Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3609

Appeal MA17-219

Peel Regional Police Services Board

May 24, 2018

Summary: The appellant requested a correction on two records under section 36(2)(a) of the *Act* through the removal of any reference to her mental health status. The police issued a decision letter denying the request. This order upholds the decision.

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

Orders and Investigation Reports Considered: M-777, MO-1438 and PO-2549.

BACKGROUND:

[1] A request was made to the Peel Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all correspondence involving the requester during 2016. The police issued two decisions in which they granted partial access to the records.

[2] Subsequently, the requester requested that the records be corrected by removing any references to her mental health status. The police responded by requesting clarification of the correction request. Specifically, the police requested that the requester specify the occurrence(s) she would like corrected and the specifics of the corrections. The requester responded to the police, advising that corrections were sought on three pages of the records.

[3] The police issued a decision denying the requested corrections. The police noted that "the investigating officer has reviewed your request and has concluded that the information contained the occurrence reports is not inexact, incomplete or ambiguous." The police offered to attach a statement of disagreement to the records.

[4] The requester (now the appellant) appealed the police's decision to deny the requested corrections.

[5] During the course of mediation, the mediator discussed the appellant's right to have a statement of disagreement attached to the records. The appellant advised the mediator that she did not wish to have a statement of disagreement attached to the records.

[6] As no further mediation was possible, the file was transferred to the adjudication stage of the appeal process, where an adjudicator conducts a written inquiry under the *Act*. As the adjudicator in this appeal, I invited the parties to provide representations. Representations were received and shared in accordance with section 7 of IPC's *Code of Procedure* and Practice Direction 7.

[7] In this order, I uphold the decision of the police and dismiss the appeal.

RECORDS:

[8] The information at issue is found at page 1 of a specified occurrence report and pages 1 and 4 of another specified occurrence report.

DISCUSSION:

[9] At the outset, I will deal with the appellant's reference to the *Canadian Charter of Rights and Freedoms* (the *Charter*) as a preliminary issue. In the appellant's representations, she refers to the *Charter*; specifically, she cites sections 1 (reasonable limits clause), 2 (fundamental freedoms), 7 (right to life, liberty and security of the person), 8 (search and seizure), 9 (detention), 10 (when in police custody) and 13 (self-incrimination).

[10] Under her citation of section 8 (search and seizure), the appellant notes that she included this section because the police entered her premises without a warrant and rummaged through her entire home. She submits that if the police claim that they concluded that she had a mental illness because they saw medication on the ottoman, then this section is relevant.[1] The appellant noted that she included section 9 (detention) because the police arbitrarily detained her and imprisoned her multiple

[1] I note that the police did not allege this in their representations, which were shared with the appellant.

times. She also states that if the police obtained the information from the hospital staff or prison guards then the information was gained by illegal means and therefore shall not be admissible to include on a subjective report. Finally, the appellant noted under section 13 (self-incrimination) that there is no chance that she would ever divulge the information in the records to the police whom she considers her oppressors.

[11] The appellant concludes that reporting, documenting and distributing private and protected information about her to a third party may close doors on her ability to live in freedom, liberty and security and is an abuse of power and actions that are blatantly subjective which in turn creates unnecessary and undue hardship.

[12] I find that the appellant has not provided sufficient evidence to prove a *Charter* violation has occurred for the purpose of this appeal. Most of the appellant's comments relating to the *Charter* deal with the circumstances surrounding why the record was ultimately created and do not address the IPC process or the *Act*. The appellant refers to the police giving her mental health information to a third party but gives no substantiation for that claim. I find that the appellant has not made out a *Charter* claim and the *Charter* will not be discussed in the remainder of this order.

[13] The only issue in this appeal, therefore, is whether the institution should correct personal information under section 36(2) of the *Act*.

[14] 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;

[15] Where the institution corrects the information or attaches a statement of disagreement, under section 36(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.

[16] 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.[2]

[17] 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.[3]

[18] The right of correction may apply only to personal information of the appellant. The term "personal information" is defined in section 2(1) of the *Act*. 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.[4]

[19] Section 36(2)(a) gives the institution discretion to accept or reject a correction request.[5] 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.[6]

[20] Upon request, the institution must attach a statement of disagreement to the information reflecting any correction that was requested but not made. An appellant must first ask for a correction, and then ask that a statement of disagreement be attached to the information, before this office will consider whether a statement of disagreement should be attached.

Representations:

[21] In their representations, the police refer to the three requirements that must be met before personal information will be corrected (set out above). The police agree that the information is personal and private and therefore the first requirement is met. However, the police submit that the appellant does not meet the next two requirements: the information must be inexact, incomplete or ambiguous; and, the correction cannot be a substitution of opinion.

[22] The police submit that the impugned information accurately reflects the reason for the call for service, the legal grounds for the interaction with the appellant and the views of the individuals whose impressions are set out in the records. The police note that the reason for the call for service is factually correct and cannot be changed. It

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[2] Orders P-186 and P-382.
[3] Orders P-448, MO-2250 and PO-2549.
[4] Order P-11.
[5] Order PO-2079.
[6] Order PO-2258.

notes that this information is used to generate the occurrence type and is important for the classification of police records.

