



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

# **ORDER MO-1700**

**Appeal MA-020198-3**

**Hamilton Police Services Board**



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## NATURE OF THE APPEAL:

The requester submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Hamilton Police Services Board (the Police) for correction of personal information. Specifically, the requester identified the records which in his view contained the errors, and requested:

...correction of these errors, or should the Police decline to correct the records, I am requiring the attachment of a statement of disagreement to the records, wherever they may occur in police files. I am also requiring that any individual or organizations to whom the records may have been disclosed be notified of the substance of the corrections, or the text of the statement of disagreement.

His request also stated:

Should the Police decline to correct the records, I am requiring that the present letter or a copy thereof be attached to the records, as a statement of disagreement.

In either case, as my letter makes reference to and cites specific incidents described in my “detailed allegation and summary of events,” submitted to the Professional Standards Branch in December 2000, .... I am requesting that a copy of that document ... be included in my correction or statement of disagreement as an appendix.

Attached to the requester’s 8-page letter was a 13-page appendix. The appendix consists of an 11-page complaint letter that the appellant had written to the Professional Standards Branch on an earlier occasion, a title page noting that a few annotated additions had been made to the text of the original letter, and a page containing three added explanatory notes.

The Police denied the request that the identified records be corrected.

With respect to the request to attach a statement of disagreement, the Police agreed to attach the requester’s 8-page statement of disagreement to the identified records; however, the Police declined the request to attach the 13-page appendix as part of the statement of disagreement. The requester was advised that the appendix would be held in accordance with Professional Standards Branch Policy files.

The requester (now the appellant) appealed the decision of the Police. In his letter of appeal, the appellant advised that he was not appealing the decision of the Police not to correct the record. Rather, the appellant set out the following grounds of appeal:

1. The Police have unilaterally and improperly severed part of my statement of disagreement, which they are refusing to attach to the inaccurate record. This appendix...is my eleven page “detailed allegation and summary of events” pertaining to a harassment complaint, solicited by and submitted to the Police for its investigation of this complaint, in December 2000, to which a title page and

one page of notes have been added, and a few minor additions made to the text. The eight-page letter that remains refers to passages in this document, and the statement of disagreement is incomplete without it. Moreover, since the aforementioned appendix is a detailed statement of my harassment complaint, solicited by and submitted to the Police for its investigation, it is entirely appropriate that this document should be in the police file documenting my complaint.

2. The Police decision letter does not address the issue of notification, explicitly raised in my correction request.

Mediation did not resolve the issues, and this file was transferred to the adjudication stage. I sent a Notice of Inquiry to the Police, initially, inviting the Police to address the issues, and the Police provided representations in response. In their representations, the Police also raise the possible application of section 52(3). I then sent a modified Notice of Inquiry, along with a copy of the Police's representations, to the appellant, who also provided representations in response.

## **DISCUSSION:**

### **STATEMENT OF DISAGREEMENT**

#### **Introduction**

The statement of disagreement submitted by the appellant to the Police consisted of an 8-page letter, along with a 13-page appendix. Because the Police have agreed to attach the 8-page letter to the identified record, what remains at issue is whether the Police are required to also attach to the identified record, as part of the statement of disagreement, the 13-page appendix.

Section 36(2) of the *Act* deals with the right of correction of personal information. It reads:

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 be notified of the correction or statement of disagreement.

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.

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).

Furthermore, Adjudicator Donald Hale recently reviewed the process through which an individual can require that a statement of disagreement be attached to identified information. In Order MO-1534 he stated:

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.

The orders referred to above set out the process by which an individual is entitled to require that a statement of disagreement be attached to a record. In this appeal, the issue is not whether to attach a statement of disagreement; rather, the issue is whether section 36(2)(b) of the *Act* requires the Police to attach all of the information identified by the appellant as a statement of disagreement (both the 8-page letter and the 13-page appendix) to the records.

### **The representations of the parties**

The Police state:

The [Police] agree that a requester is entitled to attach a statement of disagreement as per section 36(2)(b) of the *Act*. The appellant's 8-page letter is an actual statement of disagreement as to the contents of the police occurrence report to which he received a decision of partial access ....

A statement of disagreement is written after receiving the records pursuant to section 36(1) of the *Act* when there is something actually in the records to which a requester disagrees.

After referring to the wording of section 36(2)(b), the Police state:

The appellant's first 8 pages were a request for correction pursuant to section 36(2)(a) after receiving the records pursuant to the legislation. The [Police] made the decision not to correct the records and [the appellant] therefore wanted the statement of disagreement attached which is purported to "reflect any correction that was requested but not made". In this case the 13-page appendix to the statement of disagreement is actually a complaint letter sent ... two months before the [appellant] actually received and viewed a copy of the [record]. It therefore does not fit the definition of the section.

The appellant takes the position that, as he is the individual who is requiring that a statement of disagreement be attached to certain information, it is clearly his decision what his statement will contain. He also states:

I refer to and include the [appendix] in my ... correction request/statement of disagreement because the information contained in the [appendix] is relevant to the errors I have identified in the records. Nothing in the *Act* precludes me from including this relevant information in my statement of disagreement.

