Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4211

Appeal PA19-00261

Ministry of the Solicitor General

November 17, 2021

Summary: After obtaining access under the *Act* to records containing their personal information, the appellants requested the ministry to make corrections to those records under section 47(2)(a).

The records at issue are notes and reports made by police officers attending an incident.

The ministry refused to make the corrections on the basis that they were attempts to rewrite parts of the officers' recorded opinions and observations. The appellants appealed and argued that the information they sought to correct was either not in the nature of opinion information or so demonstrably false that, in some cases, the notes were inconsistent with the knowledge of the authors at the time the notes were written.

In this order, the adjudicator dismisses the appeal and upholds the ministry's decision to refuse to grant the correction requests. In consideration of the records at issue, the objective truth of the topics discussed in them is not relevant to determining whether a correction is required under section 47(2)(a).

The appellants may require the ministry to attach a statement of disagreement to the records under section 47(2)(b) of the *Act*.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 47(2), 47(2)(a), and 47(2)(b).

Orders Considered: Orders PO-3731, M-777, and MO-3581.

OVERVIEW:

[1] The Ontario Provincial Police (the OPP or the police) were dispatched to an incident in response to a 911 call. An individual was taken from the location of the incident by the police and held at a nearby police station for a short period of time.

[2] The individuals involved in the incident made a request to the Ministry of the Solicitor General (the ministry) for access to the police's records[1] regarding the incident under the *Freedom of Information and Protection of Privacy Act*[2] (the *Act*). The ministry disclosed the responsive records.

[3] The requesters then requested corrections to portions of the disclosed records under section 47(2)(a) of the *Act*. The ministry denied the correction requests and informed the requesters of their right to require the ministry to attach a statement of disagreement to the records.

[4] The requesters, now the appellants, appealed the ministry's decision to the Office of the Information and Privacy Commissioner (the IPC). An IPC mediator attempted to mediate a resolution; however, no mediated resolution was possible and the appeal transferred to the adjudication stage of the appeal.

[5] I conducted a written inquiry about the ministry's decision not to grant the requested corrections. I invited and received representations from the ministry and the appellants, which were shared with each other in full.

[6] During the inquiry, the corrections sought were clarified and narrowed. The appellants initially sought other remedies that are not available under the *Act,* such as purging or removal of certain records. The appellants withdrew their requests for these types of remedies during the inquiry and they are therefore not addressed in this order.

[7] In this order, I uphold the ministry's decision not to grant the requested corrections and dismiss the appeal.

[8] The ministry has indicated that it will receive a statement of disagreement, which it is required to do under section 47(2)(b) of the *Act*. The appellants have indicated that they intend to provide a statement of disagreement if their arguments in this appeal are unsuccessful. No order is necessary for these steps to be taken.

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[1] The ministry is responsible for responding to access requests regarding the OPP; see Order PO-2568.
[2] R.S.O. 1990, c. F.31.

RECORDS AND CORRECTIONS SOUGHT:

[9] The records at issue are notes or reports made by police officers responding to an incident. Generally speaking, they contain summaries of information obtained from a variety of sources, including a 911 call, discussions with other officers and conversations with individuals at the incident.

[10] The appellants seek two types of corrections, summarized as follows:

Correcting the use of "arrest" to "detention"

- In an Occurrence Summary, a General Report and a specialized Supplementary Report, the appellants seek to change the word "arrested" or "arresting" to "detained" or "detaining," as applicable in the context.

Correcting the reasons for contacting the police

- Change "[named individual] contacted the OPP due to [*reasons*]." To "[named individual] contacted the OPP due to [*different description of reasons*]."[3] (General Report, page 2)

- Change "[named individual] was previously holding the door shut to [*reasons*]." to "[named individual] was previously holding the door shut to [*different description of reasons*]." (General Report, page 3)

- Change "[named individual] was [*description of feelings or emotions*]." to "[named individual] was [*different description of feelings or emotions*]." (General Report, page 3)

- Delete "… [*description of circumstances*]." (A sentence fragment) (General Report, page 3)

DISCUSSION:

The right to request correction

[11] The only issue in this appeal is whether the ministry properly refused to grant the corrections requested by the appellants pursuant to section 47(2) of the *Act*, which states:

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[3] I have intentionally refrained from describing the reasons further in this Order to protect the confidentiality of those involved.

