Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2079

Appeal PA-010399-2
Appeal PA-020042-1

Ontario Civilian Commission on Police Services

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NATURE OF THE APPEAL:

These matters are two appeals from decisions of the Ontario Civilian Commission on Police Services (the OCCOPS), acting through the Ministry of Public Safety and Security (the Ministry) (formerly the Ministry of the Solicitor General), and made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). As the appellant and the institution are the same in both appeals, and many of the issues overlap, I have decided to issue a common order with respect to the two appeals.

The requester, now the appellant, sought the correction of certain information contained in two particular files at the OCCOPS. His requests to the Ministry set out suggested wording to replace the portions in the records said to be in error or containing omissions. In the alternative, the appellant asked that the Ministry attach his correction request letters to the OCCOPS files in question as a statement of disagreement.

The Ministry issued a decision with respect to each of the two correction requests stating that there were insufficient grounds for making a correction to the records at issue as no errors or omissions were evident in the records. In each decision, the Ministry advised the appellant that his statement of disagreement was added to the case file. In one case, it stated that the three OCCOPS members who had access to the records were made aware of this statement and in the other, that the responsible OCCOPS staff had been made aware of it. The appellant has appealed each of these decisions.

The information which the appellant seeks to have corrected is contained in two Case Summary reports of the OCCOPS with a "Date of Review" of December 21, 2000 and August 13, 2001, respectively.

I sent a Notice of Inquiry to the appellant, initially, inviting him to make representations on the facts and issues raised by this appeal. The appellant provided representations dated September 24, 2002 for each appeal, each accompanied by a number of attachments. He also submitted an additional letter dated September 25, 2002, containing some clarifications to his earlier representations, and a letter of September 27, 2002 containing further clarifications. Upon reviewing the appellant's representations, I have decided that it is unnecessary to seek the response of the OCCOPS to them.

DISCUSSION:

DOES THE RECORD CONTAIN THE PERSONAL INFORMATION OF THE APPELLANT?

Sections 47(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; and

Section 2(1) of the Act provides, in part, that "personal information" means recorded information about an identifiable individual.

The records in question are, as stated above, two Case Summary reports of the OCCOPS. They summarize a public complaint made by the appellant against the Hamilton-Wentworth Regional Police Service (the Police) (now the Hamilton Police Service). The Case Summary of December 21, 2000 deals with the decision of the Chief of Police (through a designate) not to process the appellant's public complaint because of its view that it was made more than six months after the event. The Case Summary notes that the decision of the review panel was to direct the Police to process the appellant's complaint. The Case Summary of August 13, 2001 deals with the appellant's subsequent request for review of the decision made by the Chief's designate on his complaint, in which the Police decide that no further action is warranted. I am satisfied, generally, that the records contain the personal information of the appellant. Although certain aspects of the records are not the personal information of the appellant (for instance, information about the members of the review panels), the portions to which the appellant seeks correction contain his personal information.

SHOULD THE PERSONAL INFORMATION BE CORRECTED?

There is a difference in wording between sections 47(2)(a) and (b) which, in my view, is significant. 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 requested but not made.

In particular, because section 47(2)(a) only provides a right to **request** a correction, it gives the Police 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 Police by the wording of section 47(2)(b), which compensates for the Police'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 (see Order MO-1518).

I am also reinforced in this view by the discussion in *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission), at pages 709-710:

> Although the report refers to the individual's "right" to correct a file, we do not feel that this right should be considered absolute. Thus, although we recommend rights of appeal with respect to correction requests, agencies should not be under an absolute duty to undertake investigations with a view to correcting records in

> response to each and every correction request. The privacy protection schemes which we have examined adopt what we feel to be appropriate mechanisms for permitting the individual to file a statement of disagreement in situations where the governmental institution does not wish to alter its record. In particular cases, an elaborate inquiry to determine the truth of the point in dispute may incur an expense which the institution quite reasonably does not wish to bear. **Moreover, the precise criteria for determining whether a particular item of information is accurate or complete or relevant to the purpose for which it is kept may be a matter on which the institution and the individual data subject have reasonable differences of opinion**. (emphasis added)
>
> If the request for correction is denied, the individual must be permitted to file a statement indicating the nature of his disagreement. We recommend that an individual who has been denied a requested correction may exercise rights of appeal to an independent tribunal. The tribunal, in turn, could order correction of the file or simply leave the individual to exercise his right to file a statement of disagreement.

Within this context, former Commissioner Tom Wright set out, in Order 186, 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 have already determined that the portions of the record to which the appellant seeks correction contain his personal information; therefore, the first requirement has been satisfied.

With respect to the second and third requirements, in Order M-777, former Adjudicator John Higgins discussed the application of the municipal equivalent to section 47(2)(a) to information in "incident reports":

> The appellant submits that, in order to deal with his appeal from the City's decision not to grant a correction request 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 records 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. indications that his behavior 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 other situations, such as workplace harassment investigations 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 a way which the legislature 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.
>
> . . .
>
> Above, I indicated that records of the type at issue here 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. In my view, these 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.

Similarly, in Order MO-1438, Adjudicator Laurel Cropley stated:

> Although I noted that the entries appear to be consistent with the matters at issue at the time they were created, this finding is not central to the issue to be determined. In this case, the question is, do the statements reflect the views or observations of the case supervisor as they existed at the time they were created?

Adjudicator Cropley found that in the circumstances of that appeal, the information in the records was an accurate reflection of the author's perception of the events as they existed at the time they were created. Further, with respect to the third requirement, she stated:

> [T]he contents of these records can best be characterized as statements of opinion, as they reflect the subjective perspective and views of the authors, and in particular, the case supervisor, with respect to events that have occurred. Although the appellant disagrees, he is in effect asking that his opinion be substituted for that of the case supervisor, which is precluded by the third requirement outlined above. Accordingly, I find that the third requirement has also not been met.

