Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3356

Appeal MA15-44-2

The Greater/Grand Sudbury Police Services Board

September 19, 2016

Summary: The appellant requested, pursuant to the *Act*, that the Greater Sudbury Police (the police) correct his personal information contained in ten occurrence reports relating to specific incidents. The police denied the appellant's request on the basis that it did not satisfy the requirements for correction as set out in section 36(2)(a) of the *Act*. The appellant appealed the police's decision. The appellant subsequently requested that the police attach seven statements detailing his requested corrections to the police occurrence reports as "statements of disagreement" under section 36(2)(b) of the *Act*. The police denied the appellant's request. In this order, the adjudicator upholds the police's decision, finding that the content of "statements of disagreement" should contain information reflecting any corrections requested but not made. The appeal is dismissed.

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)(b).

Orders Considered: Orders M-777, MO-1534, MO-1700 and P-1478.

OVERVIEW:

[1] The Greater Sudbury Police Services Board (the police) received a request for the correction of personal information, pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). With his request, the requester enclosed a "notice to police" and seven multi-page statements relating to incidents recorded in 10 identified occurrence reports detailing how he wished the descriptions of the incidents in the reports be corrected.

[2] The police issued a decision extending the time to respond to the request by 30 days. The requester, now the appellant, filed a "deemed refusal" appeal and this office opened Appeal MA15-44. This appeal was resolved with the issuance of the police's decision letter.

[3] The police's decision letter advised the appellant that investigating officers had reviewed his request for corrections to be made to the occurrence reports and had determined that "the information contained in the records is accurate and does not require any change or amendments." The police advised that, therefore, they were denying his request for the information to be corrected.

[4] The appellant appealed the police's decision to deny his requests for correction.

[5] During mediation, the appellant submitted a request to the police to have his seven multi-page statements identifying his corrections attached to their respective occurrence reports as "statements of disagreement." He also requested that the police file the document he entitled "notice to police" "in [his] personal police record."

[6] The police subsequently issued a decision advising:

> It is the position of [the police] that the substance of your Statements of Disagreement are complaints and comments about the police and your opinions. Further we consider the factual information within your records not inexact, ambiguous or incomplete.
>
> Therefore, at this time your request to append your seven (7) documents all dated November 27, 2014 and referenced above, as Statements of Disagreement to your police file is denied.
>
> Please note that [the police are] prepared to reconsider any valid request for correction or to append a properly composed Statement of Disagreement….

[7] As an example of the format that a "properly composed" statement of disagreement might take, in their decision letter the police provided the appellant with suggestions on how he might reformulate his statements. Specifically, they suggested that he format "a letter with two columns," one entitled "statement disagreed with" identifying the text in the occurrence reports that he disagrees with and the other entitled "correction requested" identifying how the appellant would like that text to be corrected.

[8] During mediation, the appellant confirmed that he takes issue with both the police's denial of his requests to correct the information in the occurrence reports as well as their denial to attach his correction requests as statements of disagreement to the occurrence reports to which they relate. The appellant also confirmed that he is not prepared to resubmit his statements of disagreement to the police in another format as suggested by the police in their decision letter.

[9] As a mediated resolution could not be reached, the appeal was transferred to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry. I sought and received representations from both parties which were shared in accordance with this office's position on sharing set out in *Practice Direction 7.*

[10] In their representations, the police submit that the issue of whether they should correct the appellant's personal information in the occurrence reports is no longer at issue as the appellant has "clearly identified that he is not seeking correction of the records at issue in the appeal." They quote from (and enclosed a copy of) a communication sent to them from the appellant in which he states that the mediator has advised him "that the sorts of corrections to actual documents that I have requested are not generally given as the original contents of such records present the perspectives of others." In that letter, the appellant further explains that it was not his "intention" to have them altered and that he wants "the original statements to remain as they were made and had effect."

[11] In his representations, the appellant first confirms that he "simply" wants the police to attach his written "statements of fact" to the occurrence reports to which they relate and that he is not seeking of have the occurrence reports altered. Later in his representations the appellant disputes the police's position that he does not wish to have the occurrence reports corrected but clarifies that he "[wishes] to have [his] records corrected in the manner in which [he has] submitted information." Additionally, the appellant's representations are focused on ensuring that the information contained in his written statements are included in his "police record" and do not identify specific corrections to be made to any specific text in the relevant occurrence reports.

[12] Accordingly, based on my understanding of the above representations, I have determined that the sole issue on appeal is whether the police are required to accept the appellant's written statements as "statements of disagreement" and attach them to the occurrence reports to which they relate.

