Information and Privacy Commissioner,
Ontario, Canada

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

RECONSIDERATION ORDER MO-3692-R

Appeal MA16-261

Ottawa Police Services Board

November 27, 2018

Summary: The appellant requested a reconsideration of specific issues that were disposed of in Order MO-3682. In particular, the appellant seeks a reconsideration of the adjudicator's finding that the majority of the record at issue, a police occurrence report, contained the personal information of a significant number of identifiable individuals, which was exempt under section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), and that the public interest override in section 16 did not apply to the exempt personal information. In this Reconsideration Order, the adjudicator finds that the appellant did not establish that grounds exist under section 18.01 of the IPC's *Code of Procedure* for reconsidering Order MO-3682, and denies the reconsideration request.

Statutes Considered: The IPC's *Code of Procedure*, sections 18.01 and 18.02.

OVERVIEW:

[1] This reconsideration order arises as a result of an appeal of an access decision made by the Ottawa Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to all general occurrence reports in relation to a high profile incident in Ottawa, Ontario, which resulted in the death of the victim as well as the alleged perpetrator.

[2] The police located a responsive record and issued a decision letter, denying access to the record in its entirety and claiming a number of exemptions, including the mandatory personal privacy exemption in section 14(1). During the mediation of the

appeal, the appellant raised the possible application of the public interest override in section 16.

[3] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. I conducted an inquiry and on October 30, 2018, I issued Order MO-3682. In that order, among other issues, I found that the majority of the record contained the personal information of several identifiable individuals, which was exempt under section 14(1) and that the public interest override in section 16 did not apply to the exempt personal information.

[4] On November 19, 2018, I received a reconsideration request from the appellant, seeking a reconsideration of my findings regarding the issues of what information qualifies as personal information, as defined in section 2(1) of the *Act*, the severing of personal information and the application of the public interest override in section 16. I did not seek responding representations from the police.

[5] For the reasons that follow, in this reconsideration order, I find that the appellant did not establish the grounds for reconsideration under section 18.01 of the IPC's *Code of Procedure* (the *Code*), and I deny the reconsideration request.

DISCUSSION:

Are there grounds under section 18.01 of this office's *Code of Procedure* to reconsider Order MO-3682?

[6] This office's reconsideration process is set out in section 18.01 of the *Code of Procedure* (the *Code*) which applies to appeals under the *Act*. Sections 18.01 and 18.02 state:

> 18.01 The IPC may reconsider an order or other decision where it is established that there is:
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> (a) a fundamental defect in the adjudication process;
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> (b) some other jurisdictional defect in the decision; or
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> (c) a clerical error, accidental error or other similar error in the decision.
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> 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.

The appellant's submissions

Personal information

[7] The appellant submits that there are fundamental flaws in the adjudication of this appeal relating to the interpretation of "personal information" and "information." In particular, the appellant argues that my finding that personal information "includes the actions and observations of the witnesses leading up to and following the incident . . ." implies that each and every observation and action of a witness is personal information, an implication which the definition of personal information in section 2(1) does not support.

[8] The appellant reiterates that he is not seeking explicitly personal information about witnesses, such as their names, address, etc., and that he has suggested such information be severed from the record. The appellant submits that he finds it hard to believe that personal information so permeates the 1056 pages of the record, such that only 11 pages can be disclosed.

[9] The appellant also refers to some of the purposes of the *Act*, which is that information should be available to the public, and exemptions should be limited and specific. He further argues that by severing the record, i.e., removing the personal information, another purpose of the *Act*, namely the protection of personal privacy, would be achieved.

[10] Lastly, the appellant submits that the police reports that have been released in connection with the incident had many severances, but they were not rendered meaningless.

The public interest override

[11] The appellant argues that in the representations he submitted during the inquiry, he provided examples of deficiencies and contradictions in the police reports on the topic that prevent citizens from making sound, independent and knowledgeable judgments about the actions of government and its agencies. He also submits that he provided examples of deficiencies in media reports of the incident where "time constraints, poor methodology and sensationalism resulted in egregious mistakes in the accounts dealing with [the incident]."