> (2) 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;
>
> (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;

[12] In appeals of this nature, IPC adjudicators have consistently considered whether the following three requirements are met as a threshold matter before an institution can grant a request for correction under section 47(2)(a):

1. the information must be the requester's personal information;
2. the information must be "inexact, incomplete or ambiguous;" and,
3. the correction cannot be a substitution of opinion – that is, it cannot simply replace one person's opinion with another person's opinion that the requester prefers.[4]

[13] As will be elaborated on below, section 47(2)(a) gives the institution the discretion to accept or reject a correction request if it does so for valid reasons.

Representations

The ministry

[14] The ministry acknowledges that the information at issue is the personal information of the appellants.

[15] The ministry submits that it exercised its discretion not to grant the requested corrections because the requests are efforts to substitute opinions or observations made by the OPP officers involved in responding to the incident. Specifically, the ministry submits that the appellants are trying to "rewrite parts of the investigating officers' recorded opinions" in a preferred way.

[16] In support of its position, the ministry refers to Order PO-3731, in which the adjudicator stated,

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[4] Orders P-186 and P-382.

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

[17] The ministry also refers to Order PO-2079, which referenced with approval the following excerpt from *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy*[5]:

> …. the precise criteria for determining whether a particular item of information is accurate or complete or relevant to the purpose for which it is kept may be a matter on which the institution and the individual […] have reasonable differences of opinion.

[18] The ministry submits that it has acted properly in denying the correction requests. While doing so, the ministry also acknowledges that the appellants have a different view of some of the events that occurred during the incident; however, the ministry maintains that this is an insufficient basis to change the records under the *Act* and, instead, submits that the appropriate response would be for the appellants to submit a statement of disagreement.

The appellants

The right to request a correction, in general

[19] The appellants generally accept the manner in which the IPC has interpreted the right to request a correction, including the three requirements set out above.

[20] Regarding requirement number two (that the information must be inexact, incomplete or ambiguous), the appellants argue that because section 47(2)(a) provides a right of correction of an "error or omission," requirement number two is not a "closed category" and that the correction right exists when the information at issue is not necessarily inexact, incomplete or ambiguous but rather "incomplete by virtue of an error or omission."

[21] The appellants concede that for a correction request to be considered, the information at issue must not be an opinion. However, the appellants disagree with the ministry's characterization that the information at issue in this appeal is "recorded

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[5] Toronto: Queen's Printer, 1980.

opinion or observation." Rather, they say the information at issue consists of facts.

[22] Alternatively, the appellants submit that even if the information is "recorded observation and opinions," it is "demonstrably false and erroneous and thus correctable." The appellants say that they do not seek to substitute anyone's opinion but rather to correct erroneous information.

[23] The appellants submit that the *Act* imposes a duty on institutions to maintain accurate records (citing sections 36(2) and 40(2) of the *Act*) and so only in exceptional circumstances should inexact, incomplete or ambiguous information be permitted to survive a correction request.

[24] The appellants argue that when the information at issue is purposefully or demonstrably "incomplete, ambiguous, inexact or otherwise erroneous," it would not be a reasonable exercise of discretion for the ministry to refuse to grant the request.

[25] The appellants also refer to the above-quoted observations of the adjudicator in Order PO-3731 regarding investigatory records, which I repeat here for ease of reference:

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

[26] The appellants make a different point than the ministry regarding investigatory records. They say that strict adherence to the standard described in Order PO-3737 could mean that recorded *untrue* information may remain uncorrected especially if the record "actually does" reflect the author's observations and mistaken impressions at the time the record was created. The appellants argue that a record could be untrue and "not actually" reflect the author's observations and impressions at the time. They say that the demonstrable falsity of a record is good evidence that the record did not "accurately reflect the author's observations…."

[27] The appellants say that correcting of demonstrably false information does not expand the scope of the IPC's review power (or, as I understand the argument, the right to request correction in the *Act*) because "the creation and inputting of intentionally false information or demonstrably false information would be a rare circumstance."

Correcting the use of "arrest" to "detention"

[28] There is no dispute that a person was removed from the location by the police.

However, the appellants submit that the person was not arrested but rather detained, which have distinct legal meanings. Therefore, the appellants say that the information in the records suggesting that the individual was arrested should be changed to clarify that the individual was detained. Further, the appellants submit that the characterization of whether someone was arrested or detained cannot be a matter of opinion – they say it can only be a matter of fact.

[29] In their representations, the appellants explain the reasons why they believe that the individual was not arrested, but rather detained, by referencing other portions of the disclosed records and affidavit evidence from one of the appellants describing what happened during the incident and that the police told the appellant that no arrest was taking place.

