



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-2375

Appeal MA08-70

Toronto Police Services Board



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Toronto Police Services (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) to remove certain information from identified Police records. The request indicated that the information to be corrected was contained in certain Police files as well as the notes of an identified police officer and a specified occurrence report, which had been disclosed to the requester following an access request under the Act. In their decision letter, the Police advised the requester that the information referred to would not be removed “from the record(s), as your point(s) of contention relates to matters of opinion and to a statement made by [an identified police officer] while in direct conversations with you.”

The requester (now the appellant) appealed the decision.

During mediation, the Police advised the mediator that after submitting his request, the appellant limited the scope of his request to the removal of information from the occurrence report that the Police had identified as the subject of the correction request. The appellant denied limiting the scope of his request in the manner suggested by the Police and sought to expunge information from two additional occurrence reports. As a result, the scope of the appellant’s correction request became an issue in the appeal.

Mediation did not resolve the matter and it was moved to the adjudication stage of the appeal process.

I sent a Notice of Inquiry setting out the facts and issues in the appeal to the Police, initially. The Police provided representations in response to the Notice. I then sent a Notice of Inquiry, along with the representations of the Police, to the appellant. The appellant provided representations in response to the Notice.

SCOPE OF THE CORRECTION REQUEST

The Police acknowledge that the appellant asks for the removal of what he describes as “distorted information” from Police records. The Police submit that, based upon a number of factors, they considered the correction request to be for certain specific notes of an identified Police officer and the identified occurrence report, only. In particular, the Police submit:

The appellant is unambiguous and forthright as he specifically identifies the records and what information he would like removed in his written submission.

..., the appellant requests the removal of distorted information from Police Records. However, on page two of his request, the appellant specifies the Police Records in which the information be removed from as follows:

With regards to the Toronto Police Services please see the notes of [identified police officer], dated:

- May 11, 2007 pg. 19-21
- Nov 22, 2006 pg. 16-20, 30-31 [pages 30 and 31 are actually dated November 30, 2006]

- And the [occurrence report the Police had identified as the subject of the correction request]

The appellant clearly identifies the records and the information he wishes corrected by having attached the following to his request: 1) Page four of [the occurrence report the police had identified as the subject of the correction request], in which he hi-lights [certain portion], and 2) Page 20 of [identified Police officer's] memorandum book for the date of 2007.05.11, in which he hi-lights: [certain portion].

The appellant further relieves any ambiguity when he contacted (via telephone) Analyst P. McGee on February 15th, 2008. Having just received our correspondence dated February 12th, 2008, the appellant wished to discuss our decision not to remove the requested information. In this discussion, the appellant made no mention of any other records regarding himself that the Toronto Police Service may have under its' care and control. He did, however, make specific references to page four of [the occurrence report the police had identified as the subject of the correction request] and to [the identified Police officer's] notes (the hi-lighted portions as mentioned above).

In response, the appellant submits that his request asks for the removal of all similar references that may exist in Police files, including any and all records that include these references.

I have reviewed the appellant's correction request and considered the representations of the parties. In his request the appellant identified three records of concern, an identified police officer's notes taken on three separate dates and the occurrence report the police had identified as the subject of the correction request. In my view, those are the records which comprise the subject of his correction request. If the appellant believes that there are other records that may contain matters of concern to him, he remains free to address them in another request for correction.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the notes and occurrence report, which the appellant seeks to have corrected, contain "personal information" and, if so, to whom it relates. "Personal information" is defined in the *Act*, in part, to mean recorded information about an identifiable individual, including 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) of the definition in section 2(1) of the *Act*). The notes of the identified police officer and the specified occurrence report contain information that qualifies as the personal information of the appellant, as that term is defined under the *Act*.

CORRECTION OF PERSONAL INFORMATION

Section 36(1) of the *Act* 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. Section 36(2)(a) 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.

Grounds for Correction

For section 36(2)(a) to apply, the information must be personal information and must be “inexact, incomplete or ambiguous”. This section will not apply if the information consists of an opinion [Orders P-186, PO-2079].

Section 36(2)(a) gives the institution discretion to accept or reject a correction request [Order PO-2079]. 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].

The appellant’s initial request to the Police asked that information that he considers to be “distorted information” be removed from the records. Correction of the records pursuant to section 36(2)(a) is the sole remaining issue in his appeal.

Are the grounds for correction present in this case?

I have already found that the records contain personal information of the appellant.

The Police submit:

In our correspondence, and again during the telephone conversation between the appellant and Analyst P. McGee (mentioned above), the appellant was informed that the information he challenges is an issue of opinion. He was further directed that he could submit a Statement of Disagreement which we would process according to section 36(2). The institution understands situational factors can affect the way an event plays out and are therefore supportive of a submission of a Statement of Disagreement.

In his request, the appellant acknowledges the fact that the portions he wished removed from the responsive Police Records were a matter of opinion. He notes in his request, “... as these are not based on any fact, or professional investigation, but are merely the **opinions** of those who have found our truth to be unpalatable,

or threatening to their status quo." [Emphasis added in original].

...

The institution contends that an occurrence report and/or officers' memorandum book notes are much more than merely a regurgitation of events occurred, but are the investigating officers' opinion based on his/her own experience and observations that include relevant information and statements received from all involved.

...

Further to the telephone conversation between the appellant and Analyst P. McGee, the appellant stated that he felt the occurrence preparing officer was taking on the opinion of the staff at [an identified location] and was not exercising his own opinion.

...

As previously mentioned, the appellant requested that specific information be removed from Toronto Police Service records. This institution denied the appellant's request, but advised him to submit a Statement of Disagreement which would be attached to the specified records. To this date the appellant has not forwarded any Statement of Disagreement and has never asked that a Statement of Disagreement be attached to the information.

Should the appellant utilize his option and forward his Statement of Disagreement to this institution, it would not be necessary to notify any person or body, as the appellant's personal information has not been disclosed to any person or body within the year before his correction request.

The appellant provided representations on this issue in response to the submissions of the Police. The appellant submits that there is no factual foundation for certain information that appears in the records and takes issue with the manner in which any "opinion" set out in the records was formed.

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 the records is similar to those at issue here, in which the Police have recorded allegations and information reported to them. Senior Adjudicator Higgins wrote:

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 content of the records are incorrect, decide what actually transpired, and "correct" the records by destroying them.

... 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.

...

... 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.

In my view, the occurrence report and notes at issue in this appeal reflect factual accounts of certain allegations received by the Police and information pertaining to the investigation they conducted.

In addition, based on the evidence of the Police, I accept that some of the portions to which the appellant seeks correction consist of an opinion (such as the certain portion of page four of the occurrence report, referenced above). As set out above, section 36(2)(a) will not apply if the information consists of an opinion [Orders P-186, PO-2079].

Accordingly, based on the interpretation of section 36(2)(a) developed in the orders cited above, I am not persuaded that the Police have exercised their discretion inappropriately in refusing correction to the records at issue. Therefore, I uphold the decision of the Police not to correct them through deletion of information under section 36(2)(a) of the *Act*. That said, the appellant may, as suggested by the Police, require them to attach a statement of disagreement pursuant to section 36(2)(b) of the *Act*.

ORDER:

I uphold the decision of the Police.

Original Signed By: _____
Steven Faughnan
Adjudicator

December 9, 2008