[12] The appellant goes on to state:

> In Paragraph 91 of the Order the Adjudicator dismisses my concerns, and my argument that quality, not just quantity, of information is relevant to this discussion. The Adjudicator's method of procedure appears to imply that Canadian civil society should accept what the media and the police say without question. In effect, "information" is held to include

> "misinformation." Not only do I find this an insult to the intelligence of the Canadian public, I also feel it violates the clear and natural meaning of the word "information" in the *Act*, a purpose of which, according to section 1(a)i, is to "provide a right of access to information under the control of institutions in accordance with the principles that information should be available to the public."

[13] Lastly, the appellant argues that the *Act* does not contemplate the media fulfilling the responsibilities of a responding institution, such as the police, to make information available to the public, and that he seeks access to primary sources of information, rather than information from flawed, and in some cases misleading secondary sources.

Analysis and findings

[14] Before I make a determination regarding the appellant's reconsideration request, for ease of reference, I refer to my findings in Order MO-3682. In making the finding that the record contained personal information, I stated:

> I find upon my review of the record that all of it, with the exception of some of the pages identified as "Forensic Action" and "Related Property Reports," contain the personal information of numerous identifiable individuals.
>
> *Witnesses*
>
> With respect to the witnesses to the incident, including individuals who did not actually witness the incident but who intervened following the incident, I make the following findings. The record contains identifiable information relating to these individuals' sex, and in some cases, marital or family status, falling within paragraph (a) of the definition of personal information in section 2(1) of the *Act*. In addition, the record contains information relating to these individuals' addresses and telephone numbers, which qualifies as personal information under paragraph (d) of the definition. Other personal information about these individuals in the record includes their personal opinions and views, falling within paragraph (e) of the definition. Lastly, the record contains the individuals' names where it appears with other personal information relating to them, which qualifies as personal information under paragraph (h) of the definition of personal information. This personal information, I find, includes the actions and observations of the witnesses leading up to and following the incident that is the subject matter of the record.
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> *The alleged perpetrator*

I find that the record contains an extensive amount of personal information about the alleged perpetrator, including the views or opinions of other individuals about him, which falls within paragraph (g) of the definition of personal information, as well as his name where it appears with other personal information relating to him, or where the disclosure of his name would reveal other personal information about him, which qualifies as personal information under paragraph (h) of the definition.

The victim

I find that the record also contains an extensive amount of information about the victim, including information relating to his medical history, which qualifies as personal information under paragraph (b) of the definition of personal information. Further, the record contains the views or opinions of other individuals about the victim, which falls within paragraph (g) of the definition of personal information, as well as his name where it appears with other personal information relating to him, or where the disclosure of his name would reveal other personal information about him, which qualifies as personal information under paragraph (h) of the definition.

To be clear, I find that the record as a whole, with a few exceptions, contains extensive personal information about several individuals, including both the victim and the alleged perpetrator, particularly information that qualifies as personal information under paragraph (h) of the definition. I find that the descriptions of the incident as it relates to the victim and the alleged perpetrator qualifies as the personal information of the victim and the alleged perpetrator. In other words, the record by and large, with a few exceptions, is about those two identifiable individuals, and qualifies as their personal information. I also note that section 2(2), which states that personal information does not include information about an individual who has been dead for more than thirty years, does not apply in these circumstances as the deceased individuals that form the subject matter of the request have not been dead for more than thirty years.

The appellant

The record does not contain the appellant's personal information.

[15] I then went on to find that the personal information contained in the record was exempt from disclosure under the mandatory exemption in section 14(1), and that the personal information in the record could not be severed, stating:

> The appellant has stated in his representations that he is not seeking access to individuals' personal information, and that any personal information that is contained in the record can be severed. I have already found on my review of the record that the entire record, with a few exceptions, consists of the personal information of the victim, the alleged perpetrator and other individuals. I also find that the breadth of personal information contained in the record, if severed, would result in only the disclosure of meaningless snippets of information to the appellant. On that basis, I find that it is not reasonable to sever the pages of the record that contain exempt personal information.

