Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3222

Appeal MA14-369

Ottawa Police Services Board

July 15, 2015

Summary: The appellant submitted a request to obtain access to records relating to complaints she filed with the police. The police granted the appellant access to the responsive records, except for small portions withheld under the personal privacy and law enforcement provisions under the *Act*. The appellant also requested that the police correct certain information in the police reports on the basis that this information defamed her good character. The police refused to make the requested corrections and the appellant appealed the police's access and correction decisions. This order finds that the police properly withheld police code information under section 38(a) in conjunction with section 8(1)(l) and upholds the police's decision to deny the correction request.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) definition of "personal information, 8(1)(l), and 36(2).

Orders and Investigation Reports Considered: Order MO-2766.

OVERVIEW:

[1] In 2011, the appellant submitted a request to the Ottawa Police Service Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to access police reports relating to complaints she filed with the police. After reviewing the records disclosed to her, she filed numerous correction requests with the police, who refused to correct the records. The appellant appealed the police's access and correction decisions to this office and two appeal files were opened (Appeals MA11-

315 and MA11-394). The appeal files were resolved by Order MO-2766, in which Adjudicator Sherry Liang provided the following background:

> … over a number of years starting in about 2002, the appellant has complained to the police about suspected unlawful activity, including suspicions that her phone was being tapped, and that she was being followed, and that unauthorized use was being made of her phone line. She was not satisfied with the police investigations, and repeatedly requested further investigations of her concerns. In the records, certain police officers expressed the view that mental health issues may be influencing the appellant's behavior. In 2009, after an investigation in response to a further complaint, the police documented that they considered laying a charge of public mischief against the appellant and might take that step if her complaints continued.

[2] Adjudicator Liang ultimately upheld the police's correction decision, but ordered a small portion of the occurrence reports to be disclosed to the appellant.

[3] In 2014, the appellant submitted the following request under the *Act* to the police for similar information:

> I am requesting all information that was undisclosed to me to be disclosed to me. I am also requesting all OPS report(s) you may have on file about me. I am requesting all information you have on me that may be stored in your internal and external database (CPIC). …
>
> … I need a copy of information regarding [a specified reported] to see if still on file bearing public mischief?
>
> … I am requesting all reports with assumption of me having mental health issues to be disclosed to me. Were they being completely destroyed? … Kept on file?
>
> My goal is to access all reports and undisclosed information about me from OPS.

[4] The police located responsive records and issued a decision letter, which stated:

> All reports relating to you have been processed in this request as it is unknown what was previously released to you in your previous request in 2011. Our Freedom of Information files have a 2 year retention therefore your previous request was purged in 2013.

[5] The police granted the appellant partial access to the records but withheld portions under the law enforcement exemption in section 38(a) and the personal privacy exemption in section 38(b).

[6] The appellant appealed the police's decision to this office and a mediator was assigned to the appeal. During mediation, the parties had discussions with the mediator which resulted in the police issuing three additional decision letters to the appellant. The police's decision letters responded to the appellant's questions about the police's retention policies and which documents have been purged or are scheduled to be purged in accordance to these policies. For example, the November 26, 2014 decision letter provided the appellant with a copy of a CPIC query which showed that the appellant's name is "Not On File". In addition, the police's January 9, 2015 decision provided the appellant with a status report which identified 7 reports remaining on file and their scheduled date to be destroyed, where applicable.

[7] At the end of mediation, the appellant advised that she remained dissatisfied with the police's correction decision. In particular, she requested that all references to mental illness, a firearms interest and public mischief be removed from the police reports.

[8] The appellant also confirmed that she continues to seek access to the withheld information on page six of a specified general occurrence report, which the police claim qualifies for exemption under section 38(a) in conjunction with the law enforcement provisions at sections 8(1)(i) and (l).

[9] The appellant confirmed that the remainder of the responsive records which were denied under the personal privacy and law enforcement provisions are not at issue in this appeal.

