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

ORDER MO-2120

Appeal MA-050257-1

Peel Regional Police

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NATURE OF THE APPEAL:

The requester filed a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) with the Peel Regional Police (the Police) for access to a Police Occurrence Report containing information relating to him. He was granted partial access to the information in the report.

Following his review of the information to which he was granted access, the appellant requested that certain corrections be made to the Occurrence Report. In his letter to the Police, the requester identified twelve items which he felt should be corrected in the report.

In their decision, the Police advised that item number two in the appellant's list of corrections had been changed but that pursuant to section 36(2)(a) of the *Act*, no other changes would be made.

The Police also advised the appellant that he could provide them with a statement of disagreement setting out any correction that was requested but not made and it would be attached to the Occurrence Report.

The requester, now the appellant, appealed the decision.

During the course of mediation, the Mediator discussed the particulars of section 36(2)(a) and (b) of the *Act* with the appellant. She also explained the possibility of attaching a statement of disagreement to the Occurrence Report outlining the eleven remaining corrections that the appellant had requested but were not made.

As mediation was not successful, the file was transferred to the adjudication stage of the inquiry process.

I began my inquiry into this appeal by sending the Notice of Inquiry to the Police. The Police provided representations in return. I then sent the Notice of Inquiry, along with a copy of the Police's representations, to the appellant. The appellant also responded with representations.

RECORD:

The record at issue in this appeal consists of a five-page Police Occurrence Report. There are eleven corrections that the appellant wishes to have made to the Occurrence Report.

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. Sections 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;
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> (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;
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> (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 to be notified of the correction or statement of disagreement.

Sections 32(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 the 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 than 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 is 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]
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> 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]

As noted above, 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].

An appellant must first ask the institution to correct the information before this office will consider whether the correction should be made.

Part 1 - Is the information that the appellant seeks to have corrected personal and private information?

The right of correction applies only to personal information that relates to the individual seeking the correction, in this case 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 age, sex, and marital or family status [paragraph (a)], information about the individual's employment or criminal history [paragraph (b)] any identifying number, symbol or other particulars assigned to the individual [paragraph (c)], the individual's address and telephone number [paragraph (d)], the views or opinions of another individual about the individual [paragraph (g)], and 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 Police acknowledge that the information contained in the Occurrence Report is the appellant's personal information within the meaning of the definition of that term in section 2(1) and, therefore, that the appellant has the right under section 36(2) to request that corrections be made.

On my review of the record at issue, I am satisfied that the Occurrence Report contains information about the appellant that qualifies as his personal information as that term in defined in the *Act*. Specifically, the Occurrence Report contains the appellant's name along with other personal information about him, including his age, sex, address and telephone number. The Occurrence Report also contains the views or opinions of other individuals, the Police officers involved, about the appellant.

Part 2 – 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 section will not apply if the information at issue consists of an opinion [Orders P-186, PO-2079].

The Police take the position that the information is "not inexact, incomplete or ambiguous and that [correcting the information] would constitute a substitution of opinion". They submit that the Occurrence Report accurately reflects the incident as reported by the investigating officer. The Police also assert that the other officer present during the investigation into this occurrence confirms that the Occurrence Report accurately reflects the events relayed to the investigating officers.

The Police explain that the information contained in the Occurrence Report is not simply a reproduction of the appellant's rendition of the incident because it was compiled by information provided by the appellant but also information provided by the appellant's spouse. They submit that when a police officer creates a report about an incident, he must "sift through" all the information provided to him. The officer must determine what is relevant, based on the officer's perception of the events as witnessed by him personally and told to him by the other parties involved.

Additionally, the Police submit that the investigating officer's use of certain terms as well as his decisions surrounding what details are relevant and important to include or not to include in the report are matters that should be determined by the police based on established reporting requirements. They submit that some of the appellant's corrections "involve superfluous information that do not impact the contact of the occurrence and would only serve to detract from the essential information reported". They take the position that many elements of the correction request attempt to dictate the content and format of a standard form Occurrence Report and state:

> The appellant appears to believe that as the "complainant", his rendition of events should be able to control the form and content of this "police occurrence". The police do not expect the appellant or any other requester to understand the rational behind the structure of an occurrence or the reasoning for including or excluding information however do maintain that this occurrence is correctly done.