[23] The police also note that where the records refer to the fact that their interaction resulted from an apprehension under the *Mental Health Act*, this is both factually correct and unambiguous. The police state that the appellant may disagree with the officer's decision to apprehend under the *Mental Health Act*, but that does not make the legal description of the interaction "inexact, incomplete or ambiguous."

[24] Similarly, the police state that their reference in the records to the appellant's history of mental health issues accurately reflects the views of the officers who observed the appellant's behaviour and were familiar with previous interactions. The police submit that a note in a police occurrence referencing possible mental health issues is not intended to be a definitive medical diagnosis, but rather a reflection of observed behaviour. The police submit that notations such as this provide important information to officers in future interactions, contributing to officer safety, public safety and the well-being of the appellant.

[25] The police refer to Order M-777 where it was held that records of incident reports and other allegations concerning a subject "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." The police submit that in such instances, as found in Order M-777, "the truth or falsity of these views in not an issue," but rather whether the reports accurately reflect the author's observations and impressions at the time the record was created. The police submit that in this appeal, the appellant is seeking to substitute her own opinion.

[26] The police note that upon receipt of the request for correction, they consulted with the investigating officer responsible for the notations who confirmed that, in their opinion, the headings and information in the records were both appropriate and accurate.

[27] The police note that upon request, section 36(2) requires an institution to attach a statement of disagreement to a record containing information reflecting any correction that was requested but not made. The police note that they offered to attach a statement of disagreement to the records but the appellant explicitly advised that she does not wish to have this attached.

[28] In her representations, the appellant states that a request for a police record is usually requested by a third party, and providing a third party with protected medical information will have a direct impact on her future, affecting her life and liberty. The appellant submits that the subjective information derives from false detainment over a nine year period of the police picking her up for no reason and coercing hospital staff to detain her, citing mental instability.

[29] The appellant submits that the report was made in bad faith since what was reported is founded on lies, corrupt police practices, stalking, trespassing without a warrant and ill-will. She submits that the report violates her right to privacy. Further, she states that the police have no objective evidence that would allow them to assess her mental status. She notes that she is off on leave from her regular employment noting that the police have not lawfully gathered information about her medical leave. She confirms that she has never informed the police about her so called "mental illness," and given her trust issues regarding the police, she argues that it is insincere for the police to allege that she gave them this information. She submits that her side is absent from the subjective inclusion in the report.

[30] She notes that whenever the police detained her, they were always left sitting in the hallways (assumedly of a hospital) for hours and she never medicated. She notes that she was never assessed or interviewed by hospital staff for longer than five minutes and queries how a doctor could conclude and report to police that she is a menace to herself and society, which is clearly not based on reality.

[31] The appellant states that the police's understating is wanton and unsubstantiated, putting prejudicial information all over her police reports that are destined to be viewed by third parties stating that this is irresponsible, unethical and a violation of her human rights.

Analysis and finding:

[32] Based on my review of the parties' representations, I find that that the information which is the subject of the request for correction under section 36(2)(a) is the personal information of the appellant as that term is defined in paragraph (b) of section 2(1) of the *Act*. The information relates to the medical, psychiatric and psychological history of the appellant and clearly falls within the definition of the term "personal information".

[33] As stated, for section 36(2)(a) to apply to allow correction of personal information in a record, the information must be "inexact, incomplete or ambiguous." This section will not apply if the information consists of an opinion.

[34] I accept the police's submission that their reference in the records to the appellant's history of mental health issues accurately reflects the views of the officers who observed the appellant's behaviour. In addition, the police confirmed that the officers were familiar with the appellant from previous interactions which is also evident in the actual records and in the appellant's own representations. I also accept that a note in a police occurrence referencing possible mental health issues is not intended to be a definitive medical diagnosis, but rather a reflection of observed behaviour, an opinion.

[35] Prior orders of the IPC have found that records of an investigatory nature cannot

be said to be "incorrect," "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.[7] I am satisfied, after reviewing the records and the representations, that the officers who recorded the information relating to the appellant's mental health status recorded that information based on their own observations and impressions at the time they created the occurrence reports. Therefore, the records reflect the views of the officers and cannot be said to be incorrect, in error or incomplete.

[36] In her representations, the appellant referred to the possibility of third parties being given access to the information in the records and the resulting effect this might have. However, the appellant was offered the opportunity to file a statement of disagreement under section 36(2) of the *Act* reflecting any correction that was requested but not made. Even though, as the police indicated, the appellant has, to date, refused to require that a statement of disagreement be attached to the information that she takes exception to, this is an option that is still available.

[37] Furthermore, based on the interpretation of section 36(2)(a) developed in the orders cited above, I am not persuaded that the police have exercised their discretion inappropriately in refusing correction to the records at issue. Therefore, I uphold the decision of the police not to correct the personal information under section 36(2)(a) of the *Act*.

ORDER:

The appeal is dismissed.

Original Signed by: May 24, 2018
Alec Fadel
Adjudicator

[7] Orders M-777, MO-1438 and PO-2549.