[13] For the reasons that follow, in this order I find that the police are not required under section 36(2)(b) to attach the appellant's written statements, in the format that they are in, to the occurrence reports to which they relate. As a result, I dismiss the appeal.

RECORDS:

[14] The records at issue are 10 police occurrence reports. The appellant has prepared seven multi-page written "statements of fact" that he wishes to have attached to the corresponding occurrence reports as "statements of disagreement." The appellant has had his "statements of fact" notarized.

DISCUSSION:

[15] If an institution denies a request for correction under section 36(2)(a) of the *Act*, under section 36(2)(b) the requester may require the institution to attach a statement of disagreement to the information. Section 36(2)(b) reads:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
>> Require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made.

[16] Pursuant to section 36(2)(b), upon request, the institution must attach a statement of disagreement to information reflecting any correction that was requested but not made. An appellant must first ask for a correction, and then ask that a statement be attached to the information before this office will consider whether a statement of disagreement should be attached.[1]

[17] Where the institution attaches a statement of disagreement, under section 36(2)(c), the appellant may require the institution to give notice of the statement of disagreement to any person or body to whom the personal information has been disclosed within the year before the time the statement of disagreement is required.

Representations

[18] The police submit that in determining whether a statement of disagreement is required to be appended, this office has considered the nature of the disputed documents. The police refer to Order M-777, in which former Senior Adjudicator John Higgins stated:

> The records to which the appellant has objected consist of "incident reports" completed by staff members, and other notes, letters and memoranda containing similar information. Some of this information consists of characterizations of the appellant by staff – e.g. indications that his behaviour towards staff was "unacceptable" or "inappropriate," that he "became angry," etc. Staff also recorded that they "felt frightened" or had an "uneasy feeling" as a result of their interactions with him.
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> In this respect, 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 ability of government institutions to maintain whole classes or records of this kind, in which individuals record

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[1] Order MO-1534.

> 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.

[19] The police submit that a similar concern arises whether the document simply records the impressions or feelings of the author or his or her observations. They submit that the records at issue are occurrence reports which "merely record observations and impressions of the police and record statements made by persons at the location attended."

[20] Specifically, the police submit that a review of the seven "statements of facts" that the appellant wishes to have attached to the occurrence reports reveals that their content falls within the following categories:

a. "background" information which the appellant asserts he shared with the police on certain occasions;

b. the opinions of the appellant on police process and his feelings about what he believes the reports imply about him or what he believes they fail to record;

c. information that the appellant asserts should be included in the occurrence reports that he claims were previously provided to police; and

d. challenges to the truth of the content of some of the witness or party statements made to officers.

[21] The police submit that none of these types of information fall within the scope of the obligation set out in section 36(2)(b) because:

a. the section does not require additional statements to be attached when a requester feels a record is incomplete;

b. the section does not require an institution to attach statements which record the personal views of the requester about the appropriateness of the record keeping or the actions of the record maker; and

c. the section does not require an institution to append background materials to a request for correction.

[22] The police state that they note that the appellant does not challenge the fact that, in each case, the officer who authored the report actually heard the statements recorded in the reports or that the officers observed the incidents depicted in the reports. They state that the appellant instead suggests that the statements made to the

police by the parties present were not truthful in their content.

[23] Finally, the police submit that the purpose of section 36(2)(b) does not permit challenges to the truth of statements made by persons and recorded in an occurrence report where there is no debate on the appellant's part that these statements were made to the police. They submit that the outcome might be different if the nature of the challenged record was different. They submit, for example, that if the record in question purported to be an accurate and truthful accounting of an incident between two individuals rather than a record of statements of individuals present at the incident, then the right to append a statement of disagreement would be arguably relevant and warranted. However, they submit that in cases where the record simply identifies statements made by individuals without purporting to assess or affirm the truth of the statement there is no requirement to "correct" the record. They submit that the record itself is already "correct" to the extent that it only purports to record statements made by a party.

[24] In his representations, the appellant states that his seven written "statements of disagreement" (which he prefers to refer to as "statements of fact" and were provided to me as part of the appellant's representations) are attempts on his part to include, on record, his formal written statements pertaining to past incidents in which he was involved, many of which he reported to police himself. He states that at the time of those incidents he provided oral statements to the police that were ignored by the reporting officers who completed the occurrence reports. He submits that it is very important to have clear, accurate and correct information on record because the occurrence reports depict false, misleading, inaccurate and incomplete information about him and the incidents. He submits that it is critically important that his "statements of fact" be attached as the occurrence reports to which they relate because the reports were used by staff at his university to "make their case" to expel him and damage his reputation. He submits that if his "statements of fact" are attached to the occurrence reports it would offer him a certain degree of protection from any future damage caused by their inaccuracies.

