Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4092

Appeal PA17-476

Office of the Independent Police Review Director

November 27, 2020

Summary: This appeal resolves a request under section 47(2) of the *Freedom of Information and Protection of Privacy Act* for corrections to a decision of the Office of the Independent Police Review Director (OIPRD) following a complaint about police conduct. In this order, the adjudicator finds that the appellant has not established the requirements for correction to his personal information. She upholds the OIPRD's decision to deny the correction request and dismisses the appeal.

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"), 24 and 47.

Order Considered: MO-1438 and PO-2079.

OVERVIEW:

[1] This appeal is about corrections requested to a record under section 47(2)(a) of the *Freedom of Information and Protection of Privacy* (*FIPPA* or the *Act*) and has its origins in a dispute about the contents of a decision of the Office of the Independent Police Review Director (OIPRD).

[2] The requester made a complaint to the OIPRD about officers of the Sarnia Police Service (SPS). After it received additional correspondence from the requester, the OIPRD issued a decision in which it wrote that it would not be proceeding with an investigation of the complaint. According to the OIPRD's decision letter, the complaint was "screened out" pursuant to a provision in the *Police Services Act* (*PSA*) that allows a complaint to be closed if it is not in the public interest to send the matter to

investigation.[1]

[3] After he received the OIPRD's decision, the requester made a request to the OIPRD for correction of his personal information in the decision and to statements in the decision that he said were inexact, incomplete and ambiguous. He also alleged that the OIPRD had breached his privacy by sharing his complaint with the SPS.

[4] The OIPRD refused the request for correction and did not change its decision.

[5] The requester, now the appellant, appealed the OIPRD's refusal to correct its decision to this office. The parties engaged in mediation to explore the possibility of resolution.

[6] During mediation, the appellant questioned the involvement of the Ministry of the Attorney General (the ministry) in his correction request. Specifically, the appellant had been asked to submit his correction request to the ministry's freedom of information and privacy office, who then corresponded with the OIPRD and the appellant, and who forwarded the OIPRD's decision denying the correction request to the appellant. The appellant questioned what he described to be a delegation of the OIPRD's authority to the ministry. As a result, at the appellant's request, the alleged delegation of the OIPRD's decision-making authority was added as an issue to his appeal.

[7] When no further mediation was possible, the appeal was transferred to the adjudication stage of the appeal process where an adjudicator may conduct an inquiry. I decided to conduct an inquiry, during which the OIPRD made representations that were shared with the appellant. The appellant did not submit representations in support of his appeal.[2]

[8] In this order, I uphold the OIPRD's decision to deny the appellant's request for correction and I dismiss this appeal.

RECORD:

[9] The record at issue is a two-page OIPRD decision letter dated July 13, 2017.

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[1] Pursuant to section 60(4) of the *Police Services Act*.

[2] The appellant was given multiple opportunities to submit representations in response to a Notice of Inquiry and to the OIPRD's representations. The appellant received several time extensions to do so, but he did not submit representations.

DISCUSSION:

[10] I will first address the appellant's allegation that the OIPRD delegated its decision- making authority to the ministry.

[11] In his notice of appeal to this office, the appellant writes that he was asked to send his correction request to the ministry's freedom of information and privacy office, which he did. However, he says that he also sent his correction request to the OIPRD directly, because the Independent Police Review Director (the director) is designated as the head of the OIPRD under the *Act* and is therefore responsible for his own decisions. As noted above, the appellant questions the ministry's involvement and the OIPRD's communication with the ministry regarding the correction request.

[12] The OIPRD submits that it is part of the ministry and that the ministry's freedom of information and privacy office simply acts as the receiving and coordinating office for *FIPPA*-related matters and that at no time did its director delegate his decision-making authority to another institution.

[13] There is some lack of clarity as to the focus of the appellant's concerns about the alleged delegation of authority by the OIPRD to the ministry, and whether he is concerned about the OIPRD's decision-making in response to the complaint, the correction request, or both. The OIPRD sent its decision denying the correction request to the ministry's freedom of information office, who then sent it to the appellant.[3] Enclosed with the ministry's cover letter to the appellant were a copy of both the record and the decision denying the appellant's correction request. Later, in response to the appellant's request during mediation that a decision be sent to him directly, the ministry's freedom of information and privacy office sent a letter to the appellant informing him that his correction request had been denied, setting out the reasons for the denial and that the "decision was made by [the] Independent Police Review Director."[4]

[14] I accept the OIPRD's submission that the ministry acts as a receiving and coordinating office for *FIPPA*-related matters. In my view, this does not constitute a delegation of the OIPRD's authority under *FIPPA* to the ministry. I am satisfied on my review of the materials before me that the record at issue in this appeal is a decision of the OIPRD in response to the appellant's complaint to the OIPRD, and was sent directly to the appellant. I note that both the record and the decision denying the correction request are on OIPRD letterhead. The OIPRD's decision denying the correction request,

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[3] The OIPRD's decision denying the correction request also contains the OIPRD's response regarding the appellant's alleged privacy breach under the *PSA*, which is not part of this appeal.