The appellant then refers to the following quotation from Order P-321, in which Assistant Commissioner Mitchinson stated:

The statement of disagreement could also serve to detail the basis for the appellant's contention that the information is without foundation. (P-321)

He also refers to Order P-186 in support of his position that a detailed statement of disagreement can be required to be attached to a record. He then states:

The information contained in [the appendix] “serves to detail the basis for [my] contention that [the information contained in the record] is without foundation” and is therefore a valid and admissible component of my statement of disagreement, based on the precedent of the two above-noted orders. The [appendix] supplies a detailed description, in my own words, of my harassment problem my complaint of which, I contend, was inaccurately reported by police in the [record], including aspects of that problem which may be particularly relevant to the fact of inaccurate reporting by the police.

## **Findings**

Previous orders have confirmed that, where a party who has been granted access to a record disagrees with information contained in the document, the appropriate remedy is provided by section 36(2)(b) of the *Act*. The requester may require an institution to attach a statement of disagreement to the information, reflecting any correction requested by the requester but not made by the institution, and there is no question that the institution must attach the statement of disagreement to the information. (See, for example, Order P-1478)

However, I do not accept the appellant's position that, because it is “the individual who is requiring that a statement of disagreement be attached to certain information, it is clearly the individual's decision what his or her statement will contain”.

The wording of the *Act* clearly establishes the process to follow when requesting a correction of information, or when requiring that a statement of disagreement be attached to information. The Orders referred to above (P-1478 and MO-1534) set out the process in detail. Similarly, the *Act*

clearly identifies the nature of the information to be included in the statement of disagreement. Section 36(2)(b) states:

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

- (b) require that a statement of disagreement be attached to the information **reflecting any correction that was requested but not made**; (emphasis added)

In my view, this section clearly sets out what is to be included in a statement of disagreement and what an individual can require an institution to attach to identified information. Specifically - a requester may require an institution to attach a statement of disagreement to the information reflecting any correction requested by the requester but not made by the institution.

I therefore do not agree with the appellant's statement that, because the appendix contains information that is relevant to the errors he believes exist in the records, he can require that this appendix form part of his statement of disagreement. The determination as to what constitutes a statement of disagreement is not based on whether the information is "relevant" to the records, rather, the issue to be decided is whether the statement of disagreement reflects any correction requested by the requester but not made by the institution.

In the circumstances of this appeal, I am satisfied that the Police properly determined whether the statement of disagreement reflected any correction requested by the requester but not made by the institution. I find that the Police's decision to attach the 8-page statement of disagreement, but not the 13-page appendix, is a proper decision in this case.

The 8-page statement of disagreement attached to the records identifies in great detail the specific sentences, phrases and words in the records that the appellant believes are incorrect. It also details the basis for the Appellant's contention that the information is incorrect. Attaching this document to the information, as the Police did, is appropriate. Although the 8-page statement of disagreement refers in a number of places to the appendix in support of or to clarify the position taken in the 8-page statement, the appendix is primarily supporting documentation for the 8-page statement of disagreement. In my view, the appendix cannot reasonably be construed as reflecting any correction that was requested but not made.

I find further support for this approach in my review of the actual request by the appellant. After requesting that the information contained in the records be corrected, the request states "I am requesting that a copy of [the appendix] ... be included in my correction or statement of disagreement as an appendix". An individual can request that records be corrected, and can identify the nature of the correction; however, in the circumstances of this case, it is not possible to "include" the appendix as part of the correction request. Had the Police decided to correct the information, as initially requested by the appellant under section 36(2)(a), the information itself

would have been changed in accordance with the requested corrections set out in the 8-page letter. The correction itself would not have included the appendix.

Accordingly, I uphold the decision of the Police to decline to attach the 13-page appendix to the records in the circumstances of this appeal.

As a final matter, although the requirement to attach a statement of disagreement to the records under section 36(2)(b) is restricted to information reflecting any correction requested by the requester but not made by the institution, there is nothing in that section prohibiting the institution from attaching other types of material to a statement of disagreement. Section 36(2)(b) simply does not require the institution to do so.

#### **NOTIFICATION UNDER SECTION 36(2)(c) OF THE ACT**

Under section 36(2)(c) of the *Act*, the appellant is entitled to require the Police to notify any person or body to whom the record has been disclosed, within the year before the time that a statement of disagreement is required, of the statement of disagreement. As identified above, one of the grounds for appeal raised by the appellant is that the Police's decision letter does not address the issue of notification, which the appellant explicitly raised in his correction request.

The Police's representations state:

The statement of disagreement has not been attached to the [record]. The statement of disagreement was to be attached after the 30 day appeal period. The appellant appealed the decision of the [Police] ... and since there was no agreement reached during the mediation stage, it has still not been attached.

... Since this request was appealed everything including attaching a statement of disagreement and notification was held in abeyance until an order is issued.

I accept that the Police correctly deferred notification under section 36(2)(c) until the issues in this appeal had been resolved.

Finally, as a result of my decisions set out above, it is not necessary for me to address the section 52(3) issues raised by the Police.



**ORDER:**

I uphold the decision of the Police to decline to attach the 13-page appendix to the record, and I dismiss the appeal.

Original signed by: \_\_\_\_\_  
Frank DeVries  
Adjudicator

October 28, 2003 \_\_\_\_\_