Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3218

Appeal MA14-354

Peel Regional Police Services Board

June 30, 2015

Summary: The appellant submitted a request for the correction of an occurrence report under section 36(2)(a) of the *Municipal Freedom of Information and Protection of Privacy Act* to the police. The police concluded that the correction requested amount to a substitution of opinion and that the information sought to be corrected was not "inexact, inaccurate or ambiguous." The police denied the appellant's correction request and the appellant appealed the denial. The police's decision to deny the correction request 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) (definition of "personal information") and 36(2).

Orders and Investigation Reports Considered: Orders M-777, PO-2549 and MO-2741.

OVERVIEW:

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Peel Regional Police Services Board (the police) for access to records related to the investigation of a complaint of alleged abuse. The police located an occurrence report and handwritten officer's notes that were responsive to the request and issued a decision granting the appellant partial access to them. The police relied on the discretionary exemption in section 38(b) (invasion of privacy) of the *Act* to withhold parts of the records and disclosed the remaining information in the records to the appellant.

[2] The appellant then submitted a correction request in respect of the disclosed records. Along with her correction request, the appellant provided to the police a report from the Peel Children's Aid Society (PCAS) which, she submitted, supported making the corrections she sought. The appellant asked the police to correct the parts of the record that identified her as the complainant and indicated that she applied cream to her minor daughter's back. She stated that these entries were incorrect. She asserted that it was the PCAS case worker who complained to the police after her minor daughter disclosed information to the case worker about an alleged assault. She added that she put lotion on both of her children's faces during her supervised visit with the PCAS worker which is reflected in the PCAS report, and thus, the police records indicating she placed cream on her daughter's back should be corrected to reflect this.

[3] After considering the appellant's correction request, the police issued a decision denying it. In their decision, the police stated the appellant made the initial allegation to PCAS, which was then passed on to them, making the appellant the complainant. The police added that making the changes to the occurrence report that the appellant requested would, in part, be a substitution of the police officer's opinion for that of the appellant. In their decision letter, the police invited the appellant to submit a statement of disagreement under section 36(2)(b) of the *Act.*

[4] The appellant appealed the police's decision to deny her correction request to this office. Mediation was attempted, but it did not resolve the appeal. The appeal was then moved to the adjudication stage of the appeal process for a written inquiry under the *Act.* During my inquiry, I sought and received representations from the police and the appellant, and shared these in accordance with *Practice Direction Number 7* of this office's *Code of Procedure.*

[5] In this order, I uphold the decision of the police and dismiss the appeal.

RECORDS:

[6] The record at issue is an occurrence report, specifically, the portions of the occurrence report that identify the appellant as the complainant and indicate that she applied cream to her daughter's back.

DISCUSSION:

[7] The sole issue before me in this appeal is whether the police should correct the personal information identified by the appellant in accordance with her request under section 36(2) of the *Act.* Section 36(1) gives individuals a general right of access to their own personal information held by an institution, while section 36(2) gives individuals the right to ask the institution to correct their personal information. The right of correction in section 36(2) reads as follows:

> Every individual who is given access under subsection (1) to personal information is entitled to,
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> (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;
>
> (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 be notified of the correction or statement of disagreement.

[8] 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.[1]

[9] As noted above, the appellant made a correction request which the police denied. In their representations to me, the parties address the three requirements for granting a correction request as set out below.

[10] The police acknowledge that the information at issue is "personal information" and it was on this basis that they granted the appellant partial access to it. While the police accept that the appellant has the right to request the corrections under section 36(2)(a), they assert that the information does not require correction. The police submit that after consulting with the officer who recorded the information at issue, they concluded that the information the appellant wants corrected was accurate. They based this conclusion on the information the appellant and her daughter provided to the officer and the officer's observations of what occurred during the incident described in the occurrence report. The police explain that the appellant's identification as the complainant in the occurrence report is based on their view that she made a criminal complaint to the PCAS and to them as a result of her daughter's appearance at the time of the incident.

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[1] Orders P-186 and P-382.

[11] The police explain that they do not expect the appellant to understand the rationale behind the structure of an occurrence or the reasoning for including or excluding information, however, they maintain that the occurrence at issue was correctly documented. The police argue that the second requirement is not met in this appeal because the information the appellant wants corrected is not inexact, incomplete or ambiguous. They also assert that the third requirement is not met because correction of the information as requested by the appellant would constitute a substitution of her opinion for that of the investigating officer's. The police rely on Order MO-1438 to submit that the relevant question is whether the statements in the record reflect the views or observations of the officer as they existed at the time that the record was created. The police also argue that the statements cannot be said to be "incorrect" or "incomplete" if they simply reflect the views and impressions of the officer, irrespective of whether the views are true or false. The police rely on Order M-777 in making this latter submission.

