

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3251

Appeal MA13-542-3

Toronto Police Services Board

October 8, 2015

Summary: The appellant asked the Toronto Police Services Board (the police) to correct his personal information in an occurrence report arising from a complaint filed against him. The police denied the appellant's request on the basis it did not satisfy the requirements for correction under section 36(2)(a) of the *Municipal Freedom of Information and Protection of Privacy Act*. The appellant appealed the police's decision. In this order, the adjudicator upholds the police's denial decision in part, but orders the correction of certain typographical and factual errors.

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).

OVERVIEW:

[1] This order disposes of an appeal of a decision of the Toronto Police Services Board (the police) to deny the appellant's request for correction of his personal information under section 36(2) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The appellant had sought and received severed records compiled by the police in the course of addressing a complaint filed against him. The appellant then wrote to the police to request, among other things, correction under the *Act* of his personal information contained in a police occurrence report. In response, the police issued a decision to the appellant that stated, in part:

A review of your five page request for correction indicates more of a fundamental disagreement with the "victims[]" account of the matter. You stated "it is in its totality one-sided and evidence I presented to justify my innocence of the claims ... were dismissed."

The noted occurrence was reported to the [police] by the complainants, with the content being told from their perspective. As such the officers' responsibility is to look into the allegations and make a determination of whether charges are required.

[2] The police further advised that its Access & Privacy Unit, which responded to the appellant's request, was not at liberty to make changes to occurrence reports or to observations made by an officer attending an incident. It also advised the appellant of his right to have the police attach to the occurrence report a statement of disagreement reflecting his concerns with the report.

[3] The appellant appealed the police's denial of his correction request to this office. As mediation did not resolve the matter, the appeal was transferred to the adjudication stage for a written inquiry under the *Act*. The adjudicator previously assigned to this appeal sought and received representations from the police and the appellant, which were shared in accordance with this office's *Practice Direction Number 7* and section 7 of its *Code of Procedure*. The previous adjudicator also asked for, and received, representations from each party responding to the other's submissions.

[4] The file was then transferred to me to complete the inquiry. Before and after the close of the inquiry, the appellant provided several additional, unsolicited submissions in support of his correction request, which I have considered in deciding this appeal. For the reasons that follow, I largely uphold the police's decision to deny the appellant's request. I order the correction of one discrete portion of the report identifying the date the complaint was filed against the appellant, which the police have acknowledged was entered in error. I also require the police to confirm the title of one of the investigating officers, as the reference to it in the record may contain a typographical error. I order the police to correct the reference if it was made in error.

RECORD:

[5] The record is a four-page police occurrence report.

DISCUSSION:

[6] The sole issue in this appeal is whether the police should correct any personal information of the appellant in the record under section 36(2) of the *Act*.

[7] 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[.]

[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

Is the information sought to be corrected the appellant's personal information?

[9] The first question is whether the information sought to be corrected is the personal information of the appellant.

[10] The appellant's original request to the police and his representations made to this office together set out a number of his concerns with the conduct of the police, the content of the record and other matters. Those relevant to his correction request, which is the sole issue to be decided in this appeal, can generally be described as complaints that the record:

- Contains inaccurate descriptions of the appellant's actions toward the complainants (as "harassing," "relentless," and as his having made demands, for example), when the appellant maintains his conduct was none of those things, but rather lawfully authorized under consumer protection and other legislation;
- Fails to include critical facts and evidence that the appellant provided to the police, including his account of events, and also includes numerous false statements made by the complainants. In the appellant's submission, this results

¹ Orders P-186 and P-382.

in a record that is incomplete, inexact and ambiguous, as well as one-sided against him;

- Fails to provide a thorough explanation of all the steps taken by the police in their investigation of the complainants' allegations, and of details that are contained in other materials obtained by the appellant, such as the investigating officers' notebooks, and
- Contains two potential typographical errors: one in the record's account of the date on which the complainants contacted the police; and the second in the title given to one of the investigating officers.