[10] No further mediation was possible and the issues in dispute were transferred to the adjudication stage of the appeals process, in which an adjudicator conducts an inquiry under the *Act*. During the inquiry process, the parties provided representations in support of their positions.

[11] The appellant provided extensive representations in support of her argument that the records should be corrected or destroyed. One of the issues the appellant addressed in her representations is a concern about the police's retention policy. In this regard, the appellant questions why certain occurrence reports are retained indefinitely by the police whereas other seemingly more serious matters are not. The appellant also made extensive arguments in support of her view that some of the involved police officers conspired to discredit her reputation in an effort to draw attention away from her original complaint about her phone lines were being tapped. However, the appellant's concerns about the conduct of the police's investigations along with her concerns about the police's retention policy are outside the jurisdiction of this

office. Accordingly, the appellant's evidence in support of these arguments will not be addressed in this order.

[12] In this order, I uphold the police's decision to withhold the information I found exempt under section 38(a) in conjunction with section 8(1)(l)(law enforcement). I also uphold the police's decision to deny the appellant's correction requests.

RECORDS:

[13] Police code information withheld on page 6 of a specified occurrence report.

ISSUES:

A. Does the record contain the appellant's "personal information" as defined in section 2(1)?

B. Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(l) exemption apply to the record at issue?

C. Did the police properly exercise their discretion?

D. Should the police correct information under section 36(2)?

DISCUSSION:

A. Does the record contain the appellant's "personal information" as defined in section 2(1)?

[14] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. There is no dispute between the parties that the occurrence report at issue contains the personal information of the appellant. I am satisfied that the record contains the appellant's date of birth and age along with her name [paragraphs (a), (d) and (h) of the definition of "personal information" in section 2(1)]. As I have found that the record contains the appellant's personal information, I will go on to determine whether the withheld information qualifies for exemption under section 38(a) in conjunction with section 8(1)(l).

B. Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(l) exemption apply to the record at issue?

[15] Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right. Section 38(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[16] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their personal information.[1]

[17] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information. The police claim that the police and CPIC code information withheld in the record qualifies for exemption under section 8(1)(l). Previous decisions from this office have consistently found that operational and police code information qualifies for exemption under that section.[2] Section 8(1)(l) states:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[18] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.[3]

[19] The appellant's representations did not specifically address this issue. The police's representations state:

> The information that has been removed on Page 6 are from the CPIC system and are code numbers and the ORI number that are unique to the police and if released, could jeopardize the security of the system and must not be disclosed to protect the integrity of the system.

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[1] Order M-352.
[2] See for instance Orders PO-3020, PO-3023, PO-3013, PO-2970 and MO-2620
[3] *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

[20] Order MO-2131 specifically addressed whether disclosure of CPIC's unique terminal Originator's Number (ORI) contained in a record could reasonably be expected to cause the harms contemplated in section 8(1)(l). In that order, Adjudicator Frank DeVries stated:

> The Police state that "The severed information relates to the terminal numbers of the various computer locations. It is through these numbers that a particular terminal is accessed". The Police also refer to the CPIC reference manual, and identify their concerns regarding the harms which may result if information of this sort is disclosed and the integrity of the system compromised. As well, the Police refer to Orders P-1214 and M-933 in support of their position that this information ought not to be disclosed. In particular, they refer to Order P-1214 in which Adjudicator Hale found that the disclosure of "this type of information could compromise the security of the CPIC computer system and would make unauthorized and illegal access to the CPIC easier." They also refer to the following excerpt from Order M-933, in which former Adjudicator Mumtaz Jiwan stated:
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> > The Police submit that the disclosure of this type of information could compromise the security of the CPIC security system and would make unauthorized and illegal access to the CPIC system easier, contrary to various provisions of the *Criminal Code* relating to the unauthorized use of data contained in computer records. I accept the submissions of the Police. I find that disclosure of the access codes for the CPIC system could reasonably be expected to facilitate the commission of an unlawful act, the unauthorized use of the information contained in the CPIC system. Accordingly, I find that the codes qualify for exemption from disclosure under section 8(1)(l) of the *Act*.