I agree with the analysis in the above decisions. Although the records before me are not akin to incident reports or witness statements, the discussion in these decisions is pertinent in relation to

records which are intended to set out the views and observations of their authors. It is also worth repeating that the legislature has found it appropriate to give institutions the discretion to decide whether or not to accept a correction request. As proposed by the Williams Commission, an appeal may be brought from an institution's discretionary decision to deny such a request and, on appeal under section 50(1)(c), it is open to this office to order a correction. In order for a correction to be found appropriate, at a minimum, the requirements established by Order 186 must be met. However, there may well be situations where it is not necessary to make a conclusive determination on whether information is "inexact, incomplete or ambiguous", where the exercise of discretion appears reasonable, and the attachment of a statement of disagreement is a sufficient response to a dispute about the correctness of a record.

Thus, certain orders of this office have refused to overturn an institution's denial of a correction request, even where information was arguably "inexact, incomplete or ambiguous". For example, in Order PO-1785, Assistant Commissioner Tom Mitchinson declined to order correction of a date where the "substance of the letter would remain unchanged". In Order 722, former Adjudicator John Higgins declined to order the correction of the spelling of the appellant's name on certain records.

I now turn to the correction requests before me.

The portions of the two Case Summaries which are the same, and for which corrections are sought are:

- "Named Officer(s)"
- "Date of the Incident"
- Reference to the appellant's report of contacting the Police regarding a "harassment problem" (in one Case Summary) or "harassment problems" (in the other Case Summary)
- Reference to the appellant's statement to the Police regarding a death threat on his telephone answering machine
- Reference to the appellant's statement to the Police about evidence of intrusion into his house and car, and telephone tapping
- Reference to the appellant's statement to the Police regarding the names of possible suspects
- Reference to the circumstances in which the appellant provided further information to the Police in May, 1999
- Reference to the particular allegations made by the appellant in May, 1999
- Information under the heading "Specific Allegation(s)" stating that "[t]he police did not investigate the harassment complaint."

The appellant further seeks correction to the following portions of the August 13, 2001 Case Summary:

- Information under the heading "Specific Allegation(s) referring to neglect of duty on the part of a specific police officer.

- Information under the heading "Summary of the Complaint", which the appellant contends omits certain allegations and information pertaining to his complaint against the Police
- Information under the heading "Analysis"
- Information under the heading "Recommendation"

It is important to note that the records were created in relation to the appellant's requests for review of the decisions of the Chief of the Police under the *Police Services Act* (the *PSA*). In this connection, they describe or reflect action taken by the OCCOPS to process and respond to those requests. Part of the appellant's corrections requests may be seen as a disagreement with the manner in which the OCCOPS dealt with his requests for review. For instance, he submits that the Case Summaries omit important aspects of his complaint against the Police. In his submissions, he also questions whether the review panel members fulfilled their responsibilities to carefully review and take into consideration his submissions in reaching their decision.

The OCCOPS is a quasi-judicial agency with responsibilities under the *PSA*, whose decisions are subject to appeal to the courts in some instances, and judicial review in others. In my view, in enacting section 47(2)(a), and providing for an appeal from a decision under section 47(2)(a), it was not the intent of the legislature that this office be engaged in an inquiry into the adequacy of decisions of another quasi-judicial agency under its own legislation. Although the right of appeal under the *Act* is broad, given the statutory and institutional framework applicable to this case, I am satisfied that I ought to approach the matter cautiously so that my inquiry does not verge upon an appeal or review of a decision made by OCCOPS under the *PSA*.

I am satisfied that the information in these portions of the records is not inexact, incomplete or ambiguous, in the whole context of the records and given the purpose for which the information is recorded and, further, that the appellant's suggested corrections reflect a substitution of opinion. In some cases, the information is intended to be a summary, such as in its description of the appellant's allegations and statements. Such a summary or description necessarily involved some judgment and interpretation of the information on which it is based, and in this sense, reflects a combination of objective fact and the subjective perspective of the author. It should be noted that, with respect to some of the disputed portions, the author was attempting to condense a large volume of information from the appellant, and it is perhaps not surprising that the appellant would have chosen to use different words himself, or included more detail. The appellant's disagreements with the manner in which the author of the Case Summaries has summarized or recorded information provided by him is, in my view, a reflection of "reasonable differences of opinion" (in the words of the Williams Commission), rather than doubt about the essential correctness of the information.

Even if there are discrete portions of the Case Summaries which might be found to be "inexact, incomplete or ambiguous" (such as reference to the appellant attending at the police station, instead of being interviewed by telephone) when considered in the context of the whole records these portions are not misleading and do not alter the substance of the information presented.

Further, some of the portions to which the appellant seeks correction are clearly the opinion of the author (such as the characterization of the investigation as "thorough", or views about the

appellant), and the appellant is in effect asking that his opinion be substituted for that of the author.

Finally, to the extent that some of the issues raised by the appellant are essentially disputes about the adequacy, fairness or validity of the response of the OCCOPS to his requests for review, having regard to my discussion about the *Police Services Act* above, it is generally not appropriate for these issues to be resolved through an appeal under section 50(1)(c) of the *Act*.

In sum, I am not persuaded that the OCCOPS has exercised its discretion inappropriately in refusing correction to the records at issue. The appellant is at liberty to submit statements of disagreement under section 47(2)(b) of the *Act*.

ORDER:

I uphold the decision of the OCCOPS to deny the appellant's correction requests.

November 29, 2002

Sherry Liang
Adjudicator