ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2013-04

January 31, 2013

EDMONTON POLICE SERVICE

Case File Number F5705

Office URL: www.oipc.ab.ca

Summary: Under section 36(1) of the *Freedom of Information and Protection of Privacy Act* (the "Act"), the Applicant asked the Edmonton Police Service (the "Public Body") to correct references in its electronic records management system indicating that he was a "suspect chargeable" and that he had been involved in an occurrence type identified as assault with a weapon or assault causing bodily harm.

The Adjudicator found that the Public Body properly refused to correct the information, as it constituted an opinion that a public body must not correct under section 36(2) of the Act. Specifically, the investigating officer and/or other personnel of the Public Body believed, as a professional opinion, that there was sufficient evidence to charge the Applicant with the particular offence. Alternatively, if the information was factual, the truth regarding whether the Applicant was chargeable and had been involved in the particular occurrence type could not be ascertained so as to require a correction.

The Adjudicator accordingly confirmed the Public Body's decision not to correct the Applicant's personal information. He also concluded that the Public Body had properly linked the Applicant's personal information to his correction request, as required by section 36(3) of the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n), 36, 36(1), 36(2), 36(3), 72 and 72(3)(d). **CAN:** *Criminal Code*, R.S.C. 1985, c. C-46, s. 267.

Orders Cited: AB: Orders 97-020, F2005-008, F2005-023 and F2007-018.

I. BACKGROUND

[para 1] An individual (the "Applicant") was involved in some sort of incident with another individual, and a member of the Edmonton Police Service (the "Public Body") attended the scene and conducted an investigation. In its electronic records management system called the Edmonton Police Records and Occurrence System ("EPROS"), the Public Body referred to the Applicant's "Involvement" in the incident as "Accused" and referred to the "Occurrence Type" as "Assault – Bh/Weapon", with "Bh" standing for "bodily harm". The Applicant was never charged with any offence.

[para 2] In a letter dated February 11, 2011, the Applicant asked the Public Body to correct its references to "Accused" and to "Assault – Bh/Weapon", as contemplated by section 36(1) of the *Freedom of Information and Protection of Privacy Act* (the "Act"). He was of the view that he was never accused and that he had not committed the alleged assault.

[para 3] In a reply to the Applicant dated March 8, 2011, the Public Body refused to make the two requested corrections, but indicated that the Applicant's correction request would be appended to his police case file.

[para 4] In correspondence received by this Office on March 24 and 25, 2011, the Applicant requested a review of the Public Body's response to his correction request. The Commissioner at the time authorized a portfolio officer to investigate and try to settle the matter. This was not successful, and the Applicant requested an inquiry in correspondence received June 1, 2011. A written inquiry was set down.

[para 5] Although the Applicant provided materials with his request for review relating to an access request as well as a different correction request, these matters are not the subject of the present inquiry. Specifically, the Applicant provided a copy of an undated access request that he had made for the police case file containing the EPROS entries described above, and his letter of February 11, 2011 included a correction request in relation to a different case file. However, the Public Body's letter of March 8, 2011 indicates that it made the correction requested by the Applicant in relation to the other case file, and the Applicant gives no indication, in any of the material that he has submitted to this Office, that he is dissatisfied with the Public Body's response to this other correction request. As for his access request, the Applicant's "Request for Review" form stated only that he wanted a "change of EPROS entry" (i.e., the requested corrections described above). While a letter accompanying the form included a line stating "Please have EPS release all infos and notes", the matter of the Public Body's response to the Applicant's access request was not referred to the portfolio officer, the Applicant requested no inquiry in relation to his access request, he raised no objection to the Notice of Inquiry setting out only an issue in relation to his correction request, and he expresses no concerns about the Public Body's response to his access request in any of his inquiry submissions.

