Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3167

Appeal MA13-573
Appeal MA13-618

London Police Services Board

March 11, 2015

Summary: The appellant asked the London Police Service (the police) to correct her personal information contained in three occurrence reports under section 36(2)(a) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The police denied her requests, but attached statements of disagreement to the records in accordance with section 36(2)(b) of the *Act*. The appellant appealed the police's decision to deny her requests for correction. The adjudicator finds that some of the passages that the appellant wishes to have corrected are statements of the police officers' opinions, and that the remainder of the passages are not inexact, incomplete or ambiguous. She upholds the decisions of the police not to correct the records.

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

Orders and Investigation Reports Considered: Orders P-186, P-382, PO-2079, PO-2549, M-777, and MO-1594.

OVERVIEW:

[1] This order addresses two appeals from decisions of the London Police Services Board made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). As the appellant and the institution are the same in both appeals, and the issues overlap, I have decided to issue a common order with respect to the two appeals.

Background to Appeal MA13-573

[2] An officer from the London Police Service (the police) attended at the appellant's residence on December 15, 2011, as a result of a complaint made by a third party about the appellant. A conversation between the police officer and the appellant ensued. It does not appear from the material before me that the appellant was charged with any offence. As a result of a request under the *Act*, the appellant obtained access to police records relating to this incident, including an occurrence report.

[3] The appellant then made a request to the police pursuant to section 36(2) of the *Act* for correction of the information appearing in the occurrence report. The appellant listed eight specific portions of the occurrence report that she wanted corrected or deleted.

[4] In a decision dated November 6, 2013, the police denied the appellant's correction request, but invited her to submit a statement of disagreement under section 36(2)(b) of the *Act*. The appellant submitted such a statement, which the police attached to her file. The appellant, however, also appealed the decision of the police refusing her correction request to this office.

[5] During the course of mediation, the appellant submitted the following additional correction request to the police:

> I am requesting complete and total deletion/purging of any & all reference to me, pursuant to December 15, 2011 visit by [a named police officer].

[6] The police denied the appellant's additional correction request by letter dated May 1, 2014.

Background to Appeal MA13-618

[7] The appellant had further contact with the police on July 18, 2012.

[8] The appellant obtained access to the police records resulting from these interactions and submitted a correction request to the police which listed four specific portions of the occurrence report that she wanted corrected or deleted. In a decision

dated November 6, 2013, the police denied the appellant's request, but again invited her to submit a statement of disagreement under section 36(2)(b) of the *Act*. The appellant submitted a statement of disagreement, which the police attached to her file. She appealed the police's decision refusing her correction request to this office.

[9] During the initial processing of this appeal, the appellant submitted a revised list of corrections to the police which, this time, listed five specific corrections or deletions to the occurrence report. The police replaced the appellant's original statement of disagreement with this revised list of areas of disagreement. In correspondence dated January 27, 2014, the police advised the appellant that they had not expunged or replaced anything in the original police report.

[10] As a mediated settlement was not reached in either appeal, they were transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I sought representations from the appellant, who filed one set of representations addressing both appeals. After reviewing the appellant's representations, I did not consider it necessary to seek representations in response from the police.

[11] In this order, I uphold the decisions of the police denying the appellant's request to correct the information in the occurrence reports.

RECORDS:

[12] The information at issue in Appeal MA13-573 appears in an occurrence report dated December 15, 2011. The information at issue in Appeal MA13-618 appears in an occurrence report dated July 18, 2012. The authors of the two reports are two different police officers.

ISSUE:

[13] The sole issue in this appeal is whether the records contain the appellant's personal information, and if so, whether the institution should correct the personal information contained in the records under section 36(2).

DISCUSSION:

[14] 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)(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;

Do the occurrence reports contain the appellant's personal information?

[15] The right to request correction of information applies only to personal information of the appellant. The term "personal information" is defined in section 2(1) as recorded information about an identifiable individual. Examples of the types of information that qualify as "personal information" are listed in paragraphs (a) to (h) and include:

> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (g) the views or opinions of another individual about the individual,

[16] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[1]

[17] The appellant's representations do not specifically address the issue of whether the occurrence reports contain her personal information. However, from my review of the reports, I find that they contain the appellant's personal information. For example, they refer to her home address, information about the nature of her involvement with the police, information about her involvement in a lawsuit pertaining to a family matter (including the amounts of money involved), and the police officers' personal impressions of her. I find that this information constitutes the appellant's personal

[1] Order P-11.

information under the introductory wording of the definition as well as paragraphs (b), (d) and (g).

