Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4385

Appeal MA22-00355

Niagara Regional Police Services Board

May 30, 2023

Summary: The appellant requested correction of her personal information, in police records of a 2021 incident involving her, claiming it erroneously described her mental state. The police denied the correction request because the information the appellant wanted corrected was officers' observations during an investigation and was collected for the purpose of law enforcement. The police advised the appellant that she could require that a statement of disagreement be attached to the records in accordance with section 36(2)(b) of the *Act*.

The adjudicator exercises her discretion under section 41(1) of the *Act* not to conduct an inquiry to review the police's decision because an inquiry is not warranted. The police have responded adequately to the correction request and they are not required to grant it. The appeal is dismissed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, 1990, c. M.5, sections 36(2)(a), 36(2)(b) and 41(1).

OVERVIEW:

[1] This no inquiry order addresses an appeal filed with the Information and Privacy Commissioner of Ontario (the IPC), under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), by an individual whose request for correction of police records involving her was denied by the police.

The correction request and the police's decision to deny it

[2] The appellant submitted a correction request to the police seeking the correction of her personal information in a general occurrence report and police officers' notes about an incident in which the appellant was involved in 2021. The

general occurrence report identifies the incident as "mischief – other." In her correction request to the police, the appellant asked that various references to her mental state and her apprehension under section 17 of the *Mental Health Act* (*MHA*) be crossed out and replaced with other language.

[3] The police issued a decision denying the appellant's correction request. In their correction decision, the police stated that the information the appellant wants corrected forms part of the "perception of the officers' observations made during an investigation" conducted for law enforcement purposes. The police also advised the appellant that she had the right, under section 36(2)(b) of the *Act*, to require them to attach her correction request as a statement of disagreement to the records.

The appeal

[4] The appellant was dissatisfied with the police's decision and appealed it to the IPC. The IPC attempted to mediate the appeal, but a mediated resolution was not possible. The appeal was then moved to the adjudication stage of the appeal process, in which an adjudicator may conduct an inquiry.

[5] As the adjudicator, I have the discretion under section 41(1) of the *Act* to conduct – or not to conduct – an inquiry to review the police's decision. I reviewed the materials in the appeal file, and I considered the requested corrections, the circumstances of the appeal and the correction provisions of the *Act* at section 36(2), which state:

> 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 to be notified of the correction or statement of disagreement.

Preliminary Assessment not to conduct an inquiry

[6] I formed a preliminary view that the appeal did not warrant an inquiry under the *Act* because no purpose would be served by an inquiry. I sent a letter to the appellant advising her of my preliminary assessment that the appeal should not proceed to an inquiry because the corrections requested did not meet the requirements for the police to grant them because:

- the information the appellant wants corrected is the investigating police officers' views and observations, which cannot be said to be "inexact,

incomplete or ambiguous" because they reflect the officers' subjective views during their investigations;

- the correction request appears to be a request to substitute the officers' opinions with the appellant's opinion and there is no statutory basis for the police to make the corrections the appellant seeks; and

- there is no statutory basis for the appellant's request that portions of the police records at issue be "removed."

[7] In my letter, I explained the three requirements that must be met before the police or, on appeal, the IPC can grant a request for correction. These are:

1. The information must be the requester's personal information,

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 appellant prefers.

[8] I advised the appellant of my preliminary assessment that only the first of the three requirements has been met in this appeal – the information at issue is her personal information. I also advised her of my preliminary assessment that she has not established that the information she seeks to have corrected is inexact, incomplete or ambiguous, and the second requirement is not met. I also noted that, contrary to the third requirement, the appellant appears to be requesting that her opinion of her mental state and actions during the incident described in the police records replace the opinion of the police officers who observed her and investigated the incident.

[9] I referred the appellant to previous IPC orders that have held that 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.[1] I also referred her to IPC orders that have held that 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; thus, 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, and not whether the information is actually true or not.[2]

[10] I invited the appellant to provide representations in response to my preliminary assessment letter if she disagreed with it. The appellant provided representations arguing that the appeal warrants an inquiry. I address those representations in my reasons, below.