[4] In this letter, the ministry also informed the appellant of his right to request that a statement of disagreement be attached to the record under sections 47(2)(b) and (c) of the *Act*.

although sent to the ministry and, in turn, to the appellant by the ministry's freedom of information and privacy office, expressly states that it is made in response to the correction request and is signed by the director himself.

[15] The only issue to be decided, therefore, is whether the OIPRD should correct the appellant's personal information in the decision under section 47(2)(a).

Should the record be corrected under section 47(2) of the *Act*?

[16] 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 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 47(2)(a) and (b) state that:

> Every individual who is given access under subsection (1) to personal information is entitled to,
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> (a) request correction of the personal information where the individual believes there is an error or omission therein;
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> (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;

[17] 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.[5]

[18] 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.[6]

[19] In each case, the appropriate method for correcting personal information should

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[5] In this case, the SPS.
[6] Orders 186 and P-382.

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.[7]

[20] The right of correction applies only to an appellant's personal information.[8]

Representations

[21] As noted above, the appellant did not submit representations in response to the Notice of Inquiry sent to him. However, he enumerated his requested corrections in his notice of appeal to this office, and I will refer to that communication to the extent that it will not disclose the contents of the record he seeks to correct.

[22] The appellant writes in his notice of appeal that the OIPRD's decision letter contains his personal information that falls within paragraphs (b), (d), (e), (g) and (h) of the definition of personal information in section 2(1) of *FIPPA* because it contains, respectively, information relating to his education; his address and telephone number; his opinions and views; the views and opinions of OIPRD officers about him; and his name which appears with other personal information relating to him, and the disclosure of which could reveal other personal information about him. Therefore, he says that the decision "is my personal information."

[23] In his request for correction, the appellant challenges the OIPRD's summary of events leading up to his complaint, and the thoroughness and adequacy of the OIPRD's decision. The appellant sets out an itemized list of corrections that he wants made to the record, which include deletions, substitutions and additions, and in the event that certain parts of the record are not deleted, a request for better reasons.

The OIPRD's representations

[24] The OIPRD says that the appellant submitted a complaint to it in May of 2017 about officers of the SPS. Afterwards, the appellant contacted the OIPRD on four occasions to provide additional information, which the OIPRD says formed part of his complaint.

[25] The OIPRD says that the appellant's complaint was screened out under a provision of its governing legislation that allows it not to deal with a complaint if it is not in the public interest, as already noted. The OIPRD issued its decision letter (the record) in which it explained why the appellant's complaint would not proceed to an investigation.

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[7] Orders P-448, MO-2250 and PO-2549.
[8] Order P-11.

[26] The OIPRD submits that the corrections the appellant has requested do not meet the requirements necessary for granting a request for corrections under *FIPPA*. The OIPRD argues that the record is clear and unambiguous as to the disposition of the complaint. It says that the appellant's request fails to consider that the decision is the opinion of the OIPRD and is not intended to be a replication of all of the issues that the appellant raised in his complaint. It says that the appellant's list of proposed corrections are an attempt to modify the OIPRD's account of the appellant's complaint and to replace the OIPRD's language with language the appellant believes more closely reflects the incidents described in the complaint.

[27] The OIPRD submits that the record sets out the OIPRD's summary or description of what it believes to be the pertinent facts, such as the nature of the allegations or information provided by the appellant, and describes the facts and issues from the OIPRD's perspective and in its own words.

[28] For the purpose of its decision not to proceed with an investigation, the OIPRD says that it had to condense a fair amount of information from all of the appellant's communications and that such a summary necessarily involved some judgment and interpretation, with the result that the record reflects a combination of objective facts and subjective perspectives. Because the OIPRD also considered information that the appellant provided after submitting his complaint, it says that, if any information from the appellant's complaint form is not mentioned in the record, it does not mean that the information is incorrect, since the summary is based on the whole of the OIPRD's communications with him.

[29] The OIPRD argues that the appellant's proposed corrections are not to information that is inexact, incomplete or ambiguous, but that the appellant is simply not satisfied with the contents of and language used in the decision letter. According to the OIPRD, the appellant's requests involve his own, preferred, language or "(re)interpretations" of the events. The OIPRD says that, while it recognizes that the complaint may relate to a number of issues (such as an alleged violation of the appellant's privacy, his presumption of innocence, or denial of his right to equal treatment), the record was not meant to limit the complaint, but rather to simply summarize it.

Analysis and finding

[30] As I have noted above, past orders of this office have found that, in order for the right of correction under section 47(2) to arise, the person seeking the correction must meet all three parts of a three-part test.[9] First, the information must be personal information; second, the information must be inexact, incomplete or ambiguous; and

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[9] See, for example, Orders 186, MO-3004 and P-382.

third, the correction cannot be a substitution of opinion.