[11] As indicated, the appellant's submissions to the police and to this office also raise numerous concerns that are outside the scope of this inquiry, which I will not address in this order.²

[12] The term "personal information" is defined at section 2(1) of the *Act* as recorded information about an identifiable individual, and includes examples listed in paragraphs (a) to (h). On my review of the record, it is clear the record contains the appellant's personal information within the meaning of the introductory wording as well as paragraphs (a) (colour, sex, marital status), (b) (criminal or other history) and (d) (address), among others, of the definition at section 2(1).

[13] I also accept that the types of corrections the appellant seeks to make to the record are corrections to his personal information in the record.

Should the personal information be corrected?

[14] The parties disagree on whether the requested corrections meet the remaining two requirements.

[15] The record contains details of a complaint made to the police by the complainants, and the steps taken by the police to investigate the allegations. The police characterize the appellant's correction request as an attempt to substitute his opinion of what transpired with that of the complainants and the investigating officers, with whose account of events he disagrees. It relies on the principle, set out in past orders of this office, 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.

² These include: the complainants' handling of his personal information; the reasonableness of the police's search for records in response to access requests made under the *Act* (in part the subject of a separate appeal filed by the appellant to this office); the officers' compliance with statutory and procedural requirements for criminal investigation management; and the police's collection and retention of personal information about him as a result of the complaint filed against him.

[16] The appellant provides extensive submissions in support of his view that his requested corrections reflect more than mere disagreement with the contents of the record, and instead are necessary to amend inexact, incomplete or ambiguous information. I summarize the appellant's arguments in favour of the various types of corrections he seeks as follows:

- For information in the record amounting to direct quotations from the complainants: The appellant submits that the complainants' account of events and their interactions with the appellant is inaccurate, and their allegations against him are not supported by the facts;
- For information in the record that is not directly attributable to the complainants, and instead represents the account of the investigating officers: The appellant submits that these portions of the record also contain inaccurate or insufficiently clear information and wording. Examples include the police's use of the words "harass" and "harassing" to describe the appellant's conduct toward the complainants, and notations indicating that certain officers were "advised," without more;
- "Missing" or "sparse" entries in the record: The appellant identifies several examples of these, including the record's failure to document the entire series of steps (the "continuance of activities") taken by the police to obtain his response to the complainants' allegations; the absence in the record of his own statements made to the police to refute the allegations; and the record's failure to include other facts and evidence that the appellant provided to the police, which would prove the falsity of the allegations; and
- Correction of two other factual errors in the record: the date the complainants made the report to the police, and (potentially) the title of one of the investigating officers.

[17] The appellant also raised questions throughout the inquiry about what appears to be an administrative notation in the record. In particular, he asked why the record indicates that it was "last updated" several days after the date of the entries by the investigating officers, and before the record's print date. Although not directly related to his correction request, I asked the police to provide an explanation.

Analysis and findings

[18] For section 36(2)(a) to apply, the information at issue must be "inexact, incomplete or ambiguous." This section will not apply if the information consists of an opinion.³

³ Orders P-186, PO-2079 and PO-2549.

[19] In addition, section 36(2)(a) gives the institution discretion to accept or reject a correction request.⁴ 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.⁵

[20] I find that the first two categories of requested corrections – for modifications to the complainants’ and investigating officers’ accounts of events – amount to a request to substitute the appellant’s own opinion and preferred wording for theirs. The appellant disagrees with the complainants’ characterization of his actions and conduct, as told to the police, and with any instances of the police using the same wording in parts of the record that are not directly attributable to the complainants.

[21] The appellant’s objection to other individuals’ use of certain terms to describe his actions, and their interpretation of his actions, does not make this information inexact or incomplete so as to warrant correction under section 36(2) of the *Act*. This is the case even if, as the appellant maintains, these terms and allegations do not reflect the reality in law. Past orders of this office have confirmed 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 observations and views of the individuals whose impressions are being set out at the time the record is created.⁶ Consistent with this principle, this office has upheld the denial of correction requests to police occurrence reports and similar records that contain accurate accounts of allegations received by the police, whether or not those allegations are later disproven.⁷

[22] Related to the appellant’s complaint about the mischaracterization of his actions is his complaint that the record does not include his own account of events, and facts and evidence that he provided to the police that he says would disprove the allegations made against him. He also complains about the record’s failure to include specific details of the investigation undertaken by the police (like those contained in police officers’ notebooks), despite statutory and procedural requirements for record-keeping by officers involved in criminal investigations.

