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

ORDER PO-2549

Appeal PA-060004-2

Ministry of Community Safety and Correctional Services

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NATURE OF THE APPEAL:

The Ministry of Community Safety and Correctional Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to an Ontario Provincial Police (OPP) occurrence report related to an incident in which the requesters were involved.

The Ministry granted partial access to the report, while withholding certain information pursuant to sections 49(a), in conjunction with 14(2)(a) and 14(1)(l) (law enforcement), and section 49(b) (invasion of privacy), together with the presumption listed at section 21(3)(b) and the consideration of section 21(2)(f).

The requesters subsequently sent a letter to the Ministry outlining a series of concerns with the accuracy of the content of the occurrence report and requesting that corrections be made to it. The requesters provided a list of the corrections requested to the Ministry.

In a decision letter dated January 12, 2006, the Ministry advised the requesters that the requested corrections would not be made to the occurrence report because they did not meet the requirements of section 47(2)(a) of the *Act*. The Ministry also informed the requesters that, in accordance with section 47(2)(b), they may require the Ministry to attach a Statement of Disagreement to the occurrence report, to reflect corrections requested but not made, and to send the Statement to any person or organization to whom the information has been disclosed within the past 12 months. The Ministry stated,

> Should you wish to exercise these rights, please submit your statement of disagreement in writing to the attention of the undersigned.

The requesters (now the appellants) decided, instead, to appeal the Ministry's decision to refuse correction to this office. In their letter of appeal, the appellants outlined once again the specific corrections they sought to the report, which related to various references to damage, as well as to injury to one of the appellants.

It was not possible to resolve this appeal by mediation and it was referred to me for adjudication. I commenced my inquiry into the appeal by sending a Notice of Inquiry to the appellants. Upon review of the appellants' representations, I concluded that it was not necessary for me to seek representations from the Ministry.

INFORMATION AT ISSUE:

The information at issue is contained in a two-page OPP Occurrence Report (LP05155823).

DISCUSSION:

CORRECTION OF PERSONAL INFORMATION

Section 47(1) gives an individual a general right of access to his or her own personal information held by an institution. Section 47(2) gives the individual a right to ask the institution to correct the personal information. As noted above, if the institution denies the correction request, the

individual may require the institution to attach a statement of disagreement to the information. The relevant parts of section 47(2) read:

> 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 47(2)(a) and (b) offers two separate remedies to individuals seeking correction of their own personal information in a record held by an institution. Section 47(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 47(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 47(2)(a) is discretionary, whereas section 47(2)(b) is mandatory.

In situations where the institution corrects personal information under section 47(2)(a) or attaches a statement of disagreement under section 47(2)(b), section 47(2)(c) provides that the appellant may require the institution to give notice of either occurrence to any person or body to whom the information has been disclosed in the year preceding the correction request or requiring of the statement of disagreement.

History of the correction provisions

The Williams Commission Report (*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)) led to passing of the *Act* some ten years after its release.

In my view, the following passage from the Williams Commission Report is helpful in seeking to understand 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 47(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 47(2) is not absolute.

Grounds for correction

Past orders of this office have established that all of the following three requirements must be met for an institution to grant a request for correction:

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 only applies to any personal information of the appellants that may be contained in the record. The term "personal information" is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual." The types of information that qualify as "personal information" include information about the individual's medical history (paragraph (b)), the personal opinions or views of the individual except where they relate to another individual (paragraph (e)), the views or opinions of another individual about the individual (paragraph (g)), or the individual's name where 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)).

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under any of the eight paragraphs under section 2(1) may still qualify as personal information [Order 11].

Analysis and Finding

The appellants did not specifically address the question posed to them in the Notice of Inquiry about whether the information they seek to have corrected is *personal information* for the purposes of the definition found in section 2(1) of the *Act*.