Finally, the Police submit generally that making the corrections requested by the appellant would change the way in which the incident was perceived by the investigating officer by substituting the appellant's point of view for that of the investigating officer.

The appellant has gone into considerable detail about what he contends to be differences and omissions in the records, originally outlined in his letter to the Police and reiterated in his representations. He argues his position that the Occurrence Report is "inaccurate and incomplete because it has not been properly done".

The appellant submits the Occurrence Report is based on the opinion of only one of the two officers present and has been influenced by that officer's subsequent discussions with the appellant's spouse. He submits that the correction that the Police agreed to make (identifying the appellant as the complainant rather than his spouse), is further evidence that the Occurrence Report is biased.

The appellant submits that some information was recorded inaccurately and submits that his friend, who was also present at the time, is a witness who can confirm the accuracy of certain statements, as well as whether they were made or not made at the time of the incident. He also submits that certain things that happened were left out of the Occurrence Report and his friend can confirm this as well.

Finally, the appellant submits that he disagrees with the Police that making some of the corrections that he has requested would change the information in any way.

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 by another individual. In Order M-777 the appellant submitted that the Commissioner's office has an

obligation to investigate his allegations that contents of the records were inaccurate, decide what actually transpired and "correct" the records. 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 institution 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.
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> 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 I this inquiry.
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> …
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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 purpose of this appeal.

In the current appeal, the record at issue is an Occurrence Report, completed by an investigating officer as a result of a complaint initiated by the appellant. The Occurrence Report records the investigating officer's description of the occurrence based on his own observations, what was communicated to him by the appellant, and an interview with the appellant's spouse against whom the compliant was filed. Some of the corrections that are requested by the appellant reflect the investigating officer's usage of specific terms and inclusion or exclusion of specific facts. I accept that the language contained in the Occurrence Report should be determined by the investigating officer based on reporting requirements and standards as established by the particular police service involved. The remainder of the requested corrections are matters that

the appellant disputes: whether certain things were said or not; whether certain things were done or not; whether certain things are relevant to the Occurrence Report or not. With respect to this information the appellant maintains one thing and the investigating officer maintains another.

The record at issue in this appeal is substantially similar to that in the above noted orders, in particular the record in M-777. In my view, the specific information that the appellant is requesting be corrected cannot be said to be inexact, incomplete or ambiguous. The information in the Occurrence Report reflects the views and observations of the investigating officer about the incident and was based on his perception of the incident, as well as information that was provided to him by all of the relevant parties.

I acknowledge that the appellant has a different perception of certain things that did or did not occur and statements that were or were not made. However, as noted by the Police, an Occurrence Report is not simply a rendition of a complainant's perception of events. Rather, it is the investigating officer's report of an incident based on his observations, statements made by relevant parties and is drafted in a way that conforms to police terminology. There is no evidence before me other than the appellant's version of the events to indicate that the investigating officer inaccurately recorded the incident. In fact, another officer who also responded to the incident and was privy to the same information as the investigating officer, concurs that the Occurrence Report simply reflects the information gathered during the investigation of the incident.

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.

Part 3 – Would the correction result in the substitution of an opinion?

Section 36(2) will not apply if the information at issue consists of an opinion [Orders P-186, PO-2079].

The Police submit both generally, and also with respect to each specific correction request, that to correct the information in the manner requested by the appellant would constitute a substitution of the appellant's opinion for that of the investigating officer.

The appellant disagrees and submits generally that he disagrees with the Police's position and to make the requested corrections would not constitute a substitution of an opinion.

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 be best 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 investigating officer. I have reviewed each of the items identified by the appellant for correction 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, I find that to alter the record to reflect such changes would result in a "substitution of opinion", which is precluded by the third requirement for a correction under section 36(2)(a).

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 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 whether it is appropriate to order the Police to attach the statement of disagreement, to the record.

Both the Police and the Mediator advised the appellant that he could provide them with a statement of disagreement describing any correction that was requested but not made and it would be attached to the Occurrence Report. Although, to date, the appellant has not sought to have a statement of disagreement attached, this order does not preclude him from doing so 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.

Original signed by: November 16, 2006
Catherine Corban
Adjudicator