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

ORDER MO-2082

Appeal MA-050369-1

Niagara Regional Police Service

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NATURE OF THE APPEAL:

The Niagara Regional Police Service (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*)for the notes of a police officer and the Incident Report relating to a specified incident in which the requester was involved. The requester was granted partial access to this information. Access to the remaining information was denied pursuant to sections 38(a) in conjunction with 8(1)(l), and section 38(b) after considering section 14(1)(a), and the presumption listed at section 14(3)(b) of the *Act*.

The requester subsequently submitted a letter to the Police setting out six points he described as "differences or omissions" in the records and requested that the Incident Report be amended or corrected to reflect those differences or omissions. Section 36(2) of the *Act* gives an individual the right to ask the institution to correct personal information.

The Police issued a decision letter advising the requester that no changes would be made to the records.

The requester, now the appellant, appealed the decision of the Police not to correct the record.

Mediation did not resolve this matter and accordingly, the appeal was transferred to the adjudication stage of the appeal process.

I began my adjudication of this appeal by sending a Notice of Inquiry to the Police. The Police provided representations in return. I then sent a Notice of Inquiry to the appellant along with a copy of the Police's representations in their entirety. The appellant submitted representations in response.

RECORDS:

The records at issue in this appeal consist of a 4-page General Incident Report and a 4-page entry from a police officer's notebook.

DISCUSSION:

CORRECTION OF PERSONAL INFORMATION

Section 36(1) gives an individual a general right of access to his or her own personal information held by an institution. Section 36(2) gives the individual a right to ask the institution to correct the personal information. If the institution denies the correction request the individual may require the institution to attach a statement of disagreement to the information. Section 36(2) reads:

> 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;

(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.

Sections 36(2)(a) and (b) provide two different remedies for individuals wishing to correct their own personal information. Section 36(2)(a) entitles individuals to *request* that their own personal information be corrected; institutions have the discretion to accept or reject a correction request. Section 36(2)(b), on the other hand, entitles an individual to *require* an institution to attach a statement of disagreement to the information at issue when the institution has denied the individual's correction request. Thus, section 36(2)(a) is discretionary, whereas section 36(2)(b) is mandatory.

Where the institution corrects the information or attaches a statement of disagreement, under section 36(2)(c), the appellant may require the institution to give notice of the correction or statement of disagreement to any person or body to whom the personal information has been disclosed within the year before the time the correction is requested or the statement of disagreement is required.

The following passage from *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980, vol. 3* (Toronto: Queen's Printer, 1980) (the Williams Commission Report) is helpful in understanding the purpose and operation of the Act's correction provisions:

> The ability to correct information contained in a personal record will be of great importance to an individual who discovers that an agency is in default of its duty to maintain accurate, timely and complete records. In this way, the individual will be able to exercise some control over the kinds of records that are maintained about him and over the veracity of information gathered from third-party sources.
>
> 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. [pp. 709-710]

One of the purposes of section 36(2) is to give individuals some measure of control over the accuracy of their personal information in the hands of government. Both the *Act* and the Williams Commission Report support the view that the right to correction in section 36(2) is not absolute.

Grounds for correction

This office has previously established that in order for an institution to grant a request for correction, the following three requirements must be met:

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 (Order 186).

In each case, the appropriate method for correcting personal information should be determined by taking into account the nature of the record, the method indicated by the requester, if any, and the most practical and reasonable method in the circumstances [Order P-448].

Is the information at issue personal and private information?

The right of correction may apply only to the personal information of the appellant. The term "personal information" is defined in section 2(1), in part, to mean recorded information about an identifiable individual, including the individual's address [paragraph (d)], the views or opinions of another individual about the individual [paragraph (g)] or the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual [paragraph (h)].

Neither the appellant nor the Police have specifically addressed in their representations whether the information at issue contains the appellant's personal information. However, on my review of

the records at issue I am satisfied that they contain information about the appellant that qualifies as his personal information, as that term is defined in the *Act*. Specifically, the Incident Report and the police notes both contain the appellant's name, along with other personal information about him including his address, telephone number, sex, race and age. The records also contain his physical description. Additionally, both records contain the views or opinions of other individuals about the appellant.

Is the information at issue inexact, incomplete or ambiguous?

For section 36(2)(a) to apply, the information must be "inexact, incomplete or ambiguous".

The Police state in their representations that it is their understanding that:

> …[T]he appellant believes that the report as it stands, is incomplete and inexact and does not, therefore, accurately reflect the incident. The appellant believes the changes, if made, would make the report more complete and more balanced.