[16] With respect to the possible application of the public interest override in section 16, I found that it did not apply, stating:

> I find in the circumstances that there is not a compelling public interest in the disclosure of the personal information contained in the record. While I find that there is a compelling public interest in the incident that is the subject matter of the request, I agree with the police that a significant amount of information has already been disclosed and this information is adequate to address any public interest considerations, and that there has already been wide public coverage or debate of both the incident and its ramifications. The appellant admits that there has been extensive media coverage of the incident, although he takes issue with the quality of the coverage.
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> The appellant's position is that the information contained in the records may shed light on the Canadian Government's actions, notably its justification of Bill C-51, which increased police powers at the expense of civil liberties, as well as knowing how warnings of violent attacks issued by Canadian intelligence and security agencies are used by police to protect citizens. On my review of the record, I find that the record does not respond to the issues raised by appellant, and that the record would not shed further light on the actions of the Canadian Government, Canadian intelligence and security agencies, or the police as it relates to the aforementioned government actions.
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> . . .
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> Even if I found that there was a compelling public interest in the disclosure of the personal information contained in the record, I find that the purpose of the personal privacy exemption in section 14(1) outweighs the compelling public interest in this instance. As I found previously, the record contains extensive and sensitive personal information. In my view, the privacy interests in this appeal are at the higher end of relative

> seriousness and sensitivity, and outweigh the public interest in the disclosure of the record.

[17] The reconsideration process set out in the IPC's *Code* is not intended to provide parties with a forum to re-argue their appeals. In Reconsideration Order PO-2538-R, former Adjudicator John Higgins reviewed the case law regarding an administrative tribunal's power of reconsideration, including the Supreme Court of Canada's decision in *Chandler v. Alberta Assn. of Architects*.[1] With respect to the reconsideration request before him, former Senior Adjudicator Higgins concluded that:

> [T]he parties requesting reconsideration . . . argue that my interpretation of the facts, and the resulting legal conclusions, are incorrect . . . In my view, these arguments do not fit within any of the criteria enunciated in section 18.01 of the *Code of Procedure*, which are based on the common law set out in *Chandler* and other leading cases such as *Grier v. Metro International Trucks Ltd.*[2]
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> On the contrary, I conclude that these grounds for reconsideration amount to no more than a disagreement with my decision, and an attempt to re-litigate these issues to obtain a decision more agreeable to the LCBO and the affected party . . . As Justice Sopinka comments in *Chandler*, "there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals." I have concluded that this rationale applies here.

[18] The approach taken by former Senior Adjudicator Higgins has been adopted and applied in subsequent orders of this office,[3] and I find that it applies equally in this case. I find that the appellant's arguments in his reconsideration request are an attempt to re-argue the appeal. Most of the arguments the appellant made in his reconsideration request are ones he made to me during the inquiry.

[19] The appellant did not provide any new information that would lead me to a different conclusion on the depth, breadth and co-mingling of personal information (within the meaning of its definition in section 2(1) of the *Act*) contained in the police occurrence report. As I stated in Order MO-3682, the record contains the personal information of not only several identifiable individuals, but also the descriptions of the incident as it relates to the victim and the alleged perpetrator, qualifying as the personal information of the victim and the alleged perpetrator. In other words, the record by and large, with a few exceptions, is about those two identifiable individuals, and qualifies as their personal information. The appellant's arguments on the issue of

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[1] [1989] 2 SCR 848 (*Chandler*).
[2] 1996 CanLII 11795 (ON SC).
[3] Orders PO-3558-R, PO-3062-R, MO-3478-R, MO-3584-R and PO-3876-R.

the extent of personal information and its severability do not lead me to come to a different conclusion.

[20] Concerning my finding in Order MO-3682 that the public interest override in section 16 did not apply to the personal information that is exempt under section 14(1), again, the appellant did not provide any new information that would lead me to a different conclusion. As I stated in Order MO-3682, on my review of the record, I found it did not respond to the issues raised by appellant, and that the record would not shed further light on the actions of the Canadian Government, Canadian intelligence and security agencies, or the police as it relates to the aforementioned government actions.

[21] In conclusion, having reviewed the appellant's reconsideration request, and his representations provided during the inquiry of this appeal, I find that there was no fundamental defect in this office's adjudication process. In addition, I find that there is no other jurisdictional defect in Order MO-3682. Lastly, I find that there is no clerical error, accidental error or omission, or other similar error in Order MO-3682. Therefore, I find that the appellant's reconsideration request does not establish any of the grounds upon which this office may reconsider a decision.

ORDER:

I deny the appellant's reconsideration request.

Original Signed by: November 27, 2018
Cathy Hamilton
Adjudicator