Should the personal information be corrected?

[18] I have reviewed the records and the appellant's representations, including attachments filed with her representations and additional attachments that she filed separately.

[19] The appellant submitted information about her work as well as her other recent activities and accomplishments. She also provided me with a copy of a police information check pertaining to herself, which was negative.

[20] The appellant has also provided some materials which outline her dissatisfaction with the judicial system and specific lawyers.

[21] In her representations, the appellant also refers to the legal burden of proof and submits that the police must present evidence to support each statement asserted in the occurrence reports.

[22] The following passage from The Williams Commission Report[2] is helpful in understanding the scope 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.

[23] Previous orders of this office have found 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;

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[2] *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")

2. the information must be inexact, incomplete or ambiguous; and

3. the correction cannot be a substitution of opinion.[3]

[24] 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.[4]

[25] Records of an investigatory nature, such as the occurrence reports at issue, cannot be said to be "incorrect" or "in error" or "incomplete" if they simply reflect the views of the individual whose impressions are being set out. 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.[5] In Order MO-1594, the adjudicator considered a correction request with respect to a supplementary report to an occurrence report. In upholding the police's denial of the appellant's correction request, the adjudicator 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, … 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.
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> …. 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.

[3] Orders P-186 and P-382.
[4] Orders P-186, PO-2079 and PO-2549.
[5] Orders M-777, MO-1438 and PO-2549.

[26] Similarly, in Order PO-2079, the adjudicator stated:

> It should be noted that, with respect to some of the disputed portions, the author was attempting to condense a large volume of information from the appellant, and it is perhaps not surprising that the appellant would have chosen to use different words himself, or included more detail.

[27] Finally, section 36(2)(a) gives the institution the discretion to accept or reject a correction request.[6] 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.[7]

Appeal MA13-573

[28] The appellant first asked for eight specific corrections to be made to the occurrence report. She later asked for "complete and total deletion/purging of any & all reference to me" in the record.

[29] The appellant does not dispute that the police officer in question attended at her residence and that a conversation ensued. There is no basis for me to conclude that the reference to the appellant in the occurrence report is in error. For that reason, I uphold the police's decision to deny the appellant's request for a total purging of any references to her in the occurrence report.

[30] I now turn to the eight corrections that the appellant initially requested. The first seven are requests to modify the police officer's account of what the appellant said to him in the course of his attendance at her residence. The statements that the officer attributed to the appellant pertain mainly to the history of a particular lawsuit in which the appellant had previously been involved. Having reviewed the record and the appellant's proposed corrections, I note that in many cases the requested corrections are quite subtle. In other cases, however, the requested changes are more substantive, or the appellant has added more detail.

[31] However, the issue is not whether the appellant said what the officer attributed to her, but rather whether or not what he wrote accurately reflects his observations and impressions at the time the record was created. As noted above, 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. The corrections requested by the appellant would not substantially alter the information contained in the occurrence report. While the officer may or may not have misunderstood portions of what the appellant related to him, I have no basis upon which to find that the record

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[6] Order PO-2079.
[7] Order PO-2258.

does not reflect his observations and impressions at the time the record was created. I agree with the adjudicator in Order MO-1594 where she states that the creation of a record of this kind necessarily involves some judgment and interpretation of the information before the officer and reflects a combination of objective fact and the subjective perspective of the author.

[32] The eighth requested correction relates to a passage in which the officer sets out his impression of the appellant and what he said to her. While the appellant may believe that the officer's impression of her is unfounded, his impressions are his subjective opinion of the appellant and her behaviour. I infer from the attachments submitted by the appellant, which contain evidence of her work and other accomplishments, that she is of the view that the police officer's opinion of her is incorrect. However, as noted above, a request for correction will not be granted where the request is for a substitution of opinion.

[33] With respect to what the officer said to the appellant, I again have no reason to doubt that the report reflects the officer's interpretation of what he said to the appellant.

[34] The appellant refers to the burden of proof and submits that the police must present evidence to support each statement asserted in the occurrence report. In Order M-777, the adjudicator discussed the application of section 36(2)(a) to incident reports:

> 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 contents of the records are incorrect, decide what actually transpired, and "correct" the records by destroying them.
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> … If I were to adopt the appellant's view of section 36(2)(a), the ability of government institutions to maintain whole classes of records of this kind, in which individuals record their impression 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"... 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.