However, on my own review of the information at issue, I am satisfied that the occurrence report contains information about the appellants that qualifies as their personal information, as that term is defined by the *Act*. In particular, I find that the occurrence report contains personal information about both of the appellants that fits within paragraphs (b), (e), (g) and (h) of the definition of that term in section 2(1), as described in the first paragraph of this section.

Is the information at issue inexact, incomplete or ambiguous?

For section 47(2)(a) to apply, the information must be "inexact, incomplete or ambiguous". However, even if the information is "inexact, incomplete or ambiguous", this office may uphold the institution's exercise of discretion if it is reasonable in the circumstances [Order PO-2258].

In their representations provided in response to the Notice of Inquiry, the appellants ask for correction of information in the record which they believe to have been recorded based on the investigating officer's "personal judgment and not on facts which we presented to her." The appellants express concern about alleged errors in the recitation of certain facts, and submit suggested corrections related to the following:

- the existence, nature and extent of damage to the appellants' trees, fence and sign/poster: the appellants submit that the officer incorrectly refers to the branches as having been trimmed, when the branches were "broken off… [and] had rough, jagged edges, and had bark hanging off them";
- whether or not the sign/poster was in violation of a municipal by-law as stated by the officer: the appellants describe their consultation with municipal officials and provide a copy of a legal opinion on the subject supporting their view that the sign/poster was not in violation of the by-law;
- the dimensions of the sign/poster and the method by which it was mounted: the appellants provide the dimensions of the sign/poster, and details about its location and structure;
- details regarding a past incident/occurrence report said to be missing from the occurrence report in question: the appellants provide their own account of the incident; and
- the description, and origin, of an injury suffered by one of the appellants: the appellant provides her own version of how the injury was incurred and a description of it.

Photographs were submitted to me by the appellants in support of various assertions as to the correct facts, as outlined above. The appellants also submitted several documents related to these items, including a legal opinion by a student-at-law and a letter from the physician of one of the appellants regarding the injury to her arm.

The Ministry informed the appellants that in order to grant the request for correction, it had to be satisfied that the personal information at issue is inexact, incomplete or ambiguous and that the correction cannot simply represent a substitution of opinion. The Ministry cited Order 186 in support of this position.

The Ministry also stated that the decision not to correct the information had been reached after consulting with the OPP detachment in question and reviewing the specific corrections requested. The Ministry mentioned that the report had been prepared by an "officer who had extensive involvement with respect to the investigation of this particular occurrence" and concluded by informing the appellants that their request did not meet the requirements of section 47(2)(a) of the *Act*.

Analysis and Finding

I have considered the occurrence report that is the subject of the appellants' concern, as well as all of the information provided to me by the appellants, including the various attachments submitted with their representations. In reviewing these materials, I am mindful of the approach this office has taken when reviewing an institution's decision to deny a correction request.

Previous orders of this office have considered the issue of correction requests for records similar in nature to those at issue in this appeal, that is, records in which the Police have recorded information reported to them about specific events by individuals, including allegations about the actions of other individuals. In Order M-777, for example, 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.

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 municipal equivalent of section 47(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 [emphasis added].
>
> …
>
> … 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, Adjudicator Laurel Cropley addressed a correction request related to narrative portions of the appellant's General Welfare Assistance file. Adjudicator 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** [emphasis added]?

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 and approach of Senior Adjudicator Higgins and Adjudicator Cropley in Orders M-777 and MO-1438 and adopt it for the purposes of this appeal.

In the appeal before me, the information at issue is contained in an occurrence report, which was completed by a police officer assigned to investigate the appellants' complaint about the actions

of their neighbours. The report records the description of the incident given by the appellants to the investigating officer, but also includes the investigating officer's own observations and impressions of the trees, fence and sign/poster on the appellants' and the neighbouring property, as well as her observations of the injury to the arm of one of the appellants.

In my view, the information at issue is substantially similar to that at issue in the orders canvassed above. I find that the information in the report reflects the views and observations of the OPP officer as recorded by her during the investigation. In keeping with the principles enunciated in Orders M-777 and MO-1438, as excerpted above, I would emphasize that it is not the truth of the recorded information that is determinative of whether a correction request should be granted, but rather whether or not what is recorded accurately reflects the author's observations and impressions at the time the record was created.

