

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-3730-R

Order MO-3708

Appeal MA17-482

Township of Oro-Medonte

January 31, 2019

Summary: The appellant requested a reconsideration of Order MO-3708 on the basis that there is an error or omission in the decision because it does not address the purpose for which the disclosed records may be utilized. In this Reconsideration Order, the adjudicator finds that the appellant has not established that grounds for reconsidering Order MO-3708 exist under section 18.01(c) of the IPC's *Code of Procedure*, and she denies the reconsideration request.

Statutes Considered: IPC *Code of Procedure*, section 18.01(c).

Orders and Investigation Reports Considered: Orders PO-2018, PO-2538-R, and MO-3708.

Cases considered: *Chandler v. Alberta Association of Architects*, [1989] 2 SCR 848 (S.C.C.).

OVERVIEW:

[1] This reconsideration order is issued regarding Order MO-3708, which arose as a result of an appeal of an access decision made by the Township of Oro-Medonte (the township) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to an engineering company's sound level and data duration reports from two specified music festivals that took place in 2016, as well as a consultant's peer review of the same.

[2] The township identified responsive records and, after notifying three affected

parties, issued a decision granting the requester access to the records in full. The township notified the affected parties of its decision to disclose the information and of their right to appeal.

[3] One of the affected parties, the organization that hosted the two events, appealed the township's decision on the basis of its view that section 10(1) (third party information) of the *Act* applied, thereby becoming the appellant in Appeal MA17-482. Mediation did not resolve the appeal, and it was moved to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry.

[4] I conducted an inquiry, during which the personal privacy exemption at section 14(1) of the *Act* was added as an issue and additional affected parties were notified of the appeal. On December 18, 2018, I issued Order MO-3708. In that order, I found that portions of two records are exempt under sections 10(1)(a), 10(1)(c), and 14(1), but that the remainder of the records are not exempt and must be disclosed to the requester.

[5] On January 25, 2019, I received a reconsideration request from the appellant. The appellant seeks a reconsideration of Order MO-3708 pursuant to section 18.01(c) of the IPC's *Code of Procedure* (the *Code*), on the basis that there is an "omission in the decision" because it does not address the purpose for which the disclosed records may be used by the requester.

[6] For the reasons that follow, I find that the appellant has not established grounds for reconsideration under section 18.01(c) of the *Code*, and I deny the reconsideration request.

DISCUSSION:

Are there grounds under section 18.01(c) of this office's *Code of Procedure* to reconsider Order MO-3708?

[7] This office's reconsideration process is set out in sections 18.01 and 18.02 of the *Code of Procedure*, which applies to appeals under the *Act*. These sections state:

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 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.

The appellant's reconsideration request

[8] The appellant accepts my findings in Order MO-3708 with respect to the applicability of section 14(1) of the *Act*,¹ but seeks a reconsideration of the order provisions requiring partial disclosure of the records on the basis that they do not address the purposes for which the records may be used.

[9] The appellant refers me to the requester's submissions during my inquiry into Appeal MA17-482. The appellant maintains that the requester sought access to the records because he is interested in the "observations, results and conclusions" they contain. Moreover, the appellant maintains that the requester sought access for the purpose of measuring "success, compliance with recommendations and progress to goals." The appellant argues that the requester does not require information about the purpose of the sound monitoring program, nor does he have an interest in the materials and methods employed during the sound monitoring program.

[10] The appellant submits that despite the requester's purported reasons for his request, Order MO-3708 is silent on the purpose for which the records may be utilized. Accordingly, the appellant seeks a reconsideration of the decision pursuant to section 18.01(c) of the *Code* on the basis that there is an omission in the decision.

[11] The appellant maintains that I must consider the overall context in which they have legitimately sought approvals from the township and other institutions, each of which, they submit, has been "aggressively resisted" by the requester and his associates. The appellant submits that the Local Planning Appeal Tribunal and the Licence Appeal Tribunal have found the requester and his associates' concerns to be "unsupported by the facts." Further, the appellant takes the position that allowing the records to be used in subsequent unrelated proceedings would be contrary to the principle of judicial economy and an abuse of process.

