has not been met with respect to the officers’ observations and opinions. As noted above, all three requirements must be met in order to qualify for a correction. As the second requirement has not been met with respect to the officers’ observations and opinions, I do not need to consider the third requirement – whether the requested correction is a substitution of opinion.

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<sup>8</sup> Orders P-186, PO-2079 and PO-2549.

<sup>9</sup> Orders M-777, MO-1438 and PO-2549.

<sup>10</sup> In this case, the records are entitled either “General Report” or “Arrest Report.”

<sup>11</sup> See, for example, Orders M-777, MO-1438, MO-2741, MO-3952, MO-3974 and PO-2549.

[30] I will however, consider the third requirement of the three-part test with respect to other corrections the appellant seeks, namely the information that she seeks to add to the reports, which I describe above under the heading "Records."

***Requirement 3: correction should not be a substitution of opinion***

[31] The police's position is that the appellant's correction request is a compilation of her own thoughts and opinions, rather than a request to amend specific facts and information, and that much of her request contains additional information and context that go beyond the police's interactions with the appellant. I agree.

[32] Concerning the extensive information unrelated to her contacts with the police that the appellant wishes to add to the reports, I find PHIPA Decision 135 instructive in this regard. While this decision dealt with a complaint made under the *Personal Health Information Protection Act* about a psychiatrist's refusal to correct the complainant's personal health information, the principles in that case are applicable in this case. In that decision, Adjudicator Colin Bhattacharjee noted that the complainant had provided additional information in her correction request that she had not provided to the psychiatrist at the time of her appointment, such as information about her family's health history, her medical status, and her education and employment history. Adjudicator Bhattacharjee found that the psychiatrist was not obligated to include this additional information in the record at issue. In doing so, he stated:

In my view, the test in section 55(8)<sup>12</sup> is intended to address whether a health information custodian or agent completely and accurately recorded personal health information from a patient at the time they collected that information. In most circumstances, it is not meant to give patients the right to correct a record of their personal health information after the fact if they failed to provide a health information custodian with complete and accurate information at the time that information was collected and recorded.

[33] I agree with this approach and adopt it in the circumstances of this appeal. I find that the extensive information the appellant wishes to be added to the reports was provided to the police after her contact with them and not at the time the contact took place, when the records were created. I also find that permitting this additional information to be included in the reports would be tantamount to substituting the opinions of the officers who attended the calls with the appellant's own opinions.

[34] As a result, I find that the third requirement of the test has not been met.

[35] In conclusion, for the reasons set out above, I find that the corrections requested by the appellant do not satisfy the three-part test for granting correction

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<sup>12</sup> Section 55(8) of the *Personal Health Information Protection Act* deals with a health information custodian's duty to correct a record of personal health information.



under section 36(2)(a) of the *Act*. Although the information that the appellant seeks to have corrected is personal information, it is not inexact, incomplete or ambiguous and to correct it would amount to a substitution of the opinion of the investigating officers with that of the appellant. As a result, I uphold the police's decision to refuse the appellant's requests to have her personal information in the four reports corrected.

[36] Finally, regarding section 36(2)(b) of the *Act*, the appellant made it clear during the mediation of the appeal that she does not wish to provide a statement of disagreement to the police to attach to the reports. As a result, it is not necessary for me to consider the application of section 36(2)(b). However, should the appellant now wish to file a statement of disagreement, I trust the police will receive it and act on it in accordance with the *Act*.

**ORDER:**

1. I uphold the police's decision to not make further corrections to the reports at issue.
2. I dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Cathy Hamilton  
Adjudicator

\_\_\_\_\_ November 23, 2022