

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3581

Appeal MA16-320

Waterloo Regional Police Services Board

March 27, 2018

Summary: The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* to the Waterloo Regional Police Services Board (the police) to correct information in police officers' notes. The police denied the correction request and advised the requester that he could attach a statement of disagreement to the records. The appellant appealed the police's decision. The police's decision is upheld. The appellant's right to attach statements of disagreement to the record appropriately addresses the issues with the officers' notes.

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

Orders and Investigation Reports Considered: Order P-186, P-382, PO-2549, M-777, MO-1438, Order PO 1881-I.

OVERVIEW:

[1] The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Waterloo Regional Police Services Board (the police) to correct information in two police officer's notebooks.

[2] The police issued a decision denying the correction request. The police advised the requester that he could require the police to attach a statement of disagreement to the records.

[3] The appellant appealed the police's decision. The police confirmed their decision to deny the correction request and again invited the appellant to exercise his right under the *Act* to attach a statement of disagreement to the officers' notes. The appellant maintained that the police should correct the notes. As mediation did not resolve the appeal, it proceeded to adjudication, where I conducted an inquiry. During the inquiry I received and shared the parties representations in accordance with *IPC Practice Direction 7*.

[4] This order upholds the police's decision to deny the appellant's request to correct the officer's notebook entries.

RECORDS:

[5] At issue in this appeal are notebook entries of two named police officers. The officers' notes relate to an incident at an office that culminated in police officers arresting the appellant. The appellant has added handwritten notes to pages 5, 8, 9, 10, 11, 14 and 15 of the officers' notes. He submits these annotations should form the basis for correcting the notes.

DISCUSSION:

Should the police correct personal information under section 36(2) of the *Act*?

[6] The sole issue in this appeal is whether the police are required under section 36(2) of the *Act* to correct the officers' notes.

[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] Previous orders have found that for an institution to grant a request for

correction, 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

Part 1: "Personal information"

[9] The right of correction applies only to an appellant's personal information. The term "personal information" is defined, though not exhaustively, in section 2(1).² Personal information includes recorded information about an identifiable individual.

[10] There is no dispute between the parties that this first requirement has been satisfied. The police accept that the records contain the views or opinions of individuals about the appellant. I have reviewed the records and I am satisfied that they contain the appellant's personal information.

Part 2: Is the information inexact, incomplete or ambiguous?

[11] For section 36(2)(a) to apply, the information must be "inexact, incomplete or ambiguous". However, 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.³

[12] In his representations, the appellant asks for correction of information in the records. The form of the suggested corrections are annotations to the existing records that are more in the nature of statements of disagreement or observations. I understand from reviewing the appellant's representations that several of the annotations should be understood as arguments and evidence regarding the inaccuracy of the notes, with the implication that the notes need to be corrected. I note however that some annotations are observations or comments on the officers' notes and do not suggest any sort of correction to the records.

[13] I have considered each of the appellant's annotations in light of the outcomes the appellant wants from this appeal, as apparent from his representations. For the reasons below it is not necessary to identify with specificity which annotations suggest corrections to the records are required.

[14] The appellant expresses concern about errors in the officers' notes, and suggests corrections regarding:

¹ Orders P-186 and P-382.

² Order P-11.

³ Order PO-2258.

- an officer's knowledge of the appellant's history of mental health issues prior to arresting him
- the appellant's physical actions when the officers were arresting him
- statements made by the appellant and officers during the incident and arrest
- whether the appellant declined his right to access a lawyer
- whether the appellant assaulted one of the arresting officers

[15] The appellant submitted several documents to support his submissions, including:

- a transcript of a civil law suit he brought against one of the officers
- a police professional standards branch report relating to the appellant's complaint about the incident
- correspondence with and notes from a child and family services agency

[16] The police submit that it reached its decision not to correct the information after consulting with the officers in question and reviewing the specific corrections requested.

Analysis

[17] I have considered the officers' notes, the police's representations and all of the information provided to me by the appellant, including the various attachments submitted with his representations. In reaching my decision, I am mindful of the approach this office has taken when reviewing an institution's decision to deny a correction request, which was summarized in Order PO-2549:

Previous orders of this office have considered the issue of correction requests for records similar in nature to those at issue in this appeal, that is, records in which the Police have recorded information reported to them about specific events by individuals, including allegations about the actions of other individuals. In Order M-777, for example, Senior Adjudicator John Higgins dealt with a correction request involving a "security file" which contained incident reports and other allegations concerning the appellant in that case.

Senior Adjudicator Higgins stated:

...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 of records of this kind, in which individuals record their impressions of events, would be compromised in a way which the legislature cannot possibly have intended.

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. [emphasis added]

...

... these same considerations apply to whether the records can be said to be "inexact" or "ambiguous". There has been no suggestion that the records do not reflect the views of the individuals whose impressions are set out in them.