[35] This interpretation of section 36(2)(a) is, in my view, consistent with the Williams Commission Report excerpt quoted above, and I adopt it for the purposes of this

appeal. To accept the appellant's submission would be to severely circumscribe the police's ability to make and keep notes of their interactions with the public. In my view, the question for me to determine is not whether the police officer and the appellant actually said what is written in the occurrence report, but rather, whether the occurrence report fairly sets out the police officer's impressions of what was said. I have no reason to find that it does not. While the appellant disagrees with the police officer's impressions, her remedy is to file a statement of disagreement under section 36(2)(b), which she has done.

[36] Therefore, I uphold the police's decision to refuse the appellant's request to make the eight requested corrections.

Appeal MA13-618

[37] As noted above, the appellant submitted two correction requests to the police in respect of the July 18, 2012 occurrence report: the original and a revised correction request. I will address the revised correction request first. In this request, the appellant asked the police to make five corrections to the occurrence reports.

[38] The first is a request to delete the police's officer's opinion of the appellant's mental state. As noted above, where a correction request amounts to a request for a substitution of opinion, it will not be granted. Therefore, I deny this aspect of the appeal.

[39] The second and fourth requests are to modify the police officer's account of what the appellant said in the course of the officer's attendance at her residence. I deny these requests for the same reasons articulated above with respect to Appeal MA13-573: the issue for me to determine is not whether the appellant actually said what is written in the occurrence report, but rather, whether the occurrence report fairly sets out the police officer's impressions of what she said. I have no reason to find that it does not, particularly given the similarity between the report and the requested corrections.

[40] The third request relates to the police officer's note that "[The appellant] then produced several photo collages". The appellant's correction request with respect to this passage reads as follows:

> **Please correct by:** Releasing limited thinking and naïve arrogance, with belittling - reference to "visual-factums".

[41] While the nature of the appellant's objection is not entirely clear to me, I infer that she takes issue with the words used by the officer to describe the material she produced. There is an element of subjectivity in the words one chooses to describe any manner of items. While the appellant may have used different words to describe the

material she showed to the police officer, I find that the officer's words do not render the description of this material inexact, incomplete or ambiguous.

[42] The fifth request is with respect to a passage in the occurrence report that contains two sentences. The first reads as follows:

> [the appellant] has previous police involvement for making threatening comments…

[43] The second sentence contains the officer's view of the appellant's mental status.

[44] The appellant's correction request reads as follows:

> **Please correct with:** credible material - evidence to substantiate the above libelous allegations.

[45] The second sentence in this passage is a statement of the officer's opinion. For that reason, I will not order it corrected.

[46] Further, I find that the first sentence, stating that the appellant has previous police involvement for making threatening comments, is not inexact, incomplete or ambiguous. The occurrence report for the previous police involvement in question is the December 15, 2011 occurrence report at issue in Appeal MA13-573, and involves an officer's assessment of whether the appellant's actions toward a complainant were threatening. That officer concluded in the December 15, 2011 occurrence report that the appellant was not threatening, but that he advised her not to contact the complainant further.

[47] The July 18, 2012 occurrence report at issue in Appeal MA13-618 does not state that the appellant has been previously charged or convicted of uttering threats: it states that she had "police involvement for making threatening comments". In my view, this does not imply that the appellant was charged or convicted of uttering threats, but rather that she was investigated for such to some degree. This is not inexact, incomplete or ambiguous; it reflects the investigating officer's views and the information gathered as of the time of the writing of the July 18, 2012 occurrence report.[8] I also note that the appellant has not made any concrete suggestion as to how this passage should be corrected.

[48] Therefore, I uphold the police's decision not to make the corrections listed in the revised request.

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[8] See Order PO-2549.

[49] I now turn to the appellant's original correction request, which takes issue with four of the five passages that I have just addressed. The suggested replacements are similar to those in the revised request, with the exception of the passage pertaining to her previous police involvement and the police officer's opinion of her mental status. In her original request, she asked that this passaged be deleted. For the reasons set out above, I find that these four passages are either statements of opinion, or are not "inexact, incomplete or ambiguous", and I uphold the police's decision not to make the corrections listed in the original correction request.

ORDER:

I uphold the decisions of the police denying the appellant's correction requests.

Original signed by: March 11, 2015
Gillian Shaw
Adjudicator