[25] In his representations, the appellant sets out a number of examples of incidents addressed in his "statements of fact" that he believes were incorrectly or inaccurately documented in occurrence reports. He submits that attaching his "statements of fact" would provide "the whole story" of the respective incidents. He submits that the police abused their exclusive access of authorship of occurrence reports to skew the facts of what happened in the context of the reported incidents and in none of the occurrence reports do they record any version of explanations of events that he provided to them orally. He submits that as a result, the occurrence reports create a "picture" of him that the police alone are drawing and he is not allowed to contribute his views to it.

[26] The appellant explains that his "statements of fact" describe every single detail that he provided them verbally at the time of the various incidents and that this is to remedy the fact that none of the occurrence reports include information about what he had actually reported to them when he relayed the circumstances surrounding each

respective incident. He submits that, as such, the records are missing essential details that he provided to police and his "statements of fact" are submissions to properly document on file what he actually reported and what events actually transpired.

[27] The appellant submits that he does indeed wish to correct the information contained in the occurrence reports but that he wishes to have them corrected in the manner in which he has submitted information which, he submits, is the best way to correct the omissions in the occurrence reports. He submits that attaching his statements is "not only what is most appropriate in these circumstances but also the course of action that has been ordered by [this office] in the past."

[28] The appellant confirms in his representations that although he wishes to have the information contained in the records corrected, he does not wish to resubmit his statements and use the format suggested by the police. He submits that the suggested format does not allow for correction by way of inclusion of errors or omissions which, he submits, make up the bulk of the misinformation, incompleteness and ambiguity that he believes is present in the occurrence reports. He submits that the only way to ensure that the distortions or omissions of his perspective in the police reports are remedied is by supplying the police with formal written statements regarding the matters in question.

[29] Finally, the appellant explains that he does not take issue with what the police have written about him. He does, however, objects to the fact that they have reported on only what they want to report, have not included or have ignored information that he has reported to them, and will not allow him to include his perspective or account of the unfolding of events, on record. He submits that his perspective should be included by way of attaching his "statements of fact" to the occurrence reports.

Analysis and finding

[30] Under section 36(2)(b) of the *Act*, where a party has been granted access to a record and disagrees with the information contained within he is entitled to attach a "statement of disagreement" to the record "reflecting any correction that was requested but not made."

[31] In Order MO-1534, Adjudicator Donald Hale considered the process that a requester must follow in order to require that a statement of disagreement be attached. In that order, Adjudicator Hale found that, based on the wording of section 36(2)(b), in order for a requester to exercise his or her right to require the attachment of a statement of disagreement to a record under section 36(2)(b), the individual must first request that a correction of the information be made under section 36(2)(a).

[32] In the circumstances of the current appeal, I accept that the appellant has followed the appropriate process as set out in Order MO-1534, as he has first submitted a correction request to the police which has been declined and now seeks that his written "statements of fact" be attached as statements of disagreement contemplated by section 36(2)(b).

[33] Previous orders of this office have discussed the nature of a requester's right to require an institution to attach a statement to a record. They have determined that, based on the wording of the provision, although a requester has a right to request the institution to attach a "statement of disagreement," that right does not permit the attachment of information in any format or of any content.

[34] In Order P-1478, Adjudicator Marianne Miller addressed the nature of the right set out in section 47(2)(b) of the *Freedom of Information and Protection of Privacy Act* (*FIPPA*) (the provincial equivalent of section 36(2)(b) of the *Act*) comparing it with the right of correction set out in section 47(2)(a) of *FIPPA* (the provincial equivalent of section 36(2)(a) of the *Act*) . She stated:

> Section 47(1)(a) indicates that individuals may **request** correction of their personal information, while section 47(2)(b) indicates that individuals may **require** a statement of disagreement to be attached to a record reflecting any correction which was requested but not made.
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> In particular, because section 47(2)(a) only provides a right to **request** a correction, it is my view that it gives the Ministry a discretionary power to accept or reject a correction request. I am reinforced in the view that section 47(2)(a) confers a discretionary power of the Ministry by the wording of section 47(2)(b), which compensates for the Ministry's discretion to refuse a correction request under section 47(2)(a) by allowing individuals who do not receive favourable responses to correction requests to **require** that a statement of disagreement be attached instead (Order M-77). [Emphasis in original]

