



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-1518

Appeal MA-010194-1

Peterborough Lakefield Community Police Services Board



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NATURE OF THE APPEAL:

The Peterborough Lakefield Community Police Service (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a correction of personal information found in police notes relating to an investigation, and in an investigation report in connection with a public complaint filed by the requester against two police officers. The requester claimed that the notes and report contained omissions, inaccuracies and untruths. The records included i) a General Occurrence Report, ii) handwritten notes from the notebooks of two named police officers and iii) a Public Complaint Report.

The Police reviewed the records and notified the requester that they would not authorize any of the changes and advised that the proper forum for this request was the Ontario Civilian Commission on Police Services.

The requester, now the appellant, appealed the decision of the Police to this office relying on the right of correction in section 36(2)(a) of the *Act*. The appellant also indicated that his request to correct the records was a separate issue from his complaint of police misconduct.

During mediation, the parties agreed that the appellant could attach a Statement of Disagreement to the records that set out the corrections he requested. The Police undertook to attach a note to the appellant's file indicating that it was subject to a Statement of Disagreement.

The appellant indicated that he considered the information in the police officers' notebooks to be incorrect, but accepted that the notebooks reflected the opinions of the police officers at the time they were prepared. As a result, the appellant agreed to remove the notebooks (item 2) from his request for correction and only appeal the decision of the Police not to correct the information in the General Occurrence Report (item 1), and the Public Complaint Report (item 3).

The appellant further clarified that he was seeking correction of only that portion of the General Occurrence Report that stated that he required no medical treatment following the incident, but that he objected to many parts of the Public Complaint Report.

I initially sent a Notice of Inquiry that set out the issues in this appeal to the Police and received representations in response. I then sent the Notice together with the non-confidential portions of the Police representations to the appellant who sent in submissions.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the *Act* provides, in part, that "personal information" means recorded information about an identifiable individual including information relating to the address and medical history of the individual, as well as the individual's name if it appears with other personal information relating to the individual.

The first record at issue is a police report (General Occurrence Report) that sets out the name and address of the appellant as a party to an incident being investigated and includes a description of the incident. The other record is a report investigating a public complaint made by the appellant against the two police officers who had investigated the incident in question. It is clear that both records contain the personal information of the appellant as defined in section 2(1) of the *Act*.

SHOULD THE PERSONAL INFORMATION BE CORRECTED?

Introduction

Sections 36(2)(a) and (b) of the *Act* provide for correction requests and statements of disagreement relating to one's own personal information. These sections 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.

There is a difference in wording between sections 36(2)(a) and (b), and in my view, this difference is significant. Section 36(2)(a) indicates that individuals may **request** correction of their personal information, while section 36(2)(b) indicates that individuals may **require** a statement of disagreement to be attached to a record reflecting any correction which was requested but not made.

In particular, because section 36(2)(a) only provides a right to **request** a correction, it is my view that it gives the Police a discretionary power to accept or reject the correction request. I am reinforced in the view that section 36(2)(a) confers a discretionary power on the Police by the wording of section 36(2)(b), which compensates for the Police's discretion to refuse a correction request under section 36(2)(a) by allowing individuals who do not receive favourable responses to correction requests to **require** that a statement of disagreement be attached instead.

In Order 186, former Commissioner Tom Wright set out the requirements necessary for granting a request for correction as follows:

1. the information at issue must be personal and private information; and
2. the information must be inexact, incomplete or ambiguous; and

3. the correction cannot be a substitution of opinion.

I will now review each of these three requirements necessary for granting a request for correction.

(1) Is the information which is the subject of the correction request personal and private information?

I have already determined that both records contain the appellant's personal information, therefore the first requirement has been satisfied.

(2) Is the information "inexact, incomplete, or ambiguous"?

General Occurrence Report

With respect to the General Occurrence Report, the appellant is seeking correction of the statement that "no medical attention was required" (by the appellant). The Police submit that:

The officers noted the cut lip in their notes and included it in the report. [The appellant] was capable physically and mentally to seek his own medical attention, there was no requirement for police to take him to the hospital to obtain a medical report.

The appellant included with his representations a copy of a record that indicated that he attended at the emergency department of a local hospital on the day of the incident that was the subject of the General Occurrence Report. The emergency record states that the appellant had undergone surgery eight days prior to the incident and that he was experiencing physical difficulties arising from the surgery. As well, the emergency record indicates that the appellant was suffering jaw pain and had a laceration on his lower lip.

It is apparent that the investigating officer's conclusion that the appellant did not require medical attention was based on his observation of the appellant's physical condition. It also reflects the fact that the Police were not involved in obtaining or assisting the appellant to receive medical help. On this basis, the information in the General Occurrence Report is neither inexact, incomplete nor ambiguous. Accordingly, I find that the second requirement has not been established.

Public Complaint Report

In his representations, the appellant questions the accuracy of that portion of the Public Complaint Report that states that the parties had a difference of opinion about the sequence of events in connection with the incident.

In Order M-777, former Adjudicator John Higgins dealt with records that have common features to those in this appeal. He concluded:

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.

... the same considerations apply to whether the records can be said to be “inexact” or “ambiguous”. There has been no suggestion that the records do not reflect the views of the individuals whose impressions are set out in them. The City submits that they are an accurate reflection of the views of these individuals. I find that requirement 2 has not been met.

I agree with the reasoning in Order M-777. Therefore, with respect to the portion of the Public Complaint Report at issue, I am satisfied that it is an accurate reflection of the investigating officer’s perception of the statements that were made at the time the report was created. I find that it is not in error, inexact, incomplete or ambiguous and the second requirement has not been met.

(3) Would a correction be a substitution of opinion?

Although I have found that the second requirement necessary for granting a request for correction has not been met, I will also consider whether the third requirement has been met.

The Police submit that “Unfortunately, we cannot remove or amend a report submitted by a Police Officer and substitution of opinion will not qualify as a correction to our files”.

The appellant in his representations states that “the information is incorrect and not just the opinion of [the police officer investigating the public complaint]”.

The investigating officer’s remark in the General Occurrence Report that ‘no medical attention was required’ reflects the officer’s opinion of the appellant’s physical condition at the time of the incident. The appellant disagrees with the investigating officer’s conclusion, but to correct this report in line with the appellant’s request would be to substitute the appellant’s opinion for that of the investigating officer.

Similarly, the statement in the Public Complaint Report that the parties held different views on the events surrounding the incident is an opinion expressed by the investigating officer. To correct this report as requested by the appellant, would again be to replace the appellant’s opinion for that of the investigating officer.

In both instances, the substitution of one opinion for another is precluded by the third requirement outlined above. Accordingly, I find that the third requirement has not been met with respect to either the General Occurrence Report or the Public Complaints Report.

In summary, I find that the requirements of the appellant's correction request have not been established.

The Police submit that a statement of disagreement has been attached to the appellant's file. Therefore, I find that the Police have fulfilled their obligation under section 36(2)(b).

ORDER:

I uphold the decision by the Police to deny the appellant's correction request.

Original signed by:
Dawn Maruno
Adjudicator

February 27, 2002