

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3731

Appeal PA15-617

Ministry of Community Safety and Correctional Services

May 10, 2017

Summary: The Ministry of Community Safety and Correctional Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act (FIPPA)* for the correction of the personal information of the requester contained in an Ontario Provincial Police (the OPP)¹ General Occurrence Report. The adjudicator finds that this information is not incorrect and declines to order the correction of this information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of personal information), 47(2)(a).

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* for the correction of the requester's personal information contained in an Ontario Provincial Police (OPP)² General Occurrence Report. The requester made the following specific claim for correction:

¹ The OPP is part of the ministry.

² The OPP is part of the ministry.

In relation to that OPP occurrence [#] I must insist that the warning flag be removed from my record. Find attached, retraction letter, from one [name, address and telephone number of an identified individual].

[2] The ministry reviewed the request and issued a decision denying the correction request by the requester. The ministry advised the requester that he could have a statement of disagreement attached to the record.

[3] The requester, now the appellant, appealed that decision.

[4] During the mediation process, the mediator explored the option of attaching a statement of disagreement to the record with the appellant. The appellant advised that a statement of disagreement would not fully address his concerns and that only the removal of the phrase "Driver Warned" from the record would satisfy his request.³

[5] The ministry advised that it fully reviewed the correction request and then confirmed the decision that the record should not be corrected.

[6] Accordingly, the file was referred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. Representations were sought and exchanged between the ministry and the appellant in accordance with section 7 of the IPC's⁴ *Code of Procedure and Practice Direction 7*.

[7] In this order, I dismiss the appellant's request for a correction of the record at issue.

RECORD:

[8] The appellant would like the words "Driver Warned" removed from the one record at issue in this appeal, the General Occurrence Report dated September 1, 2014.

DISCUSSION:

Should the institution correct personal information under section 47(2)(a)?

[9] Section 47(1) gives an individual a general right of access to his or her own personal information held by an institution. Section 47(2) gives the individual a right to

³ Therefore, section 47(2)(b) of *FIPPA* is not at issue. This section reads:

Every individual who is given access under subsection (1) to personal information is entitled to,

(b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made.

⁴ The Information and Privacy Commissioner, Ontario, Canada.

ask the institution to correct the personal information. Section 47(2)(a) states:

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;

[10] Where the institution corrects the information or attaches a statement of disagreement, under section 47(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.

[11] This office has previously established that in order for an institution to grant a request for correction, the following three 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.⁵

[12] 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.⁶

[13] An appellant must first ask the institution to correct the information before this office will consider whether the correction should be made.

[14] The right of correction may apply only to personal information of the appellant. 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

⁵ Orders 186 and P-382.

⁶ Orders P-448, MO-2250, and PO-2549.

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;

[15] 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.⁷

[16] The ministry states that the information at issue is the appellant's personal information because the appellant is the driver in question, and the record reveals the nature of an interaction between the appellant and a member of the OPP.

[17] The ministry states that the record at issue was created by the OPP and it documents that a member of the OPP warned the appellant, the driver of a vehicle, about his driving behaviour. It states that this record was created by the OPP as a result of a traffic complaint.

[18] The ministry is of the view that the information that the appellant wants removed does not meet the requirement of being "inexact, incomplete or ambiguous." It states that in this case, the OPP officer stated in the law enforcement record that he had warned the driver and that there is nothing inexact, incomplete or ambiguous about the OPP officer's warning.

⁷ Order 11.

[19] The appellant is concerned that the record implies that he, as the driver of the truck, was impaired while driving. He also states that the record has a warning flag and he would like the warning flag removed from the record.

Analysis/Findings

[20] The record contains the appellant's personal information as it contains the views or opinions of the OPP officer about the appellant and the appellant's name which appears with other personal information relating to him in accordance with paragraphs (g) and (h) of the definition of personal information in section 2(1)

[21] The entire record has been provided to the appellant. It is quite short and states:

[#] RO [reporting officer] [appellant's name], officer attended his [residence] and confirmed no alcohol involved. Driver Warned. /// NFA [no further action]

[22] From my review of the record, I find that the appellant's characterization that it has a warning flag to police and that it states that the appellant was impaired is incorrect. I find that the information that the appellant perceives as incorrect in the record is not in the record.

[23] The reference to a warning in the record is a statement made by the police officer to the appellant and is not a warning flag flagging the appellant's name to other police officers. Nor does the record indicate that the appellant was impaired as claimed by him, in fact, it states the opposite that "no alcohol involved."

[24] I agree with the ministry that "...the OPP officer stated in the law enforcement record that he had warned the driver and that there is nothing inexact, incomplete or ambiguous about the OPP officer's warning."

[25] For section 47(2)(a) to apply, the information must be "inexact, incomplete or ambiguous". This section will not apply if the information consists of an opinion.⁸

[26] Section 47(2)(a) gives the institution discretion to accept or reject a correction request.⁹ 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.¹⁰

[27] 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

⁸ Orders P-186, PO-2079 and PO-2549.

⁹ Order PO-2079.

¹⁰ Order PO-2258.

not what is recorded accurately reflects the author's observations and impressions at the time the record was created.¹¹

[28] I find that what is recorded in the record accurately reflects the author's, the OPP officer's, observations and impressions at the time the record was created. The information is not inexact, incomplete or ambiguous.

[29] In making this finding not to correct the record, I have taken into account the letter provided by the appellant from the witness indicating that her statement that she saw a truck driving erratically is incorrect. However, I note that the record does not contain information about the manner in which the truck was being driven and that this, therefore, is not at issue in this appeal.

[30] What is at issue is what the officer wrote in the record. Not what the witness may have seen. I find what the officer wrote in the record, as set out above, does not contain an error or omission.

[31] Therefore, I uphold the ministry's decision to refuse to correct the information in the record under section 47(2)(a) of *FIPPA*. Accordingly, I decline to order the record corrected as sought by the appellant.

ORDER:

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

Original Signed by: _____

Diane Smith
Adjudicator

_____ May 10, 2017

¹¹ Orders M-777, MO-1438 and PO-2549.