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[1] Orders P-186, PO-2079 and PO-2549.
[2] Orders M-777, MO-1438 and PO-2549.

Should the appeal proceed to an inquiry under the *Act*?

[11] Section 41(1) of the *Act* sets out the IPC's authority to conduct – or not to conduct – an inquiry and states, "The Commissioner may conduct an inquiry to review the head's decision[.]" For the reasons that follow, I exercise my discretion not to conduct an inquiry in this appeal.

[12] In her representations to me, the appellant does not directly address the correction provisions in section 36(2) of the *Act* or the three requirements for correction that I set out in my letter. Instead, she repeats her concerns and claims that her personal information in the records is erroneous, she alleges police misconduct and she asks that the records be destroyed. I have no jurisdiction to address the appellant's concerns about the police officers' conduct in questioning and detaining her. Also, there is no provision in the *Act* that permits the destruction of the records at issue. As such, I do not address those two points.

[13] Although the appellant does not address the correction provisions, I acknowledge her submission that the records contain errors. The appellant asserts that the officers' views "must stem from objective factors" and there is "no objective evidence" – such as body camera, patrol camera or other audio recording device footage – of her making the statements attributed to her or acting as described in the police records. She insists that the records are not an accurate reflection of what occurred and she provides her version of the incident. She also recounts two prior incidents during which the police questioned her, determined she required a mental health assessment and apprehended her under the *MHA*. All of the appellant's representations are her opinion of what took place during the 2021 incident and the two prior incidents.

[14] In support of her position, the appellant provides copies of documents she asserts confirm the errors in the police records. These documents are a copy of part of a judge's order dismissing a mischief charge against her, and a triage record, discharge form and letter from a hospital. I have examined all of these documents and I do not agree with the appellant's assertion that they confirm that the records are erroneous. The information in these documents is consistent with the information in the police records; it is not evidence of errors in the records but evidence of what happened after the 2019 incidents investigated by the police.

[15] As I explained in my preliminary assessment letter, the IPC has consistently held that a correction under section 36(2) cannot be a substitution of opinion that simply replaces one person's opinion with another person's opinion that the appellant prefers, and that records of an investigatory nature are not erroneous if they reflect the view of the person whose impressions are being set out. The police records at issue are investigatory records that accurately reflect the police's views at the time of the incident in question and cannot be said to be erroneous within the meaning of section 36(2)(a) of the *Act*. The appellant's request, that her opinion replace the opinion of the police officers who observed her, cannot be granted under the *Act*. As a result, I conclude that an inquiry is not warranted in this appeal.

[16] As noted above, the police have advised the appellant of her right to require

them to file a statement of disagreement with the records at issue in accordance with section 36(2)(b) of the *Act*. In my view, the police have responded adequately to the appellant's correction request by advising her why they denied her request and of her right to file a statement of disagreement.

[17] Finally, the appellant referred to her "personal health information" in the records throughout her appeal. She continues to do so in her representations. As I advised the appellant in my preliminary assessment, "personal health information" is a term defined in section 4 of the *Personal Health Information Protection Act* (*PHIPA*). *PHIPA* governs the handling of "personal health information" by persons including "health information custodians," which is also a defined term in *PHIPA*. The police are not a "health information custodian" within the meaning of *PHIPA*; they are an institution under the *Act*. *PHIPA* does not govern requests for correction of information that is not in the custody or under the control of a health information custodian, even if the information at issue is personal health information. Because the police are not a health information custodian, *PHIPA* does not apply to the police or to the records at issue in the hands of the police.[3]

NO INQUIRY:

For the foregoing reasons, no inquiry of this matter will be conducted under the *Act*.

Original signed by: May 30, 2023
Stella Ball
Adjudicator

[3] Order MO-3988-I.