

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER MO-3005

Appeal MA13-162

Halton Regional Police Services Board

January 31, 2014

**Summary:** The appellant asked that his personal information contained in a specified police occurrence report, be corrected or expunged under section 36(2)(a) of the *Act*. The police denied the appellant's request on the basis that the information was contained in records created by police officers and the investigative statements of the police could not be substituted with the opinions of the appellant. The police also confirmed that they attached a statement of disagreement to the records in accordance with section 36(2)(b) of the *Act*. The appellant's submissions on appeal were based on allegations that the conduct of the police was fraudulent and illegitimate. The decision of the police to not correct the records is upheld.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1), 36(2)(a) and 36(2)(b).

**Orders and Investigation Reports Considered:** MO-2258, MO-2351 and MO-2370.

### BACKGROUND:

[1] The Halton Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to expunge or correct a specified police occurrence report and related officer's notebook entries on the basis that the information contained therein is incorrect. The requester specified the following:

The Officer's notebook indicates I was "2A" (dishonourable) discharged from the Canadian Forces. This is incorrect; I have an honourable discharge. As other information has not been disclosed, please expunge the remainder of the notebook, as a balance of probability exists the material is also false.

In the police report:

1. The report page with my name and address, it states I am "*violent*" and "*Asiar*"; I am neither.
2. The remainder of the report in its entirety is false; please amend each comment accordingly or expunge, with particular attention to a trespass letter, incidents regarding the Toronto Transit Commission, "*suspect may continue to pose a threat in general, and specifically to Military personnel and property*"; and
3. As other information has not been disclosed, please expunge the unidentified information of the report as a balance of probability exists the material is also false.

[*sic*]

[2] The police issued a decision denying the request on the basis that they are not required to remove or amend a report submitted by a police officer and because a substitution of opinion does not qualify as a correction. The police acknowledged receipt of the requester's statement of disagreement and confirmed that they had attached it to the police occurrence report and notified the investigating officers.

[3] The requester, now the appellant, appealed the police's decision to deny his correction request.

[4] During mediation, the appellant confirmed he was not satisfied with his statement of disagreement being attached to the occurrence report and reiterated that he wanted the report expunged.

[5] A mediated resolution of the appeal was not possible, and it was moved to the adjudication stage of the appeal process, for an inquiry under the *Act*.

[6] I sought and received representations from the police and the appellant and shared these in accordance with this office's *Code of Procedure* and *Practice Direction Number 7*.

[7] In this order, I uphold the decision of the police.

## **RECORDS:**

[8] The records at issue in this appeal consist of the portions of the specified police occurrence report (seven pages) and the police officers' notebook entries (17 pages) which the appellant has identified as requiring correction.

## **DISCUSSION:**

[9] The only determination I need to make in this appeal is whether the appellant is entitled to require the police to correct the personal information at issue under section 36(2) of the *Act*.

[10] Section 36(1) gives an individual a general right of access to his own personal information held by an institution, while 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)(a) and (b) state:

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;

[11] 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.

[12] This office has previously established that in order for an institution to grant a request for correction, all three of the following 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.<sup>1</sup>

[13] 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.<sup>2</sup>

[14] In this appeal, the records consist of portions of a police occurrence report and police officers' notebook entries. The appellant has asked the police to correct and expunge the information at issue, and the police have responded by denying the request on the basis that they cannot change or expunge a report submitted by a police officer. The police have also informed the appellant that his substituted opinion does not qualify as a correction. Finally, the police have received the appellant's statement of disagreement and attached it to the police occurrence report and notified the investigating officers.

[15] For the reasons that follow, I uphold the police's decision to deny the appellant's correction request, and I find that the police have appropriately attached the appellant's statement of disagreement to the records and accordingly, they need not do anything further.

[16] The right of correction may apply only to personal information of the appellant. The term "personal information" is defined in section 2(1) as "recorded information about an identifiable individual." The types of information that qualify as "personal information" include information about an individual's race, national or ethnic origin, colour, age and sex (paragraph (a)), information about an individual's education, medical, criminal and employment history (paragraph (b)), an individual's address and telephone number (paragraph (c)), the views or opinions of another individual about the individual (paragraph (g)), and 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)).

