

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3974

Appeal MA17-285

Peel Regional Police Services Board

November 23, 2020

Summary: An individual sought and received access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to records, including occurrence reports, related to incidents that were attended by the Peel Regional Police (the police). Pursuant to section 36(2)(a), the individual requested that the police correct some of her personal information in those records, or in the alternative, attach statements of disagreement to the records in accordance with section 36(2)(b). The individual appealed the police's decision not to make corrections to two occurrence reports and not to attach additional information to those two occurrence reports to which statements of disagreement had already been attached.

In this order, the adjudicator upholds the police's decision not make corrections to two occurrence reports. The adjudicator also finds that, in the circumstances, the police are not required to attach additional information to those occurrence reports, to which statements of disagreement have already been attached.

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

Orders Considered: Orders M-777, MO-1700, MO-2741 and MO-3356.

OVERVIEW:

[1] This order addresses corrections to occurrence reports related to several incidents involving the appellant that were attended by Peel Regional Police.

[2] The appellant submitted a number of access requests to the Peel Regional Police

Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all information created in relation to a number of specific incidents in which she was involved. The police identified the responsive records, which included occurrence reports prepared by the investigating officers, and granted the appellant partial access to them.

[3] Following receipt of the records to which she was granted partial access, the appellant submitted numerous correction requests with respect to some of the occurrence reports. She also requested that the police attach statements of disagreement to other occurrence reports. In response, the police issued a decision agreeing to make corrections to some of the occurrence reports but refusing to make corrections to others. The police advised that they were prepared to attach statements of disagreement to the occurrence reports that they refused to make corrections to, if the requester submitted further requests to do so as required by section 36(2)(b) of the *Act*.

[4] The appellant appealed the police's decision not to make the requested corrections to two occurrence reports and not to attach additional statements of disagreement to them.

[5] During mediation, the mediator assisted the parties in clarifying the issues. In particular, the mediator helped the appellant receive clarification about information that she had requested be corrected but believed the police did not address in their decision. Following this clarification, the appellant confirmed she was satisfied that the response given by the police addressed the information that she had requested be corrected.

[6] The appellant confirmed that she is not appealing any of the police's access decisions whereby they withheld portions of the responsive records pursuant to exemptions under the *Act*.

[7] The appellant confirmed that she continues to take issue with the police's decision not to make the requested corrections to her personal information in two specific occurrence reports. She also confirmed that she continues to take issue with the police's decision not to attach additional statements of disagreement to those occurrence reports.

[8] The police maintained their position that they would not make the requested corrections to those occurrence reports and also advised that as they had already attached statements of disagreement to them, they would not attach additional statements of disagreement to those reports.

[9] A mediated resolution could not be reached and the file was transferred to the adjudication stage of the appeal process. I decided to conduct an inquiry into this appeal and sent a Notice of Inquiry setting out the facts and issue to the parties, seeking representations. Both parties provided representations that were shared in accordance with this office's *Code of Procedure and Practice Direction 7*.

[10] For the reasons that follow, I uphold the police's decision not to correct the information at issue in the identified occurrence reports. I also find that the police are not required to attach additional statements of disagreement to those occurrence reports.

RECORDS:

[11] The records at issue are two five-page occurrence reports.

DISCUSSION:

Should the police correct the appellant's personal information in the occurrence reports? If not, are they required to attach additional statements of disagreement to the occurrence reports?

[12] The issue to be determined in this appeal is whether the police should correct the appellant's personal information in the occurrence reports relating to two specific incidents and, if not, whether they are required to attach statements of disagreement to the occurrence reports. For the reasons set out below, I uphold the police's decision not to correct the personal information in the occurrence reports as requested by the appellant and I find that they are not required to attach additional statements of disagreement to them.

[13] 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. The relevant portions of section 36(2) 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
[.]

