

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-3004**

Appeals MA13-150, MA13-328 and MA13-329

Regional Municipality of Peel

January 31, 2014

**Summary:** The municipality received three correction requests from an individual, each of which were denied in full. The requester filed three appeals with this office, claiming that the information subject to her correction requests is inaccurate and unfairly damages her reputation. This order upholds the municipality's decision to deny the appellant's correction requests.

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

**Orders and Investigation Reports Considered:** Orders M-777, MO-1594, PO-2549

### **OVERVIEW:**

[1] The Regional Municipality of Peel (the municipality) received three requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the correction of information.

[2] In the first, the requester requested the correction of information contained in a memorandum dated July 22, 2011 which was included in her Ontario Works file. The requester stated that this memorandum contains information that is inaccurate and unfairly damages her reputation.

[3] The municipality denied the requester's correction request. In its decision, the municipality advised the requester that:

Information contained in your Ontario Works file is information provided by you and verified to determine your subsidy entitlement. To date, we have not received any factual information from you which warrants a change to the information contained in the file.

[4] The requester, now the appellant, appealed the municipality's decision to this office and appeal MA13-150 was opened.

[5] In her second request, the appellant filed a two-part request for the correction of information contained in her Ontario Works file. The following is an excerpt from her requests, in which she describes the information that she wishes to have corrected:

Request #1

1. The hand-written comments are inconsistent with printed numbers in Overpayment/Recovery List, the Program Eligibility Detail, in Payment Detail, in Accommodation.
2. The overpayment amounts are inconsistent with the amounts of the decisions (see the decisions attached).
3. The overpayments and deductions were made unlawfully
- ...
4. The correction of information "Accommodation" where "NO" was put instead of "Yes" will be appreciated – see Accommodation attached.

Request #2

Accommodation History

Monthly accommodation amount was changed from \$310 to \$421.33 – reason unknown.

[6] In her third request, the appellant requested the correction of the following information:

1. Please correct the amount of payments issued to OW [Ontario Works] by FRO [Family Responsibility Office] – see the payments reconciliation from FRO and information by [named individual] attached.
2. Please correct T5007 for 2008 (the spousal support is not OW benefits).

[7] The municipality again denied both of these correction requests. In its decision, the municipality advised the appellant as follows:

Information contained in your Ontario Works file is information provided by you and verified to determine your subsidy entitlement. To date, we have not received any factual information from you which warrants a change to the information contained in the file.

The appropriate forum to confirm information relating to payment amounts and details for Ontario Works administration is the Social Benefits Tribunal. We are aware that your Ontario Works subsidy entitlement has been reviewed various times by the Social Benefits Tribunal, Divisional Court, the Human Rights Tribunal, the Court of Appeal and the Supreme Court of Canada. To date, none of these reviews necessitated a change to your entitlement, or information contained the file.

[8] The appellant appealed the municipality's decisions, and appeals MA13-328 and MA13-329 were opened in relation to these correction requests.

[9] During mediation, the appellant confirmed that she would like to pursue all three corrections requests.

[10] With regard to her correction request in appeal MA13-150, the appellant advised the mediator that the memorandum which represents the subject of her correction request contains inaccurate information. Specifically, the appellant takes issue with the second bullet point in the memorandum that refers to "unreported child support and accommodation changes". The appellant submits that the statement is inaccurate and should be corrected.

[11] In the case of all three appeals, the municipality advised the mediator that it maintains its decision to deny the appellant's correction requests, but would consider any factual information the appellant submits to the municipality to support the correction request. The municipality also advised that it would agree to attach a statement of disagreement to the information which is the subject of the appellant's requests, if the appellant wished to submit one. The appellant advised that she did not wish to submit statements of disagreements.

[12] As no further mediation was possible, the appeals were transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[13] Initially, I invited the municipality to submit representations for appeal MA13-150. The municipality advised that it would not be making submissions. I then invited the appellant to submit representations in response to three Notices of Inquiry for appeals MA13-150, MA13-328 and MA13-329. Based on my review of the submissions received from the appellant, it was not necessary to seek representations from the municipality.

[14] In the discussion that follows, I uphold the municipality's decision to deny the corrections requests.

## **DISCUSSION:**

### **Correction of personal information**

[15] Sections 36(2)(a) and (b) of the *Act* provide for correction requests and statements of disagreement relating to one's own personal information. Sections 36(2)(a) and (b) of the *Act* 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

[16] 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.