[23] These concerns identified by the appellant do not make the record “inexact, incomplete or ambiguous” for the purpose for which the record was created, which is to document an occurrence reported to the police and the steps taken by the police to determine whether charges are warranted. What the appellant calls “discrepancies” in the record are not the types of omissions intended to be addressed through corrections to a record under section 36(2)(a). The police were entitled to exercise judgment in interpreting the information before them and in deciding what details to include and not

⁴ Order PO-2079.

⁵ Order PO-2258.

⁶ Orders M-777, MO-1438 and PO-2549.

⁷ Orders MO-2258, MO-3042 and others.

to include in the record. I am also not persuaded of the need for correction by the appellant's assertion that the record (an occurrence report) contains different or fewer details of the police's investigation than do the police notebooks, which may collect information about the same events for a different purpose.

[24] Lastly, there are two additional corrections requested by the appellant, which I characterize as minor, typographical errors.

[25] First, the appellant has identified an error in the record's account of the date on which the complainants contacted the police. The police have acknowledged this is a data entry error on the part of an officer. I accept that this is a typographical and factual error of the sort that may be corrected under section 36(2)(a).

[26] Second, the appellant has asked for clarification of the title of one of the investigating officers, as it appears in the record as "DC," although the other officers are identified as "PC." The police do not appear to have responded to the appellant's second question. If the officer's title at the time of the record's creation was in fact "PC," and not "DC," I classify the entry as a typographical and factual error like the one above. In these circumstances, the police are to confirm the title of this investigating officer. If the notation "DC" is an error in the record, it is also the sort that may be corrected under section 36(2)(a).

[27] In separate correspondence to this office, the police advise that it is not possible to amend the record, as the records management system used at the time the record was created has been decommissioned and all occurrence reports pre-dating November 2013 are archived. Although the police may be unable to amend the record, this office has recognized that where a correction request is granted, 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 In these circumstances, based on the evidence provided to me and the nature of the corrections requested, I find that the most practical and reasonable method for correcting the factual error(s) identified above would be to require the police to attach a notation to the record indicating that the identified information is incorrect, and identifying the correct information.

[28] Finally, the police explain that the "Last Updated" notation in the record refers to the last date a quality control clerk made any updates to the record. The police explain that the function of the quality control clerk is to review an occurrence report for completeness and to ensure there are no basic mistakes in certain data fields, such as an officer's patrol area, the premise type (for example, house or apartment) and the actual charge. The clerk is not an officer and is not able to make changes to other kinds of information in an occurrence report, like the facts of a report made to the police or the

⁸ Orders P-448, MO-2250 and PO-2549.

officers' notes. Although the "Last Updated" date in the record post-dates the officers' entries, I accept that any changes to the record made by the clerk would not have substantively altered the record, and does not support the appellant's other requested corrections. As he has been advised, the appellant has the right to register his objection to the account of events set out in the record by filing a statement of his disagreement under section 36(2)(b) of the *Act*.

ORDER:

1. I order the correction of the typographical error in one date appearing the record.
2. I order the police to confirm the title, at the time of the record's creation, of the investigating officer whose title is identified as "DC" in the record.
3. If the police determine that the notation "DC" was made in error, I order the correction of the typographical error in the officer's title.
4. I order the police to provide confirmation of the investigating officer's title, and a copy of the notation it attaches to the record indicating the incorrect information in the record and identifying the correct information. The police are to provide this to me and to the appellant by **November 12, 2015**.
5. I uphold the decision of the police to deny the appellant's other correction requests.

Original Signed by: _____
Jenny Ryu
Adjudicator

_____ October 8, 2015