The requests for correction do not meet the necessary requirements

[14] This office has previously established that in order for an institution to grant a request for correction under section 36(2)(a), all three of the following requirements must be met:

1. the information at issue must be personal information;
2. the information must be inexact, incomplete or ambiguous; and
3. the correction cannot be a substitution of opinion.¹

[15] 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.²

Requirement 1: information must be personal information

[16] The right of correction applies only to an appellant's personal information. The term "personal information" is defined in section 2(1) of the *Act*. Personal information includes recorded information about an identifiable individual.

[17] The police do not dispute that the information that the appellant requests to have corrected is her personal information. On my review of the occurrence reports, I agree with the police and find that the information that the appellant seeks to have corrected is her own personal information. Specifically, I find that the information relates to the medical, psychiatric or psychological history of the individual as contemplated by paragraph (b) of the definition of personal information set out in section 2(1) of the *Act*. I also find that the information contains the views or opinions of another individual about the appellant as contemplated by paragraph (g) of that definition.

[18] The first requirement of the test has been met.

Requirement 2: information must be inexact, incomplete or ambiguous

[19] With regard to the second requirement, the information to be corrected must be inexact, incomplete or ambiguous. I note that section 36(2)(a) gives the police the discretion to accept or reject a correction request. Therefore, even if the information is "inexact, incomplete or ambiguous", this office may uphold the institution's exercise of discretion to reject a correction request if it is reasonable in the circumstances.

[20] The police submit that the information that the appellant wishes to have corrected is not "inexact, incomplete or ambiguous" as set out in the second requirement of the test for a correction to be granted. They point to Orders M-777 and MO-2741, in particular, to support their position that records such as incident reports

¹ Orders P-186 and P-382.

² Orders P-448, MO-2250 and PO-2549.

and occurrence reports that contain allegations concerning a subject cannot be said to be "incorrect" or "in error" or "incomplete" if they simply reflect the view of the individuals whose impressions are being set out, whether or not those views are true. They submit that both of those orders support their view that in those circumstances, the "truth or falsity of the views is not an issue, but rather whether the reports accurately reflect the author's observations and impressions at the time the record was created."

[21] Specifically, the police submit that the information that the appellant seeks to have corrected "accurately reflects the reason for the call for service, the legal grounds for the interaction with the appellant, the persons involved in the call and the views of the individuals whose impressions are set out in them." They further submit that the references in the reports to the appellant's possible mental health issues accurately reflect the views of the officers who observed the appellant's behaviour at the time of the incident. The police submit:

A note in a police occurrence referring to possible mental health issues is not intended to be a definitive medical diagnosis, but rather a reflection of observed behaviour. Such notations provide important information to officers in future interactions, for officer safety, public safety and the wellbeing of the appellant herself.

[22] The appellant states that she is asking that the corrections be made as per the statement of disagreements that she submitted, which were attached to the occurrence reports. She submits the information that she seeks to have corrected is all untrue and amounts to false allegations relating to the status of her physical, psychiatric and psychological health.

[23] I agree with the police that this office has consistently held in previous orders (including Orders M-777 and MO-2741 referenced by the police) that records of an investigatory nature, such as occurrence reports, cannot be said to be inexact, incomplete or ambiguous as required by part two of the test if they simply reflect the views of the individual whose impressions are being set out. This office has found 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 author's observations and impressions at the time the record was created.³

[24] I have reviewed the parties' submissions, the records at issue and have considered the information that the appellant requests to have corrected. I accept that the occurrence reports before me are properly described as records of an investigatory

³ See, for example, Orders M-777, MO-1438, MO-2741, MO-3952 and PO-2549.

nature as they relate to police involvement in two specific occurrences involving the appellant. I am satisfied that the investigating officers who recorded the information in the respective occurrence reports based that information on their own observations and impressions at the time of the incident and when the occurrence reports were written. I also accept the police's position that the notes in the records referencing mental health issues is not intended to be a definitive medical diagnosis, but rather a reflection of observed behaviour or the authors' opinions at the time of the incident. Therefore, I accept that the records reflect the views of the officers responsible for writing the occurrence report and I find that they are not inexact, incomplete or ambiguous.