[para 6] In the course of the inquiry, the Public Body changed part of its decision in response to the Applicant's correction request by correcting the term "Accused" in EPROS. It decided to

change the term to "Suspect chargeable" as a result of new terminology that had been adopted in 2010 by Statistics Canada, being the entity to which the Public Body reports the nature of an individual's involvement and the occurrence type as shown in EPROS. The correction to "Suspect chargeable" was made electronically in EPROS on March 2, 2012, and the Applicant was advised of the correction by letter dated March 12, 2012, which accompanied the Public Body's initial submissions in this inquiry. While the Public Body takes the position that this aspect of the Applicant's correction request is now no longer at issue, the Applicant's inquiry submissions indicate that he is also dissatisfied with the reference to "Suspect chargeable". In his rebuttal submission, for instance, he says that he was not "chargeable". Both aspects of the Applicant's correction request therefore remain at issue, although the information in question for the second aspect has changed from "Accused" to "Suspect chargeable".

[para 7] The Applicant has not directly asked the Public Body to correct the reference to "Suspect chargeable". Further, the Notice of Inquiry set out the issue of whether the Public Body properly refused to correct the Applicant's personal information, not whether it properly corrected the term "Accused" by changing it to "Suspect chargeable". Nonetheless, I find that I am in a position to address the current disagreement between the parties. The Public Body has changed the reference to "Suspect chargeable", the Applicant has challenged that decision, all of his views initially in relation to the reference to "Accused" hold in relation to the reference to "Suspect chargeable", and all of the Public Body's inquiry submissions in relation to the reference to "Assault – Bh/Weapon" may be extended to the reference to "Suspect chargeable". It is most expedient for me to review the true underlying issue of whether the Public Body has properly refused to correct the current reference of "Suspect chargeable", rather than protracting the matter by requiring the Applicant to first make a new correction request.

[para 8] On January 3, 2013, this Office received an additional submission and new evidence from the Applicant. His accompanying correspondence indicates that he provided a copy to the Public Body. In accordance with this Office's *Inquiry Procedures*, the Applicant advised the Public Body that it had three business days in which to respond to the additional submission and evidence. The Public Body provided no response.

[para 9] The additional submission of the Applicant is very brief. It states that the other individual provoked the Applicant and exaggerated the incident in question. It adds that police entries about the Applicant can be detrimental, lead to prejudices, and lead to consequences against his person. The new evidence is a copy of an online exchange or posting, which I take to be in reference to the Applicant. The Applicant highlights an excerpt in which an individual makes a threat against him, although he does not indicate whether this is the same individual involved in the incident that was investigated by the Public Body, or some other individual.

[para 10] Given that the Public Body did not respond to the Applicant's new submission and evidence, and given that the new evidence appears to be relevant to the underlying events that gave rise to the Applicant's correction request, I have decided to accept the additional submission and new evidence. In the end, however, the additional submission and evidence do not change my conclusions in this inquiry, for reasons expressed later in this Order.

II. INFORMATION AT ISSUE

[para 11] The information that the Applicant wants to have corrected are the two references in EPROS, the first indicating that the occurrence type was assault causing bodily harm or assault with a weapon, and the second indicating that the Applicant's involvement in that occurrence type was as a suspect chargeable.

III. ISSUE

[para 12] The Notice of Inquiry, dated January 16, 2012, set out the issue of whether the Public Body properly refused to correct the Applicant's personal information under section 36 of the Act.

IV. DISCUSSION OF ISSUE

Did the Public Body properly refuse to correct the Applicant's personal information under section 36 of the Act?

[para 13] Section 36 of the Act reads, in part, as follows:

> *36(1) An individual who believes there is an error or omission in the individual's personal information may request the head of the public body that has the information in its custody or under its control to correct the information.*
>
> *(2) Despite subsection (1), the head of a public body must not correct an opinion, including a professional or expert opinion.*
>
> *(3) If no correction is made in response to a request under subsection (1), or if because of subsection (2) no correction may be made, the head of the public body must annotate or link the personal information with that part of the requested correction that is relevant and material to the record in question.*
> *...*

[para 14] Under section 36, an individual has the initial burden of proving that the public body has personal information about him or her and that there is an error or omission in the personal information that the public body refused to correct (Order 97-020 at para. 108; Order F2005-023 at para. 10). The public body has the burden of showing why it refused to correct the personal information and that it instead properly annotated or linked the personal information with the requested correction (Order 97-020 at para. 109; Order F2005-023 at para. 10).

