

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3186

Appeal MA14-261

Niagara Regional Police Services Board

April 23, 2015

Summary: The appellants sought correction of a police officer report that determined that the incident reported by the appellants was a civil, not a criminal matter. This order upholds the police's decision not to correct the record.

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

OVERVIEW:

[1] The Niagara Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for a correction of the requesters' personal information in a specific police report.

[2] The police issued a decision with respect to the correction request, in which they stated:

D/Cst. [name, (the detective constable)] advised that he will not be making any corrections to his [the follow-up report] as [it] merely states that he considered all the facts submitted by both sides and deemed the matter to be civil not criminal.

Cst. [name, (the constable)] has made some of the corrections requested by you in a two page supplementary report. I have enclosed a corrected copy of the report as well as copies of the scanned documents #1, #2 and #3 for the sake of clarity as [the Cst.] refers to them in his report.

[3] The police further stated that the requesters could request that a statement of disagreement be attached to the follow-up report under section 36(2)(b) and (c) of the *Act*.

[4] The requesters, now the appellants, appealed the police's decision.

[5] During mediation, the appellants indicated that they were seeking correction to four points in the follow-up report:

- 1) The constable's statement that "...it is the opinion of the writer that the concerns expressed by the complainant are civil and not criminal." The appellants state that it is a criminal matter.
- 2) The constable's statement "between the initial application in [first date] and the closing of the adjoining land in [second date]..." The appellants state that there was no closing in [second date].
- 3) The constable's statement "the Township received application to purchase the other side of the rail corridor on [date]. The application was made by councilman [name]". The appellants state that the date stamp on the application was [another date] and that the application itself was not dated.
- 4) The constable's statement "the complainant would have most likely inherited the entire parcel of land had they not delayed the closing". The appellants state that there was no inheritance - the adjoining land was not willed to them.

[6] No further mediation was possible and the file was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. Representations were sought and exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[7] In this order, I uphold the police's decision not to correct the record.

DISCUSSION:

Should the institution correct personal information under section 36(2)?

[8] 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;

[9] Where the institution corrects the information or attaches a statement of disagreement, under section 36(2)(c), an 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.

[10] The appellants have not asked for a statement of disagreement to be attached to the record at issue. Therefore, the issue in this appeal is whether the police should be required to correct the personal information in the record under section 36(a) of *MFIPPA*.

[11] The police state that a partial correction of information was made by the officer who took the initial report, in particular, the officer corrected information supplied by the appellants in order that the appellants would be "satisfied with telling their story".

[12] According to the police, the information at issue that was not corrected by the police is information contained in the follow-up report of a detective constable in the fraud unit who reviewed the initial report. That officer sought further clarification from the appellants and from the crown's office and reviewed the documentation supplied by the appellants.

[13] The police state that the information the appellants want corrected is not "personal information" nor is it "inexact, incomplete or ambiguous". They state that the four points at issue in the record, the follow-up report, are the observations and impressions of this investigating officer and are the officer's opinion.

[14] The appellants provided me with extensive representations in response to the Notice of Inquiry, much of which was not relevant to the issues identified in the Notice of Inquiry. Despite their statements made to the mediator about the four points at issue, the appellants did not provide representations concerning the correctness of these four points. Instead, in their representations they seek a reconsideration of the detective constable's conclusion that the incident investigated by the police is not a criminal offence.

[15] The appellants state that they first contacted the police to report that officials within a specific township had committed, "Fraud, Breach of Trust by a Public Officer, Municipal Corruption and Disobeying a Statute."

[16] The appellants refer to three reports, the initial eight-page report, the two-page supplementary report, and the two-page follow-up report. They state that the initial report outlines their dispute with the township with respect to their application under the *Line Fences Act* and the purchase of an abandoned rail corridor. They state that a named constable made all corrections requested by them in the two-page supplementary report.

[17] With respect to the record at issue, the follow-up report, the appellants provided lengthy representations as to why the detective constable should have determined that the matter was a criminal matter, not a civil matter. They state that:

It is clearly unreasonable to refuse to correct information when there is overwhelming evidence of criminal intent.