[21] I accept and adopt the reasoning set out above in Orders M-933, MO-2131 and P-1214 for the purposes of this appeal and find that disclosure of the information at issue could reasonably be expected to cause the harms contemplated in section 8(1)(l). Accordingly, I find that this information qualifies for exemption under section 38(a), subject to my review of the police's exercise of discretion. Given my finding, it is not necessary that I also make a determination as to whether disclosure of this information would give rise to the harms contemplated in section 8(1)(i).

C. Did the police properly exercise its discretion?

[22] The section 38(a) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must

exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[23] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[24] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[4] This office may not, however, substitute its own discretion for that of the institution.[5]

[25] The representations of the parties did not specifically address this issue. However, I find that the police's submissions in support of the application of section 8(1)(l) reflects the manner in which discretion was exercised. In particular, I note that the police redacted only the information it determined qualified for exemption. This demonstrates that the police considered the purpose of the *Act,* which includes the principle that individuals have a right of access to their own personal information, along with the principle that exemptions from this right of access should be limited and specific.

[26] Having regard to the above, I am satisfied that the police properly exercised their discretion and in doing so took into account relevant considerations such as the sensitivity and importance of police codes and ORI numbers to police agencies. I am also satisfied that the police did not exercise their discretion in bad faith or for an improper purpose, nor is there any evidence that they took into account irrelevant considerations.

[27] Accordingly, I find that the police properly exercised their discretion to withhold the information at issue I found exempt under section 38(a) in conjunction with section 8(1)(l).

D. Should the police correct police information under section 36(2)?

[28] 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:

[4] Order MO-1573.
[5] Section 43(2).

> 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;

[29] 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.

Representations of the parties

[30] The parties do not dispute that the police reports were generated as a result of complaints the appellant made to the police and that she has never been arrested or charged.

[31] Throughout her representations, the appellant advises that the information contained in the police reports have negatively affected her opportunities to obtain paid and volunteer work. The appellant disagrees with the portions of the police reports which identify her as an individual having mental health issues or as person who may be of interest to firearms officers. The appellant also takes issue with the reference to the possibility of a public mischief charge being laid in one of the reports. The appellant describes the information contained in the reports as "incorrect" and "misleading" and argues that all but a 2005 report should be purged. With respect to the 2005 report, the appellant argues that it should be corrected to properly state that the police were investigating a trespass complaint and that she had the right to protect her property without being labelled as having mental health issues.

[32] In support of her position, the appellant provided a letter, dated December 10, 2012 from a lawyer retained by her. The lawyer wrote to the Chief of Police to request that the police expunge the police report which made a reference to the possibility of a public mischief charge:

> It is our position that [the appellant] did not commit any act that warranted an occurrence report to be filed. She was merely attempting to enforce her rights and seek justice.

> …
>
> It is our position that [the appellant] has not broken any law and is a model citizen. She is law abiding with no criminal record. The general occurrence report appears during background checks when she applies for potential volunteer and employment positions.

[33] The appellant also provided reference letters from various private, non-profit and government offices where she has worked or volunteered. Also included are personal reference letters from friends and family. I have carefully reviewed these letters and note that the appellant is consistently described as a reliable, hardworking individual who brings a positive attitude to her work environments.

[34] The police take the position that the information the appellant seeks to have corrected or removed from the records consists of observations or opinions of police officers or other individuals that was collected and used during the course of law enforcement investigations. The police refused to correct the information, but have attached the appellant's statement of disagreement to those records which the appellant has requested that her statement be attached. Though the police refuse to purge the records for the reasons requested by the appellant, the police advised that only seven files relating to the appellant remain on file and that "all incidents have now been removed from CPIC". The police provided a chart along with their representations entitled "MA14-369-Records Retention Status", which was provided to the appellant. The chart identifies a total of 13 incidents of which 6 have been recently purged. In particular, the police explained that:

- the records of 5 incidents and 1 ticket have been destroyed pursuant to having reached the end of the police's record retention period. The appellant was provided with copies of the Record of Destruction for these records;
- the occurrence report relating to the 2014 incident will be destroyed pursuant to the police's retention policy in 2017;
- the occurrence report relating to the 1993 incident has a record retention period of 35 years and thus will be destroyed in 2028; and
- the occurrence reports relating to the 2001, 2002, 2006, 2009[6] and a 2005 call summary report will be held for an "indefinite" period of time in accordance with the police's retention policy.