[para 15] For section 36(1) to be engaged, a correction request must be directed toward the "personal information" of an individual, as that term is defined in section 1(n) of the Act. I find that the references to the Applicant as a suspect chargeable, and to his involvement in an assault causing bodily harm or assault with a weapon, constitute his personal information. These references are recorded information about the Applicant within the terms of the definition.

[para 16] As for the Public Body's decision in response to his correction request, the Applicant argues that the Public Body is attempting to perpetuate a bad reputation on his part, and trying to make sure that prejudices about him are created through untrue facts. He believes that he was treated prejudicially by the police officer who investigated the incident as a result of a previous entry about him in EPROS. He says that he was harassed by the other individual involved in the incident, that this other individual had expressed hatred toward him, and that he merely showed some frustration in return. He adds that he did not come into bodily contact with the other individual and that there was no violence.

[para 17] The Applicant further indicates that the investigating officer subsequently told him that the other individual had apologized, and that everything was resolved. He accordingly submits that he was never actually the subject of any accusation by the other individual. He also argues that he was not a suspect chargeable because, had he been chargeable, he would have been charged, yet was not. He submits that the Public Body should have to prove that he committed the assault in question, and that it is not his responsibility to prove the contrary. While he does not say what he would like EPROS to indicate as his involvement in the incident involving the other individual, he asks that the occurrence type be corrected to "general complaint". In his request for inquiry, he alternatively submits that he would like the two references to him removed altogether.

[para 18] For its part, the Public Body explains that the Applicant was suspected of throwing an object at the other individual. It notes that an individual's possible involvement in an occurrence type can arise from a complaint, and not necessarily an accusation, on the part of another individual. It submits that, in this particular case, its police member investigated the incident in question, considered the nature of the other individual's complaint, reviewed the evidence, and in conjunction with other personnel of the Public Body, concluded that the Applicant could be charged with assault with a weapon or assault causing bodily harm. The Public Body cites section 267 of the *Criminal Code* as the provision that sets out the offence in question, and which corresponds with the classification of the occurrence type in this case. It says that no criminal charges were laid against the Applicant because the other individual did not wish to testify.

[para 19] As for whether it has properly complied with section 36 of the Act, the Public Body argues that the Applicant has failed to establish that there is an error or omission in his personal information within the terms of section 36(1). It alternatively argues that the information that the Applicant wants to have corrected is an opinion within the terms of section 36(2), which cannot be corrected.

[para 20] The information at issue may be characterized, on one hand, as factual in the sense that EPROS purports to say that the Applicant was, in fact, a suspect chargeable and that he did, in fact, commit assault with a weapon or assault causing bodily harm. Another way of framing the information factually is to say that there was, as a matter of fact, sufficient evidence to charge the Applicant with the offence of assault with a weapon or assault causing bodily harm. The Public Body's primary submission is that the Applicant alleges errors of fact, which it argues cannot be corrected because there are competing versions of events, and the Applicant has not

shown that his version is the correct one. In a letter attached to his request for inquiry, the Applicant also characterizes the information at issue as being factual.

[para 21] On the other hand, the information that the Applicant wants to have corrected may be characterized as an opinion that the Applicant had committed assault with a weapon or assault causing bodily harm, and that he therefore could be charged with that offence. Under section 36(2) of the Act, a public body must not correct an opinion, including a professional or expert opinion.

[para 22] In my view, the information that the Applicant wants to have corrected is more properly characterized as an opinion. The investigating officer and/or other personnel of the Public Body believed, as a professional opinion, that there was sufficient evidence to charge the Applicant with the offence of assault with a weapon or assault causing bodily harm. There was a subjective view that he could have been charged, even though he was not so charged. As I find that the information constitutes an opinion within the terms of section 36(2), the Public Body had no ability to correct the information. I accordingly conclude that the Public Body has properly refused to correct the Applicant's personal information.

[para 23] If I am wrong, and the information that the Applicant wants to have corrected is factual and can therefore possibly be corrected under section 36(1), I still find that the Public Body properly refused to correct the references to "Suspect chargeable" and to "Assault – Bh/Weapon", for the reasons that follow.