[17] In order for an institution to grant a request for correction, all three of the following requirements must be met by the person seeking the correction:

1. the information at issue must be personal and private information;
2. the information must be inexact, incomplete or ambiguous; and
3. the correction cannot be a substitute of opinion.<sup>1</sup>

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

[18] For section 36(2)(a) to apply, the information must be "inexact, incomplete or ambiguous". Section 36(2)(a) gives the institution discretion to accept or reject a correction request. Thus, 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>2</sup>

[19] Records of an investigatory nature cannot be said to be "incorrect", "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 records was created.<sup>3</sup>

[20] The following passage from The Williams Commission Report<sup>4</sup> is helpful in understanding the purpose and operation of the *Act's* correction provisions:

...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.

[21] In her representations in response to the Notice of Inquiry for MA13-150, the appellant takes issue with the contents of the memorandum and submits that the information contained in the memorandum are inaccurate, deceptive and unfairly damages her reputation. The appellant submits that the statement "unreported child support and accommodation changes" in the second bullet point is not accurate and that the author implies that the appellant was dishonest in her claims for social assistance. The appellant attached a number of documents (including statements of financial assistance and support forms) to demonstrate that there were no "unreported" child support and accommodation changes.

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<sup>2</sup> Order PO-2258.

<sup>3</sup> Orders M-777, MO-1438 and PO-2549.

<sup>4</sup> *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) at 709-710. ("The Williams Commission Report")

[22] In addition, the appellant refers to a number of other bullet points in the memorandum and provides corresponding clarifications to the information and opinions contained therein. The appellant submits that the correction of the information at issue would not be a substitution of opinion. Instead, she submits that it would be a correction of discrepancies between inaccurate and unreliable information in the memorandum and the decisions of the Social Benefits Tribunal and the Ontario Court of Appeal. The appellant submits that the author of the memorandum did not present her observations and impressions after a thorough investigation, but simply provided the "high level chronological facts".

[23] With regard to the documents at issue in MA13-329, the appellant submits that there is a discrepancy in her Ontario Works file regarding the amounts of overpayments issued to Ontario Works by the Family Responsibility Office. The appellant did not make submissions with regard to the correction requests at issue in MA13-328.

[24] As previously discussed, in order for an institution to grant a request for correction, the information at issue must be personal and private information. Section 2(1) of the *Act* provides, in part, that "personal information" means recorded information about an identifiable individual. The documents subject to the appellant's correction requests include a memorandum dated July 11, 2011 (the memorandum) that relates to a letter from the appellant and various documents contained in the appellant's Ontario Works file. These documents contain the appellant's identifying information and include information relating to financial transactions in which she has been involved, and other information relating to her. Reviewing the documents subject to her correction requests, I am satisfied that they contain the appellant's personal information within the meaning of that term in section 2(1) of the *Act*. Therefore, the first requirement for granting the appellant's request for correction has been satisfied.

[25] The record subject to a correction request in appeal MA13-150 is an internal memorandum written by the municipality's Commissioner of Human Services to Mayor Hazel McCallion in response to a letter sent from the appellant to the Mayor's Office regarding her Ontario Works file. In the memorandum, the author provides the recipient with the "high level chronological facts" concerning the appellant and her Ontario Works file and Social Benefits Tribunal appeals. Previous orders of this office have considered the issue of correction requests for records similar in nature to the memorandum at issue in appeal MA13-150, that is, records in which an individual has recorded information reported to them about specific events by other individuals. For example, in Order M-777, former 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. Former 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 at 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.

[26] Adjudicator Daphne Loukidelis considered similar issues in Order PO-2549 and found 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.

[27] To the extent that an occurrence report reflects an investigating officer's views and the information gathered at the time of the investigation, Adjudicator Loukidelis found that the information contained in the occurrence report at issue cannot be characterized as "incorrect", "in error" or "incomplete", as contemplated by the second part of the test for granting a correction request.

[28] I agree with the above decisions and find them applicable here. I have reviewed the appellant's request for correction, the municipality's responses and the appellant's representations. I find that the municipality reasonably concluded that the memorandum was not "inexact, incomplete or ambiguous". I find that the memorandum reflects the author's impressions of the appellant and her history and disputes with Ontario Works at the time the memorandum was written.

[29] In Order MO-1594, Senior Adjudicator Sherry Liang considered a correction request with respect to a supplementary report to an occurrence report. Upholding the police's refusal of the appellant's correction request, Senior Adjudicator Liang found that:

... the information in these portions of the record is not inexact, incomplete or ambiguous, in the whole context of the record and given the purpose for which the information is recorded and, further, that the appellant's suggested corrections reflect a substitution of opinion. In some cases, the record sets out the officer's summary or description of certain facts, such as the nature of the allegations, or the nature of the information provided by the appellant. Such a summary or description necessarily involved some judgment and interpretation of the information before the officer, and in this sense, reflects a combination of objective fact and the subjective perspective of the author. It should be noted that the officer was attempting to condense a large volume of information from the appellant in his description of the allegations, and it is perhaps not surprising that the appellant would have chosen to describe them differently himself.

