

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4377

Appeal PA21-00352

Ministry of the Solicitor General

April 13, 2023

Summary: The ministry received a request, pursuant to the *Freedom of Information and Protection of Privacy Act*, for the correction of personal information (section 47(2)(a)) in a specified occurrence summary and a supplementary occurrence report. The ministry issued a decision denying the request. This adjudicator upholds the ministry's decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (the definition of "personal information") and 47(2)(a).

Orders Considered: Orders MO-3609, MO-3720, MO-3822 and MO-3882.

OVERVIEW:

[1] In March 2018, the appellant and two affected parties were involved in an incident in Cuba.

[2] Subsequently, the appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of the Solicitor General (the ministry) for correction to specified reports.

[3] The ministry issued a decision denying the correction request, stating the following:

"...In order for the personal information to be corrected, you must demonstrate to the ministry that, due to an error or an omission, the record containing your personal information is inaccurate..."

[4] The appellant appealed the ministry's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[5] During mediation, the mediator discussed with the appellant the option of having a statement of disagreement attached to the record at issue. The appellant advised that he may provide a statement of disagreement but wished to pursue the correction request at adjudication.

[6] As no further mediation was possible, this appeal was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct a written inquiry under the *Act*.

[7] The adjudicator initially assigned to this appeal invited the ministry and the appellant to provide representations on the issues in this appeal. She received representations from both parties. This appeal was subsequently transferred to me to continue the adjudication. I reviewed the parties' representations and decided that I did not require further submissions before making my decision.

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

RECORDS:

[9] The appellant seeks to correct information contained in an Occurrence Summary and a Supplementary Occurrence Report (the reports), which are two pages in total.

DISCUSSION:

[10] The sole issue in this appeal is whether the ministry should correct personal information under section 47(2)(a) of the *Act*.

[11] 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.

[12] Sections 47(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;

[13] 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.¹

[14] 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

Findings and analysis

[15] After reviewing the reports and the representations of the parties, I find that the first requirement of the test has been met, and the information at issue is the personal and private information of the appellant. This information relates to how the appellant was described/classified in the reports, which falls within paragraph (b) of the definition of "personal information" in section 2(1) of the *Act*. Having found that the first requirement of the test has been met, I now turn to the second requirement.

[16] With respect to the second requirement, past orders of the IPC have stated that records of an investigatory nature, such as the reports at issue, cannot be said to be "incorrect" or "in error" or "incomplete" if it simply reflects the views of the individual whose impressions are being set out. 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

[17] In this case, the appellant submits that the information he seeks to correct is wrong. He is seeking to have his description/classification in the reports changed from

¹ Orders P-186 and P-382.

² Orders P-448, MO-2250 and PO-2549.

³ Orders M-777, MO-1438 and PO-2549.

"subject of complaint" to "victim of mischief". He submits that two foreign judgments, a BC *Police Act* investigation, and an internal Disciplinary Authority decision all conclude that the allegation was false. As such, the appellant submits that "victim of mischief" is the more accurate description/classification for him.

[18] Alternatively, the appellant submits that if the reports cannot be said to be "incorrect", "in error" or "incomplete" if it simply reflects the views of the person whose impressions are being set out then it should be noted that the OPP had an onus to either take a statement from him or request another police agency to do so. He explains that a police officer is required to document both sides of a story during an investigation but this is a step that the OPP are unwilling to do in this case. The appellant submits that the OPP's investigation appears to have been left open, suggesting doubt in his innocence to anyone reading it, which has serious future implications for him with respect to employment, volunteer or other aspirations.

[19] In addition, the appellant submits that failing to update/correct the reports to ensure that they are accurate is an embarrassment to the policing profession in general. He points out that if he did not obtain a copy of the OPP file and negotiated a change in his entity code classification, he would still be characterized as "Accused, Suspect" to this day. The appellant submits that his entity code classification should be amended to reflect the final disposition of the file.

[20] Although I am sympathetic to the appellant's situation, I am unable to find that the second requirement has been met. I understand that the appellant seeks to have his entity code classification corrected so it will reflect the conclusion and findings of the Cuban courts, the BC *Police Act* investigation, and an internal disciplinary authority decision. However, as past orders of the IPC have stated, 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. In this case, the OPP officer's observation and impression were that the appellant was the subject of the complaint at the time. This observation/impression cannot be said to be "incorrect" or "in error" or "incomplete" as it simply reflects the view of the individual whose impressions are being set out.

[21] As I have found that the second requirement has not been met, there is no need for me to discuss the third requirement as all three requirements must be met for an institution to grant a correction request.

[22] Furthermore, based on the interpretation of section 47(2)(a) developed in the orders cited above, I am not persuaded that the ministry has exercised its discretion inappropriately in refusing to correct the record at issue. Therefore, I uphold the ministry's decision not to correct the personal information under section 47(2)(a) of the *Act*.

[23] As noted in section 47(2)(b), the appellant can file a statement of disagreement as his correction request has not been granted. I understand that he will do so as he was simply waiting for the outcome of this appeal before asking the ministry to attach a statement of disagreement to his file. I also encourage the appellant to request that the ministry notify anyone, to whom the personal information has been disclosed within the last year, of the statement of disagreement.

[24] Finally, the *Act* does not give me the powers to grant the appellant the three remedies⁴ he seeks in his representations.

ORDER:

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

Original Signed by: _____
Lan An
Adjudicator

_____ April 13, 2023

⁴ They are numbered (3), (4) and (5) under the heading of "Remedy Sought" of the appellant's representations.