Similarly, in Order MO-1438, Adjudicator Laurel Cropley addressed a correction request related to narrative portions of the appellant's General Welfare Assistance file. Adjudicator Cropley stated:

Although I noted that the entries appear to be consistent with matters at issue at the time they were created, this finding is not central to the issues to be determined. In this case, **the question is, do the statements reflect the views or observations of the case supervisor as they existed at the time they were created?** [emphasis added]

Adjudicator Cropley found that in the circumstances of that appeal, the information in the records was an accurate reflection of the author's perception of the events as they existed at the time they were created.

[18] Order PO-2549 involved a request to correct information in a police officer's occurrence report regarding a complaint about the actions of the appellant's neighbours. Order PO-2549 followed the reasoning and approach in Orders M-777 and MO-1438.

[19] Order PO-2549 found that the information in the report reflected the views and observations of the OPP officer recorded by her during the investigation. The adjudicator emphasized that it was not the truth of the recorded information that was determinative of whether a correction request should be granted, but rather whether or not what is recorded accurately reflected the author's observations and impressions at the time the record was created.

[20] What potentially distinguishes the present appeal from those above is the

appellant's submission that some elements of the officer's notes were deliberately inaccurate or incomplete, in particular with respect to an officer's knowledge of the appellant's mental health and the physical actions that occurred and statements made during the incident. The argument is that the officer's notes were deliberately inaccurate to support their use of force during the appellant's arrest.

[21] The appellant cites the transcript of the civil action he brought to support the argument that aspects of the officer's notes are deliberately inaccurate. The transcript highlights differences between the officers' notes and video surveillance of the incident. The video surveillance establishes that the notes are an incomplete, and in some cases inaccurate, record of the incident. As has been noted previously in appeals involving correction of records, this is not surprising as individual's recollections of an incident often do not accurately reflect what actually occurred.

[22] Applying the reasoning in previous orders outlined above, it is not enough to correct a record if the record is an honest but inaccurate recollection of events. The appellant submits that during cross-examination in the civil suit, one of the officers accepted that her notes were inaccurate. I agree that at some points in the cross examination, the officer does concede that her notes are an inaccurate record of the incident. That the officer's notes portray the officers' actions in a more favourable light than the video surveillance record is the basis for the appellant's position that the notes are deliberately inaccurate. That suggestion, without further evidence to support it, is insufficient basis for me to conclude that the officers' notes are deliberately inaccurate.

[23] The other portion of the officers' notes the appellant suggests is deliberately inaccurate is an entry that the appellant says speaks to an officer's knowledge of the appellant's mental health. The statement in the officer's notes refers to the officer's review of historic police records about the appellant and then states that there are "ongoing issues with him" (referring to the appellant). The appellant seems to have two issues with this statement. First, he appears to object to the truth of the statement, because he says previous police notes, and one in particular, show that the police did not have any concerns about the appellant even after conducting mental health wellness checks involving him. With respect to that argument, I am satisfied from my review of the records that the officers' statement is accurate. Reports provided to me show the appellant had previous contacts with police, including regarding a threat the appellant had made. Therefore there is a factual basis for the officer's statement.

[24] The appellant's second issue with the "ongoing issues with him" statement in the officer's note is its alleged inconsistency with a subsequent statement by the officer during cross-examination in the civil suit related to the incident. The transcript of the civil suit shows that in cross-examination the officer stated she was unaware of the appellant's mental health issues before the incident that resulted in the appellant's arrest. The appellant submits that the officer's note that records that she reviewed previous reports involving the appellant means the officer must have known of the appellant's mental health before the incident, because the previous reports discuss the

appellant's mental health.

[25] The problem with the appellant's argument is that it suggests the officer's answer under cross-examination is incorrect, not the notebook entry that the appellant is seeking to have corrected. The officer's note is consistent with the officer having knowledge of the appellant's mental health prior to the incident. Accordingly, I do not find there is any evidence to support the position that the officer's notes do not reflect the officer's honest opinion at the time she wrote them.

[26] I note that cross-examination of the officer in the civil suit reveals that a statement in a document relating to a physical injury the officer allegedly suffered in the incident was incorrect, because the injury did not occur. However, that statement does not appear in the officer's notes, but rather in a document that is not at issue in this appeal. Therefore, no issue regarding correction of the officers' notes arises with regard to this error.

[27] There is one annotation, at page 8 of the records, which relates to a factual statement that the appellant declined a lawyer. The appellant's annotation asserts that he indicated he did not have a lawyer. However, as the appellant is unable to substantiate this claim, I cannot consider it as a possible correction.

[28] In summary, while the officers' notes may be incomplete or inaccurate in the sense that they do not accord with the video surveillance of the incident, there is insufficient evidence to conclude that any inconsistency or inaccuracy is other than those errors that are typical of a witnesses recollections of an incident. The officers' notes are a record of their views of the incident at the time the incident took place.

Part 3: Would correction result in the substitution of an opinion?