[30] In further support of this view, the appellants submit that an arrest for a specified criminal offence, as suggested by the information in the records, could not lawfully have occurred in the circumstances. In support of this part of their argument, the appellants refer to case law setting out the police's power to arrest for the specified offence – that the criminal conduct is imminent and that the risk that the criminal conduct will occur must be substantial.[6]

[31] Further, the appellants submit that a person can only be arrested in Canada where an officer has reasonable grounds to believe an offence has occurred or to prevent the repetition of the offence, citing section 495 of the *Criminal Code.*[7] Again, the appellants submit that based on the circumstances of the incident, the police would not have had sufficient legal grounds to arrest the individual. The appellants explain the aspects of Canadian criminal law that establishes when a lawful detention may occur and, conversely, when a lawful arrest may occur.[8]

Correcting the reasons why the police were called

[32] The appellants state that the descriptions contained in the records about why police assistance was requested are erroneous. In support of this contention, the appellants provided a digital copy of the 911 call in which police assistance was requested. The appellants argue that this 911 call is the best and only evidence about why the individual contacted the police and that it contradicts the statements made by the officers in the records.

[33] One of the appellants also provided affidavit evidence explaining the reasons why they contacted the police and denying circumstances as described by the officers in

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[6] Citing *Brown v. Durham (Regional Municipality) Police Force,* 1998 CanLII 7198 (ONCA).
[7] R.S.C., 1985, c. C-46.
[8] Including, *R. v. Mann*, 2004 SCC 52 at para 34 and *R. v. Chapman,* 2020 SKCA 11 at para 62.

the records.

[34] The appellants also reject the notion that the information in the records is "an opinion" of the authors. Rather, they say that the reasons why the police were contacted are "purely statements of fact" and that these statements, therefore, are demonstrably erroneous and mistaken. Lastly, the appellants argue that no reasonable person could have held the opinion that the individual contacted the police for the reasons stated in the records.

Statement of Disagreement

[35] In the alternative to their arguments above, the appellants indicate that if I do not accept their arguments, a statement of disagreement should be attached to the records.

The ministry's reply

[36] The ministry maintained its view that the requested changes are not corrections but attempts to amend or delete portions of the records to reflect the appellants' views, which, the ministry says, are not corrections within the meaning of the *Act.*

Analysis and findings

[37] Section 47(2)(a) says that individuals are entitled to "request correction" of their own personal information where they believe there is "an error or omission" in that information. Section 47(2)(b) says individuals are entitled to "require that a statement of disagreement" be attached to the information reflecting "any correction that was requested but not made."

[38] As outlined above, in appeals of this nature, IPC adjudicators have consistently considered whether the following three requirements are met as a threshold matter before an institution can grant a request for correction under section 47(2)(a):

1. the information must be the requester's personal information;

2. the information must be "inexact, incomplete or ambiguous;" and,

3. the correction cannot be a substitution of opinion – that is, it cannot simply replace one person's opinion with another person's opinion that the requester prefers.[9]

[39] IPC adjudicators have also consistently found that records of an investigatory

[9] Orders P-186 and P-382.

nature cannot be said to be "incorrect," "in error" or "incomplete" if they simply reflect the views of the person whose impressions are being set out in the record.[10] I note that "incorrect" and "in error," although not mentioned in requirement number two above, are connected to the wording of section 47(2)(a) itself (i.e., "request correction," "error or omission").

[40] Section 47(2)(a) gives the institution the discretion to accept or reject a correction request.[11] This means that even if there is an error or omission in the personal information, the IPC may uphold the institution's decision not to make the correction, as long as there are valid reasons for its decision.[12]

[41] There is no dispute in this appeal that the information at issue consists of the personal information of the appellants.

[42] Based on my review of them, the records in which the personal information is contained are records of an investigatory nature. They are notes and reports made by police officers attending the incident. They include information from a variety of sources, such as the 911 dispatcher, other officers, the individuals involved, and the things that they saw or heard. These notes and reports are subjective in the sense that they are the written accounts of individual officers.

[43] The analysis of the adjudicator in Order M-777 is relevant to the present appeal. Dealing records similar to those at issue in this appeal, he said (emphasis added),

> ...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 municipal equivalent of section 47(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.
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> 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.
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> ...

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[10] Orders M-777, MO-1438 and PO-2549.
[11] Order PO-2079.
[12] Order PO-2258.

> ... 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.