[17] Having reviewed the records at issue, I find that the information the appellant wants corrected constitutes his personal information as that term is defined in the paragraphs of section 2(1) of the *Act* noted above.

[18] For section 36(2)(a) to apply, the information must be "inexact, incomplete or ambiguous." This section will not apply if the information consists of an opinion.<sup>3</sup> Section 36(2)(a) gives the institution discretion to accept or reject a correction request.<sup>4</sup>

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<sup>1</sup> Orders 186 and P-382.

<sup>2</sup> Orders P-448, MO-2250 and PO-2549.

<sup>3</sup> Orders P-186, PO-2079 and PO-2549.

<sup>4</sup> 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.<sup>5</sup>

[19] Records of an investigatory nature 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. In other words, 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.<sup>6</sup>

[20] The police submit that the contents of both the police occurrence report and the investigating officers' notebook entries are of an "investigatory nature" and reflect the views of the officers who made the notes; thus the records cannot be characterized as incorrect or incomplete such that the grounds for correction under section 36(2) are made out. The police add that the information in the records constitutes the opinions of the officers, which although subjective, are not subject to correction and will not be replaced, amended or deleted.

[21] The appellant alleges that the records were written under false pretences as a result of a conspiracy, and constitute fraud and harassment. He further alleges that the records are inexact, incomplete, ambiguous and an invasion of his privacy. He denies that the occurrence report and officers' notes at issue are of an "investigatory nature" on the basis that the police had no jurisdiction to investigate allegations within the Department of National Defence in Toronto. He adds that the police did not investigate the allegations reported by the Canadian Forces, because if they had, they would have uncovered fraud by the complainants.

[22] The appellant alleges that the police's actions in obtaining his personal information from the Canadian Forces constitutes "theft from the Department of National Defence" and a breach of federal privacy legislation. To support these arguments the appellant explains that at the time the occurrence report was written, he was no longer a member of the Canadian Forces because he had already been discharged. He then provides details of alleged inconsistencies in the investigation and allegedly false information that was provided to the police and the Canadian Forces about him. The appellant denies that his request is based on his opinion and he repeats his allegations of fraudulent investigation by the police.

[23] I note that the appellant has made similar allegations about the legitimacy of the investigation of his actions and about the conduct of various authorities in two other appeals before me. I am issuing orders simultaneously in all three appeals before me. As I have noted in the other two orders, I have no authority or jurisdiction to address

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<sup>5</sup> Order PO-2258.

<sup>6</sup> Orders M-777, MO-1438 and PO-2549.

the appellant's allegations about the police's conduct, and will not deal with these allegations in this appeal.

[24] I have reviewed the records and find that they consist of the police officers' opinions and facts which they obtained in the course of their investigation into the actions of the appellant. I accept the position of the police that the records accurately reflect the police officers' observations and impressions at the time that the records were created. I find that the police occurrence report and the police officers' notebook entries are investigatory in nature and they reflect the impressions and views of the investigating officers who recorded them. Therefore, I agree that they cannot be said to be "incorrect" or "incomplete."

[25] I further find that the correction of the records in the manner suggested by the appellant would result in a substitution of the appellant's opinion for that of the investigating officers. In accordance with a long line of orders of this office confirming the factual nature of occurrence reports and police officers' notes,<sup>7</sup> I uphold the police's decision to refuse to correct the information at issue.

[26] I also note that the police have confirmed that they attached the statement of disagreement they received from the appellant to the police occurrence report at issue, and that they notified the investigating officers of the statement of disagreement as well. I find that the police have, therefore, complied with section 36(2)(b) of the *Act*, which entitles the appellant to require the police to attach a statement of disagreement to the records at issue. While the appellant has indicated he is not satisfied with this, he is not entitled to the correction which is he is seeking under the *Act*.

[27] Accordingly, I will dismiss this appeal.

**ORDER:**

I uphold the decision of the police and dismiss the appeal.

Original Signed By: \_\_\_\_\_  
Stella Ball  
Adjudicator

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January 31, 2014

<sup>7</sup> See for example Orders MO-2258, MO-2351 and MO-2370.