[18] Concerning each of the four points at issue in the follow-up report, the appellants' position is:

1) *"...it is the opinion of the writer that the concerns expressed by the complainant are civil and not criminal."*

The appellants want the constable to determine that the matter is a criminal matter.

2) *"between the initial application in 2009 and the closing of the adjoining land in 2012..."*

The appellants did not address this point in their representations.

3) *"the Township received application to purchase the other side of the rail corridor on [date]. The application was made by councilman [name]"*.

The appellants did not address this point in their representations.

4) *"the complainant would have most likely inherited the entire parcel of land had they not delayed the closing"*.

The appellants state that they paid for part of the land at issue, which contradicts this opinion of the detective constable.

Analysis/Findings

[19] 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

[20] 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.²

[21] Section 36(2)(a) gives the institution discretion to accept or reject a correction request.³ 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.⁴

¹ Orders P-186 and P-382.

² Orders P-448, MO-2250 and PO-2549.

³ Order PO-2079.

⁴ Order PO-2258.

[22] The right of correction may apply only to personal information of the appellants. The term "personal information" is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where 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;

[23] 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.⁵

[24] The appellants have not identified any specific information as personal information in the record at issue, the follow-up report. Nor is it apparent to me that the information in the four points at issue is personal information. The information in the record does not appear to be personal information, but information about a property as it concerns the appellants' dispute with the township with respect an application under the *Line Fences Act* and the purchase of an abandoned rail corridor. Therefore, I find that I do not have sufficient evidence to determine that the information at issue is personal information. As section 36(2)(a) applies to correct personal information, this section cannot apply.

[25] Even assuming that the four points at issue contain the personal information of the appellants, the appellants have not provided sufficient evidence for me to determine that the other parts of the test under section 36(2)(a) have been met, namely, that the information is not opinion evidence and that it is "inexact, incomplete or ambiguous" information.

[26] The information at issue in the record has been identified by the appellants as opinion evidence. In particular, the appellants state in their representations that they disagree with the "opinion" of the detective constable that wrote the report. However, section 36(2) will not apply if the information consists of an opinion.⁶

[27] The appellants only provided specific representations on points 1 and 4 of the four points at issue. Point 1 concerns the opinion of the detective constable according to the record and point 4 concerns the opinion of the detective constable according to the appellants. Therefore, of the two points that the appellants did provide representations on, both concern opinions. Section 36(2)(a) cannot, therefore, apply to these two opinions.⁷

[28] The appellants were advised in the Notice of Inquiry, and in a follow-up email from the Adjudication Review Officer, that their representations should include all of their arguments, documents and other evidence they rely on to support their position in the appeal. Despite this, the appellants did not provide any specific representations in response to the Notice of Inquiry on points 2 and 3. In the absence of representations from the appellants on the particular information in points 2 and 3, I find that I do not have sufficient evidence to find that these remaining two points contain inexact, incomplete or ambiguous information.

⁵ Order P-11.

⁶ Orders P-186, PO-2079 and PO-2549.

⁷ Points 1 and 4.

[29] Furthermore, records of an investigatory nature, such as the record at issue, 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.⁸

[30] Based on my review of the record at issue, the follow-up report, I find that it is an investigatory record that reflects the views of the individual whose impression is being set out, namely the views of the detective constable. Based on my review of the parties' representations and the record, I find that what has been recorded in this record accurately reflects the detective constable's observations and impressions at the time the record was created.

[31] Although requested by the appellants, it is not within my jurisdiction under *MFIPPA* to require the detective constable police officer to change his opinion or determination that a matter is a civil, not a criminal matter.

[32] Accordingly, I find that section 36(2) does not apply in this appeal. I find that I do not have sufficient evidence to determine that the information at issue in the record is personal information. Even if it is personal information, I do not have sufficient evidence to determine that this information is not opinion evidence and is also inexact, incomplete or ambiguous information. Therefore, I will uphold the police's decision not to correct the information at issue in the record.

ORDER:

I uphold the police's decision not to correct the record and dismiss the appeal.

Original signed by: _____
Diane Smith
Adjudicator

_____ April 23, 2015

⁸ Orders M-777, MO-1438 and PO-2549.