[44] Order MO-3581 is also relevant. In Order MO-3581, the appellant requested corrections to notes made by a police officer about an incident that involved the appellant. In support of his request, the appellant tendered evidence including: admissions made by the police officer in civil proceedings that her notes were inaccurate; and, video evidence that contradicted the way that the incident was described in the officer's notes. In MO-3581, the adjudicator accepted that the notes were inaccurate. However, he also found that the inaccuracies were typical errors that one commonly finds in similar types of records that contain a person's recollections of an event. He accepted that the notes were a record of the author's views of the incident at the time they made the notes and upheld the police's decision not to correct them.

[45] The approach taken by IPC adjudicators in relation to records of an investigatory nature is applicable to this appeal. Records of an investigatory nature often contain the subjective views and impressions of the individuals who created the records. Although these records may inform the determination of an "objective truth" in another forum, such as court proceedings, they are inherently subjective and therefore vulnerable to all the ordinary limits of human perception and memory.

[46] This means that there will inevitably be errors in these types of records. There will be mistakes made at the time the note or report was made. And, there will also be errors that only become apparent with the benefit of hindsight or other information that was not available to the author at the time the record was created. Considering the nature of these records, IPC adjudicators have therefore held that in relation to these types of records the only relevant analysis is "whether or not what is recorded accurately reflects the author's observations and impressions at the time the record was created"[13] or have found that "the truth or falsity of [the views] is not at issue," in appeals of this nature.

[47] I particularly agree with the observations of the adjudicator in Order M-777 that the legislature did not intend for the right to request a correction to interfere with the integrity of records of an investigatory nature.[14]

[48] I will now turn to the specific requests made by the appellants.

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[13] Order MO-3731.
[14] Order M-777.

Arrest vs. detention

[49] The appellants seek to change references in the records from "arrest" to "detention."

[50] As I understand the arguments of the appellants, it was so apparent to everyone involved that no arrest was taking place that when the authors of the notes used the word "arrest" they effectively made an incorrect word choice. They argue, therefore, that to change the word arrest to detain would in fact be to align the notes with what the authors, in fact, believed *at the time*. The appellants argue that this outcome would be consistent with the IPC's approach to analyze whether what is recorded accurately reflects the author's impressions at the time.

[51] In the context of the type of records before me – records of an investigatory nature – the truth of the statements in the notes or reports is not a relevant consideration. This means that even if I was persuaded that the references to arrest are in error, it would not follow that the correction request should be granted. As I elaborate on above, records of an investigatory nature containing the impressions and views of others, cannot be said to be "incorrect" or "in error" within the meaning of section 47(2)(a). In my view, the ministry was entitled to refuse to grant this request.

[52] In reaching this conclusion, I have considered but rejected the appellants' argument that if it can be established that the author's notes contain an error known to the author at the time they made it, this would amount to an error sufficient to warrant a correction. Because the truth of the statements in the notes or reports is not a relevant consideration, it matters not why or when the ostensible error occurred.

Reasons for contacting the police

[53] The appellants seek to change portions of the records that describe the reasons why the police were contacted, arguing that the records contain significant inaccuracies. Based on the recording of the 911 call and one of the individual's own recollections, they argue that the impugned statements are demonstrably false.

[54] In the context of the type of records before me, the truth of the statements in the notes or reports is not a relevant consideration. This means that even if I was persuaded that the descriptions contained in the records were inaccurate, it would not follow that the correction request should be granted. Records of an investigatory nature containing the impressions and views of others, cannot be said to be "incorrect" or "in error" within the meaning of section 47(2)(a).

[55] I also find that the statements at issue contain the authors' opinions. Based on my review of it, I do not agree with the appellants that the information at issue is not susceptible to being an opinion.

[56] Section 47(2)(a) may not be used to substitute opinions of one person for

another and the ministry was entitled to refuse to grant this correction request.

Conclusion and statement of disagreement

[57] The appellants were entitled to make the correction requests, but the ministry was not required to grant them if they refused to do so for valid reasons.

[58] In this case, the ministry is not prepared to permit the appellants to change the statements made by the OPP officers who attended the incident. In consideration of the nature of the records at issue, I find that the ministry's decision is based on valid considerations.

[59] The appellants are not without remedy because they are able to require the ministry to file the statement of disagreement. The ministry has invited the appellants to do so and I trust therefore that the parties will work together to facilitate the submission of a statement of disagreement, should the appellants wish to do so.

ORDER:

I dismiss the appeal.

Original signed by: November 17, 2021
Valerie Jepson
Adjudicator