



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1534

Appeal MA-010072-3

Hamilton Police Services Board



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NATURE OF THE APPEAL:

The Hamilton Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of an occurrence report involving complaints of harassment made by the requester. The Police located a copy of the report and granted access to it, in part, on February 15, 2001, along with a supplementary report prepared later. The requester has appealed the denial of access to those portions of the occurrence report which have been withheld. This appeal has been assigned Appeal Number MA-010142-1 by this office.

The requester indicated to the Police that he wished to file a statement of disagreement dated December 13, 2000 along with a covering letter dated March 30, 2001. On May 7, 2001, the Police advised the appellant that they were denying his request that the December 13, 2000 letter be attached to the subject occurrence report under section 36(2)(b) of the *Act*. The Police denied the request on the basis that the December 13, 2000 letter predated the requester's receipt of the requested records on February 15, 2001. As a result, the Police take the position that the statement of disagreement does not relate to the information contained in the occurrence report and is not a "factual disagreement" with the contents of the record, as is required by section 36(2)(b).

The requester, now the appellant, appealed the decision of the Police to deny his request to file a statement of disagreement under section 36(2)(b). I provided the appellant with a Notice of Inquiry seeking his representations and received submissions from him in response. Because of the manner in which I will address the issues in this appeal, it was not necessary for me to solicit the representations of the Police.

The sole issue for determination in this appeal is whether the appellant is entitled to file his letter of December 13, 2000 as a statement of disagreement to be attached to the subject occurrence report in accordance with section 36(2)(b) of the *Act*.

DISCUSSION:

STATEMENT OF DISAGREEMENT

The appellant is requesting that his letter of December 13, 2000 be attached to an occurrence report maintained in the record-holdings of the Police as his statement of disagreement under section 36(2)(b). This section states:

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

require that a statement of disagreement be attached to the information reflecting any correction that was requested and not made

In Order P-1478, former Adjudicator Marianne Miller succinctly described the nature of the right to require the attachment of a statement of disagreement granted by section 47(2)(b) [the equivalent provision in the provincial *Act* to section 36(2)(b)], as opposed to the right of

correction in section 47(2)(a) [the equivalent provision in the provincial *Act* to section 36(2)(a)] as follows:

Section 47(2)(a) indicates that individuals may **request** correction of their personal information, while section 47(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*. [my emphasis]

In particular, because section 47(2)(a) only provides a right to **request** a correction, it is my view that it gives the Ministry a discretionary power to accept or reject the correction request. I am reinforced in the view that section 47(2)(a) confers a discretionary power on the Ministry by the wording of section 47(2)(b), which compensates for the Ministry's discretion to refuse a correction request under section 47(2)(a) by *allowing individuals who do not receive favourable responses to correction requests to **require** that a statement of disagreement be attached instead* (Order M-777). [my emphasis]

The Appellant's Submissions

The appellant concedes that he "did not make an explicit request that police correct the inaccurate record" though he argues that "a request to attach a statement of disagreement contains such a request to correct the record implicitly". The appellant has expressed his concerns that in relying on a "technicality", the Police continue to suppress what he describes as the "accurate description of my harassment complaint".

The appellant indicates that his request to attach a statement of disagreement "may be regarded as having implied a request to correct the record" and that "[B]y declining my request . . . police may be assumed to have declined also the stronger request, to correct the record. Therefore I am entitled to require police to attach the statement of disagreement, as set out in Section 36(2)(b)."

The appellant goes on to add that to allow the Police to decline to attach the statement of disagreement on the grounds that he did not explicitly request a correction, "is to subvert the spirit of the *Act*, which clearly intends to grant an individual the right to require that a statement of disagreement be attached to personal information that individual believes to be inaccurate."

The appellant also submits that the proposed December 13, 2000 statement of disagreement relates directly to the contents of the occurrence report as it sets out his version of the events described therein. Finally, the appellant suggests that, regardless of the fact that the December 13, 2000 letter predates his receipt of the occurrence report, "it bears on what would have been stated in the interviews and conversations the record purports to summarize and, moreover, corrects the description of the complainant's harassment complaint . . ." The appellant concludes his submissions by adding the proposed statement of disagreement "constitutes, at least in part, a factual disagreement with the contents of the record."

Findings

In the present appeal, the appellant is seeking to have attached to a record a statement of disagreement under section 36(2)(b). As he concedes, he has not requested that the Police make corrections to what he feels are inaccuracies and incorrect information contained in the record. Rather, the appellant takes the position that by submitting a statement of disagreement, he has implicitly requested the correction of the “inaccurate and incorrect” information contained in the record.

With respect, I cannot agree. The wording of section 36(2)(b) is clear. In order for an individual to exercise his or her right to *require* the attachment of a statement of disagreement to a record, that individual must first request that a correction of the information be made. In my view, only if the institution declines to make the correction requested is the individual entitled to *require* the institution to attach a statement of disagreement to the record which reflects the requested correction of information.

In the present appeal, the appellant has not fulfilled this requirement. The appellant did not request a correction of his personal information prior to submitting his request for the attachment of a statement of disagreement to the record. I do not agree that the submission of his statement of disagreement in some way implicitly represented such a correction request. I find that the provisions of section 36(2) require that a person seeking the correction of their personal information do so in a clear and unequivocal fashion. That was not the case in the present appeal as the appellant declined the opportunity to do so.

Since the appellant has not completed the required first step in the process, that of requesting correction of the personal information in the record under section 36(2)(a), I find that he is not in a position to require the Police to attach his statement of disagreement to the record in question under section 36(2)(b). Accordingly, the Police were not required to attach the statement of correction to the record under section 36(2)(b) and I uphold the decision not to do so.

ORDER:

I uphold the decision of the Police to decline to attach the appellant’s statement of disagreement to the record and dismiss the appeal.

Original signed by:
Donald Hale
Adjudicator

April 30, 2002