Part 1: information must be personal information

[31] There is no dispute that the record contains the appellant's personal information. Personal information is defined in section 2(1) as recorded information about an identifiable individual. I find that the record contains information about the appellant's education; his home and email address; his personal opinions or views; the views or opinions of another individual about him; and his name where it appears with other personal information relating to him or where disclosure of the name would reveal other personal information about him. I find that this is the appellant's personal information within the meaning of the definition of "personal information" in paragraphs (b), (d), (e), (g) and (h) in section 2(1).

[32] However, I find that the second and third parts of the three-part test for correction have not been met.

Part 2: information must be inexact, incomplete or ambiguous

[33] Turning to the second part of the test, I find that the appellant has not provided sufficient evidence to support his position that the information he seeks to be corrected is inexact, incomplete or ambiguous.

[34] I agree with the OIPRD that the decision itself is unambiguous. I also find that most of the information the appellant seeks to have corrected is not his personal information but is the OIPRD's summary of events that prompted the appellant's complaint about the SPS. For example, the appellant says that mere reference to interaction with police results in a presumption of guilt, and he disputes that police were called to a particular location or that an investigation took place, and challenges the OIPRD's reference to the fact that police have discretion in the conduct of their investigations. I am not persuaded that these concerns support a finding that the record is inexact, incomplete or ambiguous.

[35] The appellant has challenged the language and accuracy of the OIPRD's summary and seeks to correct almost every paragraph of the record through deletions and substitutions of the OIPRD's text in favour of his own. In the event of a refusal to correct the record in accordance with his request, the appellant demands more robust reasons for the OIPRD's decision not to investigate.

[36] Although the record is not an incident report, it has common features with incident reports and arises from a complaint about police conduct during investigation(s). This office has previously held that records of an investigative nature cannot be "incorrect", "in error" or "incomplete" where 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.[10]

[37] Adopting this reasoning, and in the absence of sufficient evidence from the appellant, I find that the OIPRD's summary and its decision is not incomplete or inexact. There is no suggestion before me that the record does not reflect the views of the OIPRD, and I accept the OIPRD's submission that it does so accurately.

Part 3: correction must not be a substitution of opinion

[38] With respect to the third part of the test for correction under section 47(2)(a), I find that the correction request seeks to substitute language or a description of events in the record to craft a version of it that the appellant believes is more favourable to him or one that is more in keeping with his own views. In this regard, I agree with the OIPRD's submission that the appellant's correction request effectively amounts to a request to substitute his own decision for the OIPRD's decision.

[39] In Order MO-1438, the adjudicator dealt with similar facts, where an appellant provided suggested wording to be inserted in place of entries he sought to have removed from certain records. The adjudicator wrote that:

> The 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 precluded by the third requirement [in the three-part test] outlined above. Accordingly, I find that the third requirement has also not been met.

[40] The OIPRD's decision is the director's opinion. It appears from my review of the correction request that a number of the appellant's disputes relate to the adequacy, fairness or validity of the OIPRD's decision. For example, and without disclosing the contents of the record, the appellant has challenged the OIPRD's position that police have discretion to determine their investigative processes. He requests the addition of reasons and proof of legislative authority should these types of statements not be removed from the record, or better reasons why an investigation of his complaint would not be in the public interest.

[41] The IPC is not the appropriate forum for the resolution of disputes regarding the adequacy of the OIPRD's reasons. The OIPRD argues that if the appellant disagrees with the OIPRD's decision to screen out his complaint, it is open to him to seek judicial review. The OIPRD relies on Order PO-2079 to argue that an appeal of the denial of a

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[10] Orders M-777, MO-1438 and PO-2349.

correction request to the IPC is not the appropriate remedy if the appellant disagrees with the OIPRD's decision made under the *PSA*.

[42] I agree. In Order PO-2079, the adjudicator recognized that it was not the legislature's intent for there to be an inquiry under the *Act* into the adequacy of the decision of another quasi-judicial agency under its own governing legislation. To the extent that some of the issues raised by the appellant are disputes about the adequacy, fairness or validity of the OIPRD's decision, those issues cannot be resolved through an appeal to this office regarding the denial of a request to correct his personal information in a record under section 47(2)(a).

[43] For the foregoing reasons, I find that the three-part test for correction of the record has not been met.

[44] In closing, I am also satisfied that the OIPRD properly exercised its discretion in refusing correction to the record at issue, and I uphold the OIPRD's decision to deny the appellant's correction request. The appellant may submit a statement of disagreement under section 47(2)(b) of the *Act* to the OIPRD.[11]

ORDER:

I uphold the decision of the OIPRD to deny the appellant's correction request and dismiss this appeal.

Original signed by: November 27, 2020
Jessica Kowalski
Adjudicator

[11] The appellant may also require that his statement of disagreement be sent to the SPS under section 47(2)(c) of the *Act*, if he so chooses.