[35] Subsequently, in Order MO-1700, Senior Adjudicator Frank DeVries considered the format or content of statements of disagreement that an institution is required under section 36(2)(b) to attach to a record to which they have refused correction. In that order, the appellant took the position that as the requester requiring that a statement of disagreement be attached to certain information, it is the requester's decision as to what his or her statement will contain. Senior Adjudicator DeVries disagreed with the appellant's position and found that the wording of section 36(2)(b) clearly establishes that a statement of disagreement must reflect any correction that was requested but was not made:

> In my view, [section 36(2)(b)] clearly sets out what is to be included in a statement of disagreement and what an individual can require an institution to attach to identified information. Specifically, a requester may require an institution to attach a statement of disagreement to the information reflecting any correction requested by the requester but not made by the institution.
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> I therefore do not agree with the appellant's statement that, because the appendix contains information that is relevant to the errors he believes exist in the records, he can require that this appendix form part of his

> statement of disagreement. The determination as to what constitutes a statement of disagreement is not based on whether the information is "relevant" to the records, rather, the issue to be decided is whether the statement of disagreement reflects any correction requested by the requester but not made by the institution.

[36] In Order MO-1700, Senior Adjudicator DeVries accepted that the police were required (as they had already done), to attach to the record an 8-page statement of disagreement. That statement identified in great detail specific sentences, phrases and words in the records that the appellant contended were incorrect and detailed the basis for the appellant's contention. However, he did not accept that a 13-page appendix that the appellant had included with his 8-page statement, which he argued "supported" or "clarified" the positions taken in the statement, could reasonably be construed as reflecting any correction that was requested but not made. He stated that had the police decided to correct the information contested by the appellant, the information itself would have been changed in accordance with the requested corrections set out in the 8-page statement but would not have included any of the information contained in the appendix.

[37] In the matter that is before me, the appellant seeks to attach seven signed and notarized "statements of fact" to the respective occurrence reports to which they relate. Each statement is between 6 and 24 pages long and clearly identifies the occurrence report to which it relates. These "statements of fact" contain very detailed narratives of the incidents to which their respective occurrence reports relate, from the appellant's perspective. Many of them contain background information providing context to the incident. The statements also describe, in significant detail, what the appellant recalls telling the police at the time that each incident was reported. They also, in some cases, comment on the appellant's view on police processes including the procedure followed by officers who attended at the incidents.

[38] I have carefully considered the representations of both the police and the appellant and have reviewed the "statements of fact" submitted by the appellant. In keeping with Senior Adjudicator DeVries' reasoning in Order MO-1700, I do not accept that the police are *required* by section 36(2)(b) to attach the "statements of fact" as "statements of disagreement" to the occurrence reports as, in my view, the type of the information that they contain is not in keeping with the purpose of that section, which is to permit an individual to attachment a "statement of disagreement" reflecting corrections that were requested but not made.

[39] As with the information in the appendix considered by Senior Adjudicator DeVries in Order MO-1700, the information contained in the appellant's "statements of fact" is not information that the police could have "corrected" in the occurrence reports if they had granted the appellant's correction request. The information is not factual information that can be independently verified but consists of background or contextual information as well as the appellant's own personal views and perspectives on how the specific incidents unfolded. The "statements of fact" also do not reference specific

portions of the occurrence reports that the appellant contends are incorrect and detail the basis for the appellant's contention. The information that they contain are narratives told from the appellant's perspective.

[40] I acknowledge that the appellant believes that the police's descriptions of events in the occurrence reports are not sufficiently detailed and do not present the whole picture of each incident. I acknowledge that the appellant is concerned because, in his view, some of the occurrence reports depict him inaccurately and he is concerned that this information might be used against him in some way. I understand that, in light of this, the appellant desires to have his "statements of fact," which describe in great detail the incidents in each occurrence report from his perspective, attached to the reports in order to have on record what he perceives to be a more fulsome picture of events. However, in my view, this is not the type of information that is contemplated by section 36(2)(b). While there is nothing in that section that prohibits the police from attaching other types of material to a record, I find that section 36(2)(b) does not require them to do so.

[41] Accordingly, I find that the police are not required under section 36(2)(b) to attach the appellant's seven multi-page written "statements of fact" as "statements of disagreement" to the corresponding occurrence reports as the requirement is restricted to information reflecting any correction that was requested by the appellant but not made by the institution.

[42] I uphold the police's decision and dismiss the appeal.

ORDER:

I uphold the police's decision not to attach the appellant's written "statements of fact" to the records to which they relate and dismiss the appeal.

Original Signed By: September 19, 2016

Catherine Corban
Adjudicator