



**Information and Privacy
Commissioner/Ontario**

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

Reconsideration Order MO-2400-R

Appeal MA07-58

Order MO-2367

City of Toronto



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

BACKGROUND:

This order sets out my decision on a reconsideration request from the City of Toronto (the City) stemming from Order MO-2367, issued November 25, 2008.

The City received a large number of requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a single requester seeking access to information relating to sign inspection records for various properties in Toronto.

Order MO-2367 related to a number of requests submitted by the requester, specifically, Request Number 06-4120 and Request Numbers 06-4690 through 06-4868.

The City issued fee estimates for the processing of Request Number 06-4120 and Request Numbers 06-4690 through 06-4868. The requester's appeal of the City's fee estimates formed the basis of Order MO-2367. By Order Provision 2 of Order MO-2367, I ordered the City to issue a final access decision for Request Number 06-4120. Specifically, I stated:

I order the City to issue a final access decision for Request Number 06-4120 by January 5, 2009. The final access decision should identify any exemptions that apply to the responsive records and detail the total fee to be charged, including any preparation and photocopy fees. The City should also clearly identify the remaining amount that is owed by the appellant.

This Order Provision forms the basis for this reconsideration order.

REQUEST FOR RECONSIDERATION:

After I issued Order MO-2367 I received separate reconsideration requests from both the appellant and the City. The City requested that I reconsider my decision and that I stay the operation of the order pending the final disposition of its reconsideration. On January 6, 2009, I granted an interim stay of Order MO-2367.

I dismissed the appellant's reconsideration request in a letter to him dated March 5, 2009.

The City's reconsideration request related to three of the Order Provisions in Order MO-2367. In a letter dated March 5, 2009, I dismissed the reconsideration of two of the three Order Provisions. This reconsideration order disposes of the final aspect of the City's reconsideration request: Order Provision 2.

DISCUSSION:

THE RECONSIDERATION PROCESS

Section 18 of the IPC's *Code of Procedure* sets out the grounds upon which the Commissioner's office may reconsider an order. Sections 18.01 and 18.02 of the *Code of Procedure* state as follows:

18.01 The IPC 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.

GROUND FOR THE RECONSIDERATION REQUEST

In the circumstances of this case, the grounds upon which the City bases its reconsideration request are paragraph (a) and (b) of section 18.01; that is, there was a fundamental defect in the adjudication process or some other jurisdictional defect in the decision. As noted above, the portion of the City's reconsideration request that I have yet to address relates to Order Provision 2.

The City submits that Order Provision 2 was premised on assumptions which the parties were not invited to make representations on. Specifically, the City argues that in Order Provision 2, I assumed that the appellant requested the continued processing of Request Number 06-4120. It also submits that I assumed that the payment of a fee estimate deposit by a requester obligates an institution to undertake further work regardless of whether or not the requestor wishes the institution to continue with the request.

The City request that Order Provision 2 be stricken in its entirety from Order MO-2367.

ANALYSIS

In assessing the merits of the City's reconsideration request, I have taken into account the provisions of sections 18.01 and 18.02 of the *Code of Procedure*, I have reviewed the original representations filed by the City and the appellant during the inquiry process, as well as the representations made by the City in its reconsideration request. In reviewing this information, together with my findings in Order MO-2367, I am persuaded that I erred in ordering the City to issue a final access decision for Request Number 06-4120. I find that this error constitutes a fundamental defect in the adjudication process, thereby meeting the ground for reconsideration outlined in section 18.01(a) of the *Code of Procedure*.

In its representations, both during the inquiry process and in its request for reconsideration, the City submits that it was unclear whether the appellant had actually requested that Request Number 06-4120 be closed and that the City eventually closed the request on the basis that it had been abandoned. Although this submission does not, in and of itself, indicate that the appellant no longer wished to pursue access to the records responsive to Request Number 06-4120, on my review of the appellant's representations submitted during the inquiry process he quotes from an email he sent to the City of Toronto on January 11, 2007. In that email the appellant specifically requests that Request Number 06-4120 be closed.

In my view, the appellant's representations indicate that he clearly requested that Request Number 06-4120 be closed. Therefore, I find that I erred in ordering the City to issue a final access decision for that request and that my finding amounts to a fundamental defect in the adjudication process. Accordingly, I allow the reconsideration and will rescind Order Provision 2 of Order MO-2367.

ORDER:

1. I order the interim stay granted on January 6, 2009 with respect to Order MO-2367 be lifted.
2. I hereby rescind Order Provision 2 of Order MO-2367.
3. I order the City to comply with Order Provisions 3 and 5 of Order MO-2367 by **April 17, 2009**.

Original signed by: _____
Catherine Corban
Adjudicator

_____ March 13, 2009