[12] On this basis, the appellant requests that Order MO-3708 be reconsidered to restrict the use of the records I have ordered disclosed for the purposes identified by the requester in his submissions. Specifically, the appellant requests that direction be provided indicating that the requester may only use the disclosed records for the purpose of comparative analysis and research, and not for any other objective, or other legal or adjudicative proceeding.

¹ The appellant's reconsideration request does not specifically address my findings with respect to section 10(1)(a) or 10(1)(c) of the *Act*.

Analysis and findings

[13] To begin, I observe that the reconsideration process set out in this office's *Code* is not intended to provide parties with a forum to re-argue their cases. In Order PO-2538-R, 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 Association of Architects*.² With respect to the reconsideration request before him, he 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 Toronto Trucks Ltd.*]³

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.

[14] Adjudicator Higgins' approach has been adopted and applied in subsequent orders of this office.⁴ In Order PO-3062-R, for example, Adjudicator Daphne Loukidelis was asked to reconsider her finding that the discretionary exemption in section 18 of the *Act* did not apply to information in records at issue in that appeal. She determined that the institution's request for reconsideration did not fit within any of the grounds for reconsideration set out in section 18.01 of the *Code*, stating as follows:

It ought to be stated up front that the reconsideration process established by this office is not intended to provide a forum for re-arguing or substantiating arguments made (or not) during the inquiry into the appeal...

[15] In my view, the appellant's arguments in this case are a clear attempt to re-argue the appeal. The appellant did not submit during the initial inquiry that I ought to place limits on the purposes for which the requester can use the records. As established by section 18.02 of the *Code*, this office will not reconsider a decision simply on the

² [1989] 2 SCR 848 (S.C.C.).

³ 1996 CanLII 11795 (ON SC), 28 O.R. (3d) 67 (Div. Ct.).

⁴ See, for example, Orders MO-3478-R, PO-3062-R and PO-3558-R.

basis that new evidence is provided, whether or not that evidence was available at the time of the decision. Here, the appellant is raising a new argument that they could have made during my inquiry.

[16] In any event, for the following reasons, I would not have accepted the appellant's submission that I ought to place restrictions on the requester's use of the disclosed information.

[17] In the case before me, the appellant has not expressly taken issue with my findings on the application of sections 10(1)(a), 10(1)(c), or 14(1) of the *Act*. Rather, the appellant takes issue with the fact that Order MO-3708 does not specify any terms or limitations under which the records I have ordered to be disclosed may be used by the requester.

[18] In Order PO-2018, Assistant Commissioner Adjudicator Sherry Liang considered a request by an affected party to place restrictions on the use of information contained in the records at issue in the event that they be ordered disclosed. In addressing this request, she stated:

It has been said in prior orders that disclosure of general records under the *Act* is considered to be "disclosure to the world" (see Orders MO-1243 and P-1499, for example). There is no authority for conditional disclosure under the *Act*, save for the provisions in section 21(1)(e), relating to disclosure for research purposes, which do not apply here.

[19] This approach has been affirmed and followed in subsequent decisions,⁵ and I adopt it for the purpose of this reconsideration request. While the appellant seeks restrictions imposed on the ways in which the requester may use the records, the limited grounds for imposing conditions on the use of disclosed records under section 14(1)(e) of the *Act*⁶ are not applicable in the circumstances of this appeal. Therefore, disclosure under the *Act* is effectively disclosure to the world. In other words, a party receiving disclosure under the *Act* may do what they wish with the records, subject to any restrictions imposed by law, other than the *Act*.

[20] Having reviewed the appellant's reconsideration request and representations, I find that there is no clerical error, accidental error or omission, or other similar error in Order MO-3708. Accordingly, I find that the appellant's reconsideration request does not establish a basis under section 18.01(c) upon which this office may reconsider a decision.

⁵ See, for example, Orders MO-3657 and PO-3140.

⁶ This is the municipal equivalent to section 21(1)(e) of the *Freedom of Information and Protection of Privacy Act* referred to in Order PO-2018.

ORDER:

1. I deny the appellant's reconsideration request.
2. I lift the interim stay of Order MO-3708 and order the township to disclose the records in accordance with that decision to the original requester no later by **March 8, 2019**, but not before **March 1, 2018**.

Original signed by: _____

Jaime Cardy
Adjudicator

February 8, 2019 _____