[29] As noted above, a correction cannot occur if the information to be corrected consists of an opinion.⁴ This requirement exists because it is not appropriate to substitute the opinion of an individual requesting the correction for that of the individual who actually recorded the information.

[30] In Order MO-1438 Adjudicator Cropley addressed the third requirement for a correction request:

[T]he contents of these records can best be characterized as statements of opinion, as they reflect the subjective perspective and views of the authors, and in particular, the case supervisor, with respect to events that have occurred. Although the appellant disagrees, he is in effect asking that his opinion be substituted for that of the case supervisor, which is

⁴ Order P-186, PO-2079.

precluded by the third requirement outlined above. Accordingly, I find that the third requirement has also not been met.

[31] In the present appeal, much of the information at issue in the record comprises statements of opinion by the officers, which reflect their subjective perspective and views of the incident. It is reasonable to expect that officers will make notes in a fair, accurate and even-handed manner, and that officer's notes will be afforded weight that makes their accuracy important. However, that does not mean they are or should be treated as factual records. In fact, to treat the officers' notes as more than their opinion would give undue weight to the notes and exacerbate the very problem the appellant complains of- that inaccurate or incomplete officer notes are treated as complete and accurate factual accounts of an incident. The cross-examination of the officer recorded in the transcript of the civil action arising from the incident provides an excellent example of an officer's notebook entries not being assumed to be complete or accurate.

[32] I have reviewed the appellants' arguments and notations and, in my view, many relate to statements of opinion made by the officers that reflect those officers' perception of the incident. As discussed above, some of those opinions are inaccurate when compared with video surveillance footage of the incident. However, permitting corrections of the notes in accordance with the appellants' request would in many instances amount to substitution of the officers' opinions for information that, though more accurate, would not reflect the officers' observations recorded at the time of the incident. Further, replacing the officers' versions with the appellant's version of events or amending or supplementing the officers' version to more fully accord with the appellant's version of events would in some cases result in a "substitution of opinion", which is precluded by the third requirement of the correction test.

[33] As all three requirements for the granting of a correction request have not been met with respect to any of the appellant's requested corrections, I am satisfied that the police acted reasonably in refusing to grant the appellant's request to make corrections to the record.

Remedy

[34] The *Act* provides for a statement of disagreement to be attached to records. The police have invited the appellant to provide a statement of disagreement but the appellant wanted the officers' notes corrected. The appellant's desire for correction, as I understand it, stems from his belief that the notes as written are an obstacle to him successfully seeking a remedy for what he considers unjust conduct by police. The appellant has provided evidence of his failed attempts to obtain a remedy for his grievances through various avenues, including a civil action. I understand the appellant is also concerned about further consequences arising from a conviction he incurred as a result of the incident, particularly regarding custody of children.

[35] The appellant has shown that the officer's notes contain some inaccurate

observations of the incidents they relate to. The appellant has not established that the officer's notes are deliberately inaccurate.

[36] I sympathise with the appellant's frustration that the officers' notes are not an accurate reflection of the incident, as subsequently established by other sources of evidence, including video surveillance of the incident. However, I am satisfied that the statement of disagreement the appellant has a right to under section 36(2), and that the police have agreed to provide to him, is the appropriate remedy, including to address inaccuracies in the officers' notes. As Order 186 found, if a statement of disagreement is attached to the record, this leaves it open to anyone who obtains access to the record to formulate his or her own view as to the validity of the officers notebook entries. As Order PO 1881-I states:

The remedy of attaching a statement of disagreement implies that there is a reasonable difference of opinion between an institution and a requester regarding the accuracy of the content of a record – the institution says it is accurate, the requester disagrees. Anyone looking at such a record in future knows that there is a dispute regarding its accuracy and can take that into account in assessing the reliance placed on the content of the record.

[37] In the context of this appeal I would go further even than Order PO-1881-I and say that it is common ground between the parties that some of the officers' notes are factually inaccurate and are incomplete in the sense that they do not record every aspect of the incident. The police's decision not to change the notes is because they are satisfied that the notes are accurate to the extent they reflect the officers' views at the time they recorded them. While this stance frustrates the appellant, it is legitimate because it recognises that the notes are not intended to be a complete factual account, but merely to reflect the officers' opinions at the time they were written.

[38] I observe also that some of the appellant's notations on the notebook entries provide a succinct and effective counter to the incomplete or inaccurate notebook entries. The appellant summarizes additional facts or opinions and supports them with reference to evidence such as the video surveillance or witness statements. In short, these types of annotations are an effective and appropriate way of addressing the appellant's grievances regarding the accuracy of the officers' notes.

[39] I note also that under section 36(2)(c), where the institution attaches a statement of disagreement 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 statement of disagreement is required. The appellant can exercise this right to ensure that any decision maker who may rely on the officers' notes is aware of the legitimate caveats the appellant raises regarding their completeness and accuracy.

ORDER:

I uphold the police's decision to deny the appellant's request for correction.

Original Signed by: _____
Hamish Flanagan
Adjudicator

_____ March 27, 2018