[6] Initially, the police advised that the 2009 occurrence report would be destroyed in April 2015. However, when this office contacted the police in June 2015 to confirm that this occurred the police advised that they requested that these records be destroyed but were advised by their Archive and File Storage unit that these records could not be destroyed "due to a cross referenced case number".

Decision and analysis

[35] 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.[7]

[36] 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.[8]

[37] 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.[9]

[38] Previous decisions from this office have consistently held that 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.[10]

[39] The appellant requested that the police destroy the 6 occurrence reports (1993, 2001, 2002, 2006, 2009 and 2014) remaining on file. The appellant also requested that the the police correct a 2005 call summary report to state that the police were investigating a trespass complaint and that the appellant had the right to protect her property without being labelled as having mental health issues.

[40] I have reviewed the representations of the parties, along with the police reports in question and am satisfied that though the information contained in the reports relates to the appellant in a personal way, there is no reasonable basis to conclude that the information is "inexact, incomplete or ambiguous" as it simply reflects the views of the police officer who created the report.

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[7] Orders P-186 and P-382.
[8] Orders P-448, MO-2250 and PO-2549.
[9] Orders P-186, PO-2079 and PO-2549.
[10] Orders M-777, MO-1438, MO-2766 and PO-2549.

[41] I appreciate the time and effort the appellant has taken in responding to the issues in this appeal. In my view, however, the appellant's correction request simply seeks to substitute her opinion for that of the attending or investigating police officers. As noted above, previous decisions from this office have found that section 36(2)(a) will not apply if the information the requester seeks to correct is information which consists of an opinion.

[42] Having regard to the above, I uphold the police's decision to deny the appellants' correction request.

[43] While I realize that the appellant may be disappointed with my decision, I note that this office has for nearly a decade been closely involved in efforts to modernize the way law enforcement agencies perform police records checks. It has also consistently recommended that non-conviction and non-criminal information should be disclosed by the police in a police record check *only in exceptional circumstances*.[11] In doing so, this office has publicly acknowledged in its annual reports that disclosures of non-criminal or mental health contacts with the police in a police record check could "unfairly affect" an individual's employment and volunteer opportunities.

[44] Based on the nature of the information contained in the police reports at issue, it would appear that past police record checks into the appellant's contact with the police could have given rise to the same concerns this office has publicly highlighted. However, I note that since the appellant filed her original correction request in 2011, in addition to the deletions to the records identified by the police earlier in this order, a number of notable events have occurred.

[45] First, in 2011 the Ontario Association of Chiefs of Police (OACP) published the *Law Enforcement and Records Managers Network Check Guidelines* (LEARN guidelines). In June 2014, the LEARN guidelines were amended to the effect that in a Police Vulnerable Sector Check, information that is not to be disclosed includes "Any reference to incidents involving mental health contact."

[46] Second, on July 1, 2015, the Ottawa police adopted the amended LEARN guidelines as they relate to police record checks.

[47] Third, on June 3, 2015 the Minister of Community Safety and Correctional Service introduced Bill 113, An *Act Respecting Police Records Checks,* in the Ontario Legislature. The bill proposes to limit the disclosure of information in police record checks to information authorized to be disclosure in the Schedule to the bill. Authorized disclosures do not include information relating to incidents involving mental health contacts with police agencies.[12]

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[11] 2014 Information and Privacy Commissioner of Ontario Annual Report, p. 10.
[12] This bill has passed first reading but has not been enacted as of the present time.

ORDER:

The appeal is dismissed.

Original Signed By: July 15, 2015
Jennifer James
Adjudicator