In this appeal, the appellants themselves have suggested that the record reflects the officer's own personal judgment. While the appellants may have mentioned this to impugn the accuracy of the record, it is, in fact, central to my finding. The report simply reflects the investigating officer's views and the information she gathered at the time of the investigation. In my view, the information cannot be characterized as "incorrect", "in error" or "incomplete", as contemplated by the second part of the test for granting a correction request.

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

Since all three requirements of the test for correction must be satisfied, it is not necessary for me to consider the third requirement. However, for the sake of completeness I will address the third requirement briefly below.

Would the correction result in the substitution of an opinion?

As noted above, this section will not apply if the information consists of an opinion [Orders P-186, PO-2079]. This requirement is based on the premise that it is not appropriate to substitute the opinion of the individual requesting the correction for that of the individual who actually recorded the information.

As already outlined in greater detail in this order, the appellants take issue with many of the investigating officer's statements as to the condition of appellants' trees, fence and property, as well as the injury to the arm of one of the appellants. At several points in their representations, the appellants expressly state that they disagree with the descriptions given by the officer. In specific reference to the issue of damage, the appellants submit that their interpretation of "the facts" is different than the officer's. The appellants state:

> Damage to our fence:
> We **consider** damage to our fence that has to do with any objects lying against our fence … When we tried to show and explain it to [the officer], her reply was

> that our neighbors can do anything they please with our fence from their side. … We **disagree** with [the officer's] statement.
>
> Damage to our trees:
> The branches from our trees were broken down by our neighbors (by hand) more than one foot inside of our property. … We **consider** this to be trespassing and damage to our trees.
>
> Damage to our property:
> Hitting our wooden poster inside of our property … with a garden hoe … left huge holes in the plywood. … We **consider** this to be trespassing and damage to our property [emphasis added].

Analysis and Finding

Adjudicator Cropley, in the order previously referred to (MO-1438), also addressed the third requirement for a correction request. In my view, her comments are relevant in the circumstances of the present appeal. 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 present appeal, the information at issue in the record is most appropriately characterized as representing statements of opinion belonging to the investigating officer, which reflect her subjective perspective and views. It could be argued that the appellants admit as much in pointing out those aspects of the information recorded by the officer with which they disagree.

In any event, I have reviewed each correction requested by the appellants and, in my view, they relate to statements of opinion that clearly reflect a matter of individual perception as to the condition of the appellants' trees, fence, sign/poster, property and the injury reported. Although the appellants may disagree with the investigating officer's conclusions or observations, I conclude that permitting corrections of the report in accordance with the appellants' request would amount to substitution of the appellants' opinion for that of the investigating officer. In my view, any such replacement by the appellants' version of events of the investigating officer's version would result in a "substitution of opinion", which is precluded by the third requirement of the test for a correction.

As all three requirements for the granting of a correction request have not been met, I am satisfied that the Ministry acted reasonably in refusing to grant the request and make corrections to the record. Accordingly, I will uphold the Ministry's decision.

Statement of Disagreement to be attached to the information

As noted above, section 47(2)(b) of the *Act* 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. If the correction is not made, the individual may then require that a Statement of Disagreement be attached to the information.

In view of my finding upholding the Ministry's decision, I would like to draw the appellants' attention to their entitlement under section 47(2)(b) to require the Ministry to attach a Statement of Disagreement to the occurrence report. The appellants may also require the Ministry to carry out the appropriate notification of outside parties, as required by section 47(2)(c). In the circumstances, this is the option remaining open to the appellants under the *Act* which would allow them to register the fact of their disagreement with the information.

ORDER:

I uphold the Ministry's decision to deny the appellants' request for correction.

Original signed by: February 26, 2007
Daphne Loukidelis
Adjudicator