[para 24] The Applicant has provided his version of events by indicating, among other things, that he had previously been threatened online according to the new evidence submitted by him, was harassed by the other individual at the time of the incident, and was merely expressing frustration rather than committing assault. His version raises the possibility that he did not commit an offence at all, was provoked to do so, or otherwise had a defence. In any event, I cannot ascertain the true facts regarding what transpired between the Applicant and the other individual so as to determine whether or not the Applicant could have been charged with assault, and whether the occurrence type indicated in EPROS did or did not actually take place. To the extent that the information at issue is factual, the parties dispute what the facts are.

[para 25] As cited by the Public Body, it is not sufficient, for the purpose of section 36(1), to allege that information is wrong or missing, without establishing the correct or complete facts or the true version of events (Order F2007-018 at para. 63). It notes that a public body exercises its discretion properly if it does not correct a disputed fact, provided that it has acted in good faith (Order 97-020 at para. 123). It further notes that there is reason to refuse a correction request in circumstances where it is not possible to make a factual determination about the matter through the inquiry process (Order F2005-008 at para. 52). I find that this is one of those cases.

[para 26] As noted earlier, the Applicant believes that the Public Body has treated him prejudicially as a result of a previous entry in EPROS, and that it is deliberately trying to give him a bad reputation. To the extent that he is arguing bad faith on the part of the Public Body in refusing to comply with his correction request, I have insufficient evidence of bad faith. I

therefore maintain my conclusion that the Public Body has properly refused to correct the Applicant's personal information.

[para 27] I have also noted the Applicant's additional submission to the effect that police entries can have a negative impact on an individual. However, this likewise does not change my conclusions in this inquiry. I have found that the information that the Applicant wants to have corrected constitutes an opinion, which section 36(2) of the Act does not allow to be corrected, or alternatively amounts to a fact or facts the truth of which I cannot ascertain so as to require them to be corrected.

[para 28] On refusing to correct an individual's personal information, a public body must show that it properly annotated or linked the personal information with the requested correction, as required by section 36(3). The Public Body indicates that it scanned and electronically linked the Applicant's correction request of February 11, 2011, and the Public Body's response of March 8, 2011, to the police case file in question, which interfaces with EPROS. It explains that these two documents are readily visible and accessible to anyone accessing the electronic file, as they are clearly marked "Request for Correction of Personal Information".

[para 29] The Applicant expresses no concerns about the manner in which Public Body linked his correction request to the personal information that he wants to have corrected. I find that the Public Body properly did so, in any event. While the references to the Applicant being a suspect chargeable, and to being involved in an assault with a weapon or assault causing bodily harm, appear before me in a report generated from the EPROS database, the two references effectively characterize or colour the entire police case file. I therefore consider it compliant with section 36(3) for the Public Body to have effectively made one overall link to the electronic file as a whole, rather than create an electronic link from an EPROS entry itself (which may or may not have been possible). Section 36(3) of the Act should be interpreted sensibly, so that a public body has some administrative leeway in deciding the manner in which annotation or linking will occur (Order 97-020 at para. 184).

[para 30] As noted at the outset of this Order, the Public Body changed the reference from "Accused" to "Suspect chargeable" in the course of this inquiry. In this respect, it did make a correction. Because section 36(3) applies "if no correction is made", the Public Body arguably does not have to link the Applicant's personal information to this particular aspect of his requested correction. On the other hand, the Applicant remains dissatisfied with the reference to "Suspect chargeable", and his views in his initial correction request about the term "Accused" hold in relation to the term "Suspect chargeable". Moreover, the Public Body does not argue that it should only have to link part of the Applicant's correction request to his case file. In short, the Public Body's decision to link the entire correction request to the Applicant's personal information is appropriate and commendable, even if it may not be technically required.

V. ORDER

[para 31] I make this Order under section 72 of the Act.

[para 32] I find that the Public Body has properly refused to correct, under section 36 of the Act, the references to "Assault – Bh/Weapon" and to "Suspect chargeable" in the Applicant's police case file. Under section 72(3)(d), I confirm the Public Body's decision not to correct this personal information of the Applicant.

Wade Raaflaub
Adjudicator