... From my review of the information before me, there is no reason to doubt that the record is an accurate reflection of the officer's understanding of the state of events being described, and the request for correction is in essence a request to substitute one person's understanding for another.

[30] I agree with Senior Adjudicator Liang's analysis and adopt it here. The record at issue in appeal MA13-150 is a memorandum that summarizes the municipality's contacts with the appellant and her history as a recipient of social assistance. As with the record at issue in Order MO-1594, the author of this memorandum has summarized or described the appellant's history with Ontario Works to provide the Mayor with the "high level chronological facts". As such, the memorandum required the author to exercise some judgment in summarizing a large amount of information, which was included in the appellant's Ontario Works file and those relating to her appeals with the Social Benefits Tribunal. As a result, the memorandum represents the application of a combination of objective facts and the author's perspective. Reviewing the memorandum and the information before me, I find that the memorandum constitutes an accurate reflection of the author's understanding of the municipality's contacts with the appellant, as well as her history with Ontario Works and the Social Benefits Tribunal. Therefore, I find that the appellant's request for correction is a request to substitute her opinion and understanding for that of the author of the memorandum.



[31] Furthermore, upon a review of the memorandum and the information before me, I find that regardless of whether the information contained in the memorandum is "inexact, incomplete or ambiguous", the municipality's exercise of discretion to refuse the appellant's request was reasonable. Reviewing the appellant's correction request and representations, it appears that she is asking the municipality to review her entire Ontario Works file and those relating to her appeals at the Social Benefits Tribunal and to correct the inaccuracies she believes are contained in the memorandum. However, I find that such a correction would require "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", as contemplated by the Williams Commission Report<sup>5</sup>. Accordingly, I find that this is a situation that where it is not necessary to make a conclusive determination on whether the information is "inexact, incomplete or ambiguous". Instead, on my review of the circumstances of the appeal (including the correction request, the nature of the record, and the impact of allowing the requested correction), I find that this is a situation where the municipality's exercise of discretion is reasonable. Further, I conclude that the attachment of a statement of disagreement is a sufficient response to the appellant's correction request in this matter.

[32] With regard to the correction requests at issue in appeals MA13-328 and MA13-329, I find that the appellant has not provided me with any factual information that would warrant the municipality changing the information at issue. Rather, the appellant only asserts that there are discrepancies in her Ontario Works file and requests an explanation for them.

[33] Reviewing the correction requests and the information subject to the correction requests, I find it useful to refer to the municipality's decision, which advised the appellant as follows:

Information contained in your Ontario Works file is information provided by you and verified to determine your subsidy entitlement. To date, we have not received any factual information from you which warrants a change to the information contained in the file.

The appropriate forum to confirm information relating to payment amounts and details for Ontario Works administration is the Social Benefits Tribunal. We are aware that your Ontario Works subsidy entitlement has been reviewed various times by the Social Benefits Tribunal, Divisional Court, the Human Rights Tribunal, the Court of Appeal and the Supreme Court of Canada. To date, none of these reviews necessitated a change to your entitlement, or information contained the file.

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<sup>5</sup> The Williams Commission Report, *supra* note 4.

[34] I agree with the municipality. Reviewing the information before me and the appellant's correction requests, it appears that the appellant is seeking the correction of information that would address her entitlement to benefits. However, this information was already reviewed by the Social Benefits Tribunal, the Human Rights Tribunal and various levels of the courts for its accuracy. Moreover, I agree that the appropriate forum for the correction of payment amounts and information relating to Ontario Works administration is the Social Benefits Tribunal, not this office. As a result, I find that the municipality's exercise of its discretion to refuse to change the information subject to the appellant's requests was reasonable.

[35] Therefore, having regard to the requirements to grant a request for correction, I am not persuaded that the municipality exercised its discretion inappropriately in refusing to correct the records. As indicated above, the municipality offered the appellant the opportunity to attach statements of disagreement to the information subject to her correction requests. The appellant remains at liberty to submit a statement of disagreement under section 36(2) of the *Act* and this order does not preclude her from requesting that the municipality do so in accordance with section 36(2)(b) of the *Act*.

**ORDER:**

I uphold the municipality's decisions and dismiss the appeals.

Original Signed by: \_\_\_\_\_  
Justine Wai  
Adjudicator

\_\_\_\_\_ January 31, 2014