



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **Reconsideration Order PO-2086-R**

**Appeal PA-010194-2**

**Interim Order PO-2054-I**

**Ministry of the Solicitor General**



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## **INTRODUCTION:**

This order sets out my decision on the reconsideration of one aspect of Interim Order PO-2054-I, issued on October 21, 2002.

The appellant submitted a request to the Ministry of the Solicitor General (now the Ministry of Public Safety and Security) (the Ministry), under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to “the 147 records referred to on page 6 [of Order PO-1608].”

The Ministry identified a number of responsive records. It provided the appellant with access to some of them, in whole or in part, and denied access to other records on the basis of one or more of the exemptions contained in the *Act*. The appellant appealed the Ministry’s decision.

After conducting an inquiry, I found that certain records or portions of records did not qualify for exemption and, pursuant to Provision 1 of Interim Order PO-2054-I, I ordered the Ministry to disclose these records to the appellant. On November 7, 2002, I received a letter from the Ministry, asking me to reconsider five items relating to Provision 1. After considering the Ministry’s request, I rejected four items, and advised the parties accordingly.

As far as the remaining item was concerned, I issued an interim stay of Provision 1 as it applied only to the portions of pages 53, 54, 63 and 64 that contain cellular phone numbers. I then wrote to the parties on November 15, 2002, inviting them to provide representations on whether the Ministry’s reconsideration request for these records fits within any of the grounds for reconsideration set out in Section 18.01 of this office’s *Code of Procedures*, and if so, how I should deal with the substantive issues raised by the Ministry for these records. Both parties submitted representations, which were then exchanged, and additional representations were provided by the appellant in response.

## **DISCUSSION:**

### **SHOULD THE ORDER BE RECONSIDERED?**

#### **Introduction**

The reconsideration procedures for this office are set out in section 18 of the *Code of Procedure*. In particular, sections 18.01 and 18.02 of the *Code* state:

18.01 The IPC [Information and Privacy Commissioner] may reconsider an order or other decision where it is established that there is:

- (a) a fundamental defect in the adjudication process;
- (b) some other jurisdictional defect in the decision; or
- (c) a clerical error, accidental error or omission or other similar error in the decision.

18.02 The IPC will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was available at the time of the decision.

## **Representations**

The Ministry takes the position that my order to disclose cellular phone numbers on pages 53, 54, 63 and 64 represents a fundamental defect in the adjudication process. The Ministry explains:

The Interim Order orders the disclosure of cell phone numbers assigned to government officials for use in their professional capacities, on the basis that such information does not constitute personal information. The Ministry has called several of these cell phone numbers and has learned that these cell phone numbers have been reassigned to private sector individuals or corporate entities. The Ministry would like the IPC to reconsider this disclosure in light of this information. Due to the elapsed time since the preparation of this record (1995), the position of the Ministry is that the numbers have been re-assigned and are no longer attached to the persons named in the record. It is submitted that the accuracy and reliability of the cell numbers cannot be confirmed and disclosure should be refused on the basis that the release of the records would clearly constitute an unjustified invasion of the personal privacy of the individual to whom the information relates.

In a follow-up letter, the Ministry elaborates on its position as follows:

Individuals to whom these cell phone numbers have been reassigned would have reason to object if they learned that their numbers were now being given to a third party media outlet. It is foreseeable that they could be contacted, and asked intrusive questions by reporters looking for information that these private individuals obviously have no knowledge about. They may suffer the additional indignity of then having to pay for these calls.

The appellant disagrees with the Ministry's position. He submits:

I was extremely surprised by the government's objection to the release of the government cellular phone numbers. I thought it was clear I am interested in them for what they might tell me about September 1995. I have absolutely no interest in who has them now, but I am very interested in who had them seven years ago.

This is much like how a library or archives keeps old city directories. They're useful for a snapshot of a particular time in history. Obviously, I would not consult a 1995 street directory for 2002 information. I would consult one, however, for 1995 information.

In responding to the Ministry's representations, the appellant states:

I also find it odd that [the Ministry is] worried about us asking intrusive questions of the people who now hold the telephone numbers. What possible interest could it be for [the appellant's employer] to know about people who have received the

phone numbers since the Ipperwash violence? I also find it bizarre that they say they're worried about these people being called, and then admit that they themselves have called some of these people. I repeat, and this should be painfully clear, that I am interested in these numbers for what they reveal about the night of September 6, 1995.

... If for some reason, and I cannot see how this would happen, there are any cell phone charges to people who have gotten the numbers since 1995, I personally promise to pay the charges.

## **Findings**

I do not accept the Ministry's position.

The Ministry has not alleged, let alone established, that I denied any party procedural fairness during my inquiry, nor that I either failed to take into account relevant information that was before me or took into account irrelevant considerations in reaching my decisions. In my view, the Ministry is simply attempting to raise new evidence that could have been produced during the course of my inquiry, had it chosen to do so. Although in certain circumstances it may be appropriate to reconsider a decision based on new evidence, particularly where the mandatory personal privacy or commercial information exemptions could be at issue, in my view, these circumstances are not present here. For these reasons, I find that the Ministry has failed to establish a fundamental defect in the adjudication process leading to Interim Order PO-2054-I.

Even if I were to accept that there was an adjudicative defect in my order, I would not be inclined to reconsider my decision based on the new information provided by the Ministry in any event.

In that regard, I agree with the appellant that the records at issue here should be reviewed in the context in which they were created. As I determined in Interim Order PO-2054-I, the cellular phones assigned to various government officials, and presumably paid for with public funds, do not qualify as "personal information" under the *Act*. These phones belong to the government, and their use as reflected in publicly accessible records is a matter of public accountability. In my view, the appellant's analogy to archived address directories is an appropriate one. The cellular phones assigned to public officials in 1995 is a matter of historical record and potential significance in the circumstances. The subsequent re-assignment of these phone numbers is, in my view, an irrelevant consideration in the context of this appeal.

In its representations, the Ministry states that some of the cellular phone numbers have been re-assigned to "corporate entities". Clearly, corporate entities do not have privacy rights under the *Act*, and the Ministry's arguments in this regard are groundless. As far as the Ministry's position that other cellular phone numbers have been re-assigned to "private sector individuals" is concerned, the Ministry provides no details about these individuals, or even which of the various numbers fit this category. In my view, bald assertions of this nature are not sufficient to justify a reconsideration of my decision in the context of this appeal.

Therefore, I find that there is no defect in the adjudication process as it relates to the treatment of the cellular phone numbers on pages 53, 54, 63 and 64 in Provision 1 of Interim Order

PO-2054-I. Accordingly, I uphold my decision as it relates to these records, and order the Ministry to disclose the cellular phone numbers on pages 53, 54, 63 and 64 to the appellant by **December 19, 2002**.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

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December 12, 2002