[25] The second requirement of the test has not been met.

[26] As noted above, all three requirements must be met in order to qualify for a correction. As the second requirement has not been met, I do not need to consider the third requirement – whether the requested correction is a substitution of opinion. However, for the sake of completeness I will consider it.

Requirement 3: correction should not be a substitution of opinion

[27] The police submit that the appellant's correction requests amount to her seeking to substitute her opinion for that of the authors of the occurrence reports. They submit that the information she seeks to have corrected reflects opinions that were formed based on the authors' observations and impressions of the appellant at the time that the occurrence reports were created and should not be substituted.

[28] The police submit that upon receipt of the request for correction, they consulted with the investigating officers who recorded the information in the occurrence reports and each of them confirmed that it was their opinion that the information in the reports was both appropriate and accurate. To support this submission, the police provided affidavits from the investigating officers.

[29] The appellant's submissions do not specifically address this portion of the test or whether her requested corrections would amount to a substitution of her opinion for those of the officers who recorded the information in the occurrence reports.

[30] With regard to the third requirement, I accept the police's submission that the information that the appellant seeks to have corrected consists of the observations and views of the investigating officers who attended the incidents. I find that correcting the records in the manner requested by the appellant would result in a substitution of her opinion for that of the investigating officers who recorded the information in the occurrence reports. A long line of orders from this office has held that a correction will

not be made 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.

[31] The third requirement of the test has not been met.

[32] In conclusion, for the reasons set out above, I find that the corrections requested by the appellant do not satisfy two of the three requirements of the three-part test for granting correction under section 36(2)(a) of the *Act*. Although the information that the appellant seeks to have corrected is personal information, it is not inexact, incomplete or ambiguous and to correct it would amount to a substitution of the opinion of the investigating officer with that of the appellant. As a result, I uphold the police's decisions to refuse the appellant's requests to have her personal information in the two occurrence reports corrected.

The police are not required to attach additional information to the occurrence reports

[33] As set out above, section 36(2)(a) and (b) provide two different remedies for individuals wanting to have their own personal information corrected in records held by institutions governed by the *Act*. While section 36(2)(a) entitles an individual to request that their personal information be corrected, an institution has the discretion to accept or reject a correction. Section 36(2)(b), on the other hand, entitles an individual to require an institution to attach a statement of disagreement to the information at issue when the institution has denied an individual's correction request. Thus, section 36(2)(a) is discretionary, whereas section 36(2)(b) is mandatory.

The parties' representations

[34] During mediation, the appellant indicated that she was dissatisfied with the police's response to her request to have additional information attached to the two occurrence reports.

[35] The police do not dispute that section 36(2)(b) requires that they attach a statement of disagreement to any record containing personal information that they have declined to correct in response to a request under section 36(2)(a). However, they submit that they have met their obligation under section 36(2)(b) as they have attached statements of disagreement to the two occurrence reports. They submit that they are not required to attach the additional information provided by the appellant to the occurrence reports as it does not reflect corrections that were requested but not made as required by section 36(2)(b).

⁴ See for example, Orders P-186, PO-2079, PO-2549, MO-2258, MO-2351, and MO 2370.

[36] With their representations, the police enclosed copies of letters sent to the appellant that confirm that statements of disagreement have been attached to both occurrence reports. Those letters also enclosed copies of the relevant statements of disagreement authored by the appellant and subsequently attached to each occurrence report.

[37] The police further submit that they are "not obligated to attach further, lengthy, narrative statements containing the appellant's own personal views and perspectives on how the specific incidents unfolded." They submit that an appellant's right under section 36(2)(b) does not permit the attachment of information in any format or of any content.

[38] In support of their position, the police point to Order MO-1700 in which Senior Adjudicator Frank DeVries considered the form 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. They submit that while Senior Adjudicator DeVries accepted that the police were required to attach a statement of disagreement that identified in great detail specific sentences, phrases and words in the records that the appellant contended were incorrect, he did not accept that an appendix to that statement which he stated "supported" or "clarified" the positions taken in the statement of disagreement could reasonably be construed as reflecting any correction that was requested but not made.

