

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4348

Appeal MA21-00167

City of Thorold

March 20, 2023

Summary: The City of Thorold (the city) received a request under section 36(2) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to correct the appellant's tax arrears records. The correction request stems from the appellant's assertion that he never received email notification from the city regarding interim or final tax notices which led to a late payment. In this order, the adjudicator upholds the city's decision and dismisses the appeal.

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

Orders Considered: Orders MO-1594 and MO-2526.

OVERVIEW:

[1] The City of Thorold (the city) received a request under section 36(2) of the *Act* to correct the requester's tax arrears records. The correction request stems from the appellant's assertion that he never received email notification from the city regarding interim or final tax notices which led to a late payment. He challenges the city's position that it sent emails to him and he has made several access requests for information to support his assertion. In the correction request at issue in this appeal he asks that the city "correct" certain records that purport to show that the city sent him a tax bill and an additional related notice.

[2] The city issued a decision denying the correction request. The city explained in its decision that there was no way to correct the information that was the subject of the request.

[3] The city also advised that the requester is entitled to require that a statement of disagreement be attached to the record.

[4] The requester, now the appellant, appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[5] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry under the *Act*.

[6] I decided to conduct an inquiry and sought representations from the city on the facts and issues set out in a Notice of Inquiry. The city provided representations in response. I then sent the appellant a Notice of Inquiry as well as the city's representations. The appellant provided responding representations.

[7] In this order, I uphold the city's decision and dismiss the appeal.

RECORDS

[8] The appellant requests the correction of city records that indicate that emails enclosing a final tax bill and a related notice were sent to the appellant's email address by the city (tax notices).

DISCUSSION:

[9] The sole issue in this appeal is whether the city should correct personal information under section 36(2)(a) of the *Act*.

[10] 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.

[11] 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;

[12] 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 the requester's personal information; and
2. the information must be inexact, incomplete or ambiguous; and
3. the correction cannot be a substitution of opinion.¹

[13] 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

Representations

[14] In his representations the appellant acknowledges receiving two emails from the city regarding tax arrears but says he never received the tax notices. He adds that this was the only reason that he did not pay his tax bill on time and he wants to challenge the two tax arrears notices on this basis. He states that he commenced two IPC appeals³ requesting access to information which would allow him to determine if the tax notices were properly sent to him. He takes the position that his tax arrears are in error because of the city's alleged failure to send him the tax notices.

[15] The city submits that the appellant seeks to "correct" notations in the city's computerized tax system that it sent emails regarding the tax notices.

Findings and analysis

As noted above, in order to qualify for a correction, all three of the following requirements must be met:

1. the information at issue must be the requester's personal information; and
2. the information must be inexact, incomplete or ambiguous; and

¹ Orders P-186 and P-382.

² Orders MO-2550, P-448 and PO-2549.

³ Which resulted in Interim Orders MO-4328-I and MO-4329-I.

3. the correction cannot be a substitution of opinion.⁴

[16] It is not necessary for me to decide if the tax notices qualify as personal information because I conclude in any event that the information does not otherwise qualify for correction.

[17] In Order MO-2526, the adjudicator states the following about section 36(2)(a) and (b) and the purposes of section 36(2):

Sections 36(2)(a) and (b) provide two different remedies for individuals wishing to correct their own personal information. Section 36(2)(a) entitles individuals to *request* that their personal information be corrected; institutions have the discretion to accept or reject a correction request. 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 the individual's correction request. Thus, section 36(2)(a) is discretionary, whereas section 36(2)(b) is mandatory.

...

One of the purposes of section 36(2) is to give individuals some measure of control over the accuracy of their personal information in the hands of government. Both the *Act* and the Williams Commission Report [*Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vol. 3 (Toronto: Queen's Printer, 1980)] support the view that the right to correction in section 36(2) is not absolute.

[18] Therefore, the decision to correct information is a discretionary decision of the city. As stated by the adjudicator in Order MO-1594:

... It is also worth repeating that the legislature has found it appropriate to give institutions the discretion to decide whether or not to accept a correction request. As proposed by the Williams Commission, an appeal may be brought from an institution's discretionary decision to deny such a request and, on appeal, it is open to this office to order a correction. In order for a correction to be found appropriate, at a minimum, the requirements established by Order 186 must be met. However, there may well be situations where it is not necessary to make a conclusive determination on whether information is "inexact, incomplete or ambiguous", where the exercise of discretion appears reasonable, and the attachment of a statement of disagreement is a sufficient response to a dispute about the correctness of a record.

⁴ Orders P-186 and P-382.

[19] I agree with and adopt the statements made by the adjudicators above for the purpose of this appeal.

[20] The information at issue is drawn from the city's computerized tax system which sets out notations regarding the sending of the tax notices. The city's email history⁵ has notations which include the time and date sent. As I understand it, these records illustrate that the city's computerized tax system sent the appellant emails. I understand that the appellant says he did not receive them. However, when I take into account the city's explanation, I find that the appellant has failed to present sufficient evidence for me to conclude that the information that the appellant seeks to correct is "inexact, incomplete or ambiguous" and accordingly, based on the test set out above, it does not qualify for correction. I also find that the city reasonably exercised its discretion not to correct the email record.

[21] In these circumstances, I uphold the decision of the city not to correct the information under section 36(2)(a) of the *Act*.

ORDER:

I uphold the city's decision to deny the correction request, and dismiss the appeal

Original Signed by: _____
Steven Faughnan

_____ March 20, 2023

⁵ Disclosed to the appellant in a decision letter at issue in Appeal MA21-00436, which was the subject of Interim Order MO-4328-I.