The Police go on to outline the points that the appellant would like to see corrected and explain that the officer who compiled the information at issue has considered these points and feels that he has adequately reflected the incident and that the information is not "inexact, incomplete or ambiguous".

The appellant argues that the Incident Report is "not complete" because "preference was shown in the report" to the complainant. He states that the Incident Report is "a story written for the complainant." He states:

> I provided evidence to the officer that was relevant to the matter, and it was not included in his Report. I provided evidence that was contrary to the evidence of the complainant and the officer determined that her evidence was more credible than mine. He has no basis for that determination. The officer had the opportunity to confirm the credibility of my evidence by interviewing [named individual] who was present at the commencement of the reported "harassment", and failed to do so.

The appellant has also gone into considerable detail about some of the differences and omissions in the records, originally outlined in his letter to the Police, to demonstrate his position that the records are "incomplete, inexact or ambiguous".

In Order M-777, Senior Adjudicator John Higgins dealt with a correction request involving a "security file" which contained incident reports and other allegations concerning the appellant in that case. The nature of those records is similar to those at issue in this appeal, that is, records in which the Police have recorded allegations and information reported to them. In Order M-777, Senior Adjudicator Higgins stated:

> …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.
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> …
>
> … 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.

Similarly, in Order MO-1438, which addressed a correction request related to narrative portions of the appellant's General Welfare Assistance file, Adjudicator Laurel Cropley stated:

> Although I noted that the entries appear to be consistent with matters at issue at the time they were created, this finding is not central to the issues 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.

I agree with the reasoning taken in the above decisions and adopt it for the purposes of this appeal.

In the current appeal, the records at issue are an Incident Report, completed as a result of a complaint initiated by an individual, and the corresponding police notes of the investigating officer. The Incident Report and the police notes record the description of the incident by the complainant to the investigating officer as well as the investigating officer's description of what the appellant relayed to him when he spoke to the appellant about the incident.

In my view, the information at issue is substantially similar to that at issue in the above noted orders and, in particular, that at issue in M-777. The recorded information reflects the views and observations of the complainant about the incident at the time the complaint was filed and those impressions have been set out by the investigating officer. The issue before me in this appeal is whether the investigating officer accurately recorded what was communicated to him by others

about the incident. There is no evidence before me to indicate that the investigating officer inaccurately recorded the complainant's statement, the records simply reflect the information gathered.

On this basis, I find that the record is not inexact, incomplete and ambiguous, and therefore does not meet the second requirement for correction referred to above.

Although not strictly necessary for me to consider the third requirement, for the sake of completeness I will do so briefly below.

Would the correction result in the substitution of an opinion?

This section will not apply if the information consists of an opinion [Orders P-186, PO-2079].

The appellant concludes his representations by stating:

> …[W]hile I understand that the terms of reference stated by Commissioner [Tom] Wright [in Order 186] do not allow the correction to be a "substitution of opinion", in this matter I believe that the opinions of the officer are not objective and independent.

In Order MO-1438, described above, Adjudicator Cropley also specifically addressed the third requirement for a correction request to be granted. 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.

In the current appeal, the contents of the records are similarly best characterized as statements of opinion as they contain information that reflects the subjective perspective and view of the complainant and, in some instances, that of the investigating officer. I have reviewed each and every correction requested by the appellant and, in my view, those corrections relate to statements of opinion that clearly reflect a matter of individual perception as to the way in which certain events occurred. Although the appellant claims that some of the information detailed in these records is false, misleading or misinterpreted, altering the record to reflect such changes would result in a "substitution of opinion" which is precluded by the third requirement for a correction**.**

As all three requirements for the granting of a correction request have not been met, I am satisfied that the Police acted reasonably in refusing to grant the request and make correction to the record. I will therefore uphold the decision made by the Police.

Statement of disagreement to be attached to the information

As noted above, section 36(2)(b) stipulates that, upon request, an institution is required to attach a statement of disagreement to the information reflecting any correction that was requested but not made. An individual must first ask for a correction, and if the correction is not made, may *require* that a statement of disagreement be attached to the information. If the Police refuse to do so, this office would then be in a position to consider the issue of the statement of disagreement, if asked to do so.

The Police state in their representations that "the appellant did not wish for a statement of disagreement to be attached to the report at this stage" of the appeal. Although in his representations the appellant did not address the matter, this order does not preclude him from requiring that a statement of disagreement reflecting his perception of the incident be attached to the records, pursuant to section 36(2)(b) of the *Act*.

ORDER:

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

August 23, 2006

Catherine Corban
Adjudicator