[39] The police also point to Order MO-3356 where I found that the Greater Sudbury Police Services Board were not required to attach a lengthy "statement of fact" to an occurrence report because the information did not reference specific portions of the occurrence reports that the appellant contended were incorrect but were, rather, narratives of background or contextual information told from the appellant's perspective.

[40] The police submit that the circumstances described in Order MO-3356, are precisely those that are present in this case. They submit that the additional information that the appellant seeks to have attached to the occurrence reports are lengthy narratives that provide background and contextual information as well as the appellant's own personal views and perspectives on how the incidents unfolded. They further submit that the statements contain no new or additional information regarding corrections that were requested and not made that has not already been included in the statements of disagreement already attached to the reports.

[41] The appellant's representations include a document that identifies the occurrence reports at issue by number and then sets out the additional information that she wishes to have attached to each of them. The information is set out in narrative form and provides descriptions and background information about individuals that she submits are relevant to the incidents documented in the occurrence reports. She does not provide any other representations on the issue of whether the police should be required to attach this additional information to the occurrence reports.

Analysis and findings

[42] I have reviewed the occurrence reports, the correction requests, the statements of disagreement already attached to the reports, the police's representations and the appellant's representations, which include the additional information that she wishes the police to attach to the occurrence reports. Based on the evidence before me, I find that the police are not required to attach the additional information to the occurrence reports.

[43] As noted by the police in their representations, previous orders of this office have discussed the nature of a requester's right to require an institution to attach a statement of disagreement to a record. Those orders have determined, based on the wording of the provision, that 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.⁵ Considering the language of the provision, the right in section 36(2)(b) to require an institution to attach a statement of disagreement to the information is limited to information that reflects a correction that was requested but not made.⁶ As noted above, section 36(2)(a) permits an individual to request the correction of personal information where they believe there is an error or omission.

[44] In Order MO-1700 referenced by the police in their representations, 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 argued "supported" or "clarified" his 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 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. Senior Adjudicator DeVries stated:

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.

[45] I agree with Senior Adjudicator DeVries' reasoning and find it relevant to my

⁵ Orders MO-1700 and MO-3356.

⁶ Order MO-1534.

analysis here.

[46] From my review of the additional information that the appellant seeks to have attached to the occurrence reports, I note that it is background information about other individuals mentioned or referred to in those reports as well as information that describes interactions and events involving her and those individuals that occurred prior to the incidents documented in the reports. In her representations, the appellant appears to confirm this as she states that she seeks to have this information attached to provide background and context to the incidents documented in the occurrence reports.

[47] Based on the occurrence reports and the appellant's correction requests, I do not accept that the additional information that the appellant seeks to have attached reflects corrections to the reports that she requested but the police declined to make. The additional information not only does not relate directly to the incidents documented in the occurrence reports, but it also does not serve to dispute the accuracy of the reports' contents, identify errors or set out corrections that the appellant requested the police make. I find that, as in Order MO-1700, the additional information provided by the appellant is not information that reflects a correction requested under section 36(2)(a).

[48] Accordingly, I find that the additional information is not of the nature that the police are obliged to attach to the occurrence reports as statements of disagreement under section 36(2)(b) of the *Act*. Moreover, from my review of the evidence, I accept that the statements of disagreement that have already been attached sufficiently reflect the corrections that the appellant requested be made to the occurrence reports that the police declined to make and meet the police's obligations under section 36(2)(b).

[49] In conclusion, I uphold the police's decision not to attach the additional information provided by the appellant to the two occurrence reports at issue.

ORDER:

1. I uphold the police's decision to deny the appellant's requests for correction to the occurrence reports.
2. I uphold the police's decision not to attach additional statements of disagreement to the occurrence reports.
3. I dismiss the appeal.

Original signed by:
Catherine Corban
Adjudicator

November 23, 2020