[12] The appellant argues that it was the PCAS worker who contacted the police to report the alleged abuse after her daughter spoke to the PCAS worker. She submits that she was merely present at PCAS to have a supervised access visit with her children and she did not contact the police and file a complaint of alleged abuse. To support her position, she states that she was not aware that her daughter had disclosed any alleged abuse and this is confirmed in the PCAS case notes which state that her daughter did not tell her about the assault during their visit. The appellant states that although the investigation that ensued was conducted jointly by the PCAS and the police, there are a number of discrepancies between the PCAS case notes and the police records, including the absence of any mention in the notes of the PCAS worker that she applied cream to her daughter's back during the investigation. The appellant also states that the police's failure to provide a rationale or have an equitable process for understanding how this information is assimilated goes against the very nature of due process. She then takes issue with the way that the police conducted their investigation.

[13] I find that the information the appellant wants corrected qualifies as personal information in accordance with paragraphs (a), (g) and (h) of the definition of that term in section 2(1) of the *Act.* These paragraphs read:

> "personal information" means recorded information about an identifiable individual, including,
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> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (g) the views or opinions of another individual about the individual, and

> (h) 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[.]

[14] Having found that the information at issue is personal information, I find that the first requirement for correction is met in this appeal. The second and third requirements for correction are that the information be "inexact, incomplete or ambiguous" and that the correction not be a "substitution".

[15] Previous orders of this office have considered the issue of requests to correct records in which the police have recorded information reported to them about specific events by individuals. In order M-777, for example, 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. 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.
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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 in this inquiry [emphasis added].
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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.

[16] In Order PO-2549, in which similar issues were raised, Adjudicator Daphne Loukidelis considered a correction request involving an occurrence report and found that to the extent that an occurrence report reflects the investigating officer's views and the information gathered at the time of the investigation, such information cannot be characterized as "incorrect", "in error" or "incomplete" as contemplated by the second part of the test for granting a correction request. In concluding that there were no grounds for correction, she emphasized that:

> [I]t 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.

[17] Finally, in Order MO-2741, Assistant Commissioner Sherry Liang found that the police reasonably concluded that certain parts of various occurrence reports were not "inexact, incomplete or ambiguous" as they simply reflected the views of the officers. Assistant Commissioner Liang further found that the request for correction amounted to a substitution of the officer's opinion for that of the appellant.

[18] I adopt the reasoning and approach taken in Orders M-777, PO-2549 and MO-2741 in this appeal. I find that the occurrence report information at issue is investigatory in nature as it documents the investigating officer's observations and impressions at the time of the investigation. The officer explicitly states in the records that he observed the appellant applying cream to her daughter's back when he was speaking to the appellant during the course of his investigation. While the appellant argues that this is incorrect because she applied cream to her daughter's face as is documented in the PCAS records, I note that the PCAS records provided by the appellant indicate that she applied cream to her daughter's face during their visit, which took place before the investigation by the police and the PCAS. The appellant also argues that the absence of any notation in the PCAS investigation notes indicating that she applied cream to her daughter's back during the officer's questioning, proves that the officer's notes are incorrect. I do not find this argument persuasive. The PCAS notes, like the officer's notes, document the observations and impressions of the PCAS worker at the time of the investigation. Each set of investigation notes reflects the views of the investigator who recorded the notes. Therefore, there can be inconsistencies between the two sets of investigation notes without such inconsistencies establishing that one set of notes or the other is "inexact, incomplete or ambiguous" for the purposes of section 36(2)(a).

[19] On the issue of whether or not the appellant should be listed as the complainant, I accept the evidence of the police as set out in the email of November 13, 2014, from the investigating officer. The police attached this email to their representations and I provided a copy of it to the appellant. The email indicates that it was the officer's understanding that the appellant brought her daughter's superficial injuries to the attention of the PCAS worker and that during the investigation it was clear to him that after speaking with the appellant she was primarily the one who was making a criminal complaint. This description is helpful in explaining the police's decision to identify the appellant as the complainant. However, I agree with the appellant that the police's representations on this specific issue, specifically, that they "do not expect the appellant or any other requester to understand the rationale behind the structure of an occurrence or the reasoning for including or excluding information", are inappropriately dismissive and unhelpful, particularly in an appeal in which the accuracy of information contained in an occurrence report is the sole issue. It would have been more

appropriate and helpful to the appeal process if the police had simply summarized the officer's reasoning from his email in their representations.

[20] For the reasons set out above, I find that the police reasonably concluded that the information at issue is not "inexact, incomplete or ambiguous." I further find that the correction of the information at issue would be a substitution of the appellant's opinion for that of the investigating officer's. As the last two requirements for correction have not been met in this appeal, I uphold the police's decision.

[21] I note that the appellant is entitled under section 36(2)(b) of the *Act* to require the police to attach a statement of disagreement to the information reflecting the corrections that she requested but were not made. The police have advised the appellant of this right and she may exercise it by submitting her statement of disagreement to the police. If the appellant exercises her right under section 36(2)(b) she may also require the police to notify certain recipients of the information of her statement of disagreement in accordance with section 36(2)(c) of the *Act* set out above.

ORDER:

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

Original Signed By: June 30, 2015
Stella Ball
Adjudicator