

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-3767-R

Appeals MA18-200 and MA18-202

Order MO-3720

Peel Regional Police Services Board

May 8, 2019

Summary: The appellant requested a reconsideration of Order MO-3720 on the basis that there is a fundamental defect, a jurisdictional defect, and a clerical or other error or omission in the order, as contemplated by sections 18.01(a), (b), and (c), respectively, of the IPC's *Code of Procedure*. In this Reconsideration Order, the adjudicator finds that the appellant has not established the grounds for reconsidering Order MO-3720 under section 18.01 of the *Code*, and she denies the reconsideration request.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 41(13); *IPC Code of Procedure*, sections 7.03, 7.04, 7.05, 18.01(a), (b), and (c).

Orders and Investigation Reports Considered: Orders PO-2538-R, PO-3062-R, and MO-3720.

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-3720, which arose as a result of an individual appealing decisions issued by the Peel Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). In those decisions, the police refused to make certain corrections to incident reports requested by the individual under section 36(2) of the *Act*. The

correction requests related to two separate incidents. With respect to the first incident, the appellant sought correction of her date of birth, the listed "involved persons," the date of a marital separation, the incident date and time, and references to her mental health status and behavior. Regarding the second incident, the appellant sought correction of her date of birth, the use of the word "alias," and references to her mental health status and behaviour.

[2] The police's decision was to grant the correction requests, in part. The police also advised that a statement of disagreement could be attached to the records pursuant to section 36(2)(b) reflecting any corrections that were requested but not made. The appellant declined the offer of attaching a statement of disagreement to the records, and appealed the police's decision to this office, resulting in Appeals MA18-200¹ and MA18-202.²

[3] I conducted a joint inquiry into the appeals and issued Order MO-3720 on January 17, 2019. In Order MO-3720, I upheld the police's decision on the basis that the information at issue in both appeals is not "inexact, incomplete, or ambiguous,"³ and that the requested corrections would constitute a substitution of the officers' opinions with the appellant's.

[4] On February 6, 2019, I received a reconsideration request from the appellant. The appellant seeks a reconsideration of Order MO-3720 pursuant to sections 18.01(a), (b), and (c) of the IPC's *Code of Procedure* (the *Code*). For the reasons that follow, I find that the appellant has not established grounds for reconsideration under section 18.01 of the *Code*, and I deny the reconsideration request.

DISCUSSION:

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-3720?

[5] This office's reconsideration process is set out in sections 18.01 and 18.02 of the *Code*, 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;

¹ At issue in Appeal MA18-200 were police officer notes relating to the two incidents.

² At issue in Appeal MA18-202 were police occurrence reports relating to the two incidents.

³ See section 36(2) of the *Act* and Orders P-186 and P-382.

(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.

[6] The reconsideration process set out in the *Code* is not intended to provide parties with a forum to re-argue their cases. In Order PO-2538-R, Senior 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*.⁴ 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.*]⁵

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.

[7] The senior adjudicator's approach has been adopted and applied in subsequent orders of this office.⁶ 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

⁴ [1989] 2 SCR 848 (S.C.C.).

⁵ 1996 CanLII 11795 (ON SC), 28 O.R. (3d) 67 (Div. Ct.).

⁶ See, for example, Orders MO-3478-R, PO-3062-R, and PO-3558-R.

substantiating arguments made (or not) during the inquiry into the appeal...

The appellant's reconsideration request

[8] The appellant's submissions address all of the grounds for reconsidering an order, as set out in section 18.01 of the *Code*. Regarding the ground under section 18.01(a) in particular, the appellant maintains that there was a fundamental defect in the adjudication process because she was not given an opportunity to respond to the police's reply representations. She maintains that she was entitled to obtain a copy of the police's representations and to provide representations in reply.

[9] The appellant also submits that she was only provided with partial access to information in one of the records and she describes her reasons for believing this to be the case.

[10] The appellant's submissions also reiterate arguments that were raised during my initial inquiry. For example, the appellant maintains that she never received a decision letter regarding her request to correct the officers' notes. She also submits that the records incorrectly reflect the incident type, the reason for the calls for service, the people involved, and the views of the individuals. She continues to maintain that references to her mental health reflect the views of individuals other than the police and she objects to the fact that police did not speak with her to verify the truth of those individuals' statements. She argues that the truth of the information in the records is "crucial," even if the records are of an investigatory nature. She also points out inconsistencies in occurrence and police file numbers that appear in the police's submissions and correspondence that was sent during the inquiry.

[11] The appellant further maintains that there was a jurisdictional defect in the decision, as considered by section 18.01(b) of the *Code*. In support of this position, she explains that the records relate to incidents that occurred during her divorce proceedings. She states that courthouse staff and other individuals gave the police false information regarding her aliases and variants for the purpose of creating a "fictional person to run their scam." The appellant suggests the incorrect information is connected to fraud involving of the sale of a specific property. She maintains that the police must delete all alias and variant references in the records in order to stop the fraud.

[12] Finally, the appellant repeats many of the submissions summarized above in support of her position that there was a clerical or accidental error or omission in the decision as contemplated by section 18.01(c) of the *Code*. She also maintains that the cover page of one of the records refers to the wrong occurrence number.

Analysis and findings

[13] In dismissing the appellant's reconsideration request, I have considered each of

the grounds set out under section 18.01 of the *Code* in turn.

[14] Section 18.01(a) of the *Code* allows this office to reconsider an order where there was a fundamental defect in the adjudication process. Past orders of this office have determined that a fundamental defect in the adjudication process may include:

- failure to notify an affected party,⁷
- failure to invite representations on the issue of invasion of privacy,⁸ or
- failure to allow for sur-reply representations where new issues or evidence are provided in reply.⁹

[15] One of the reasons the appellant submits there was a fundamental defect in the adjudication process is because I did not invite her to respond to the police's reply representations.

[16] Section 41(13) of the *Act* addresses whether parties to an appeal are entitled to provide representations for an adjudicator's consideration during an inquiry. This section states:

The person who requested access to the record, the head of the institution concerned and any other institution or person informed of the notice of appeal under subsection 39 (3) shall be given an opportunity to make representations to the Commissioner, **but no person is entitled to have access to or to comment on representations made to the Commissioner by any other person** or to be present when such representations are made. [emphasis added]

[17] While there is no right of access to the representations made in the course of an inquiry,¹⁰ procedural fairness generally requires some degree of mutual disclosure of the arguments and evidence of all parties. This is reflected in sections 7.03, 7.04, and 7.05 of the *Code*, which give adjudicators the discretion to invite additional representations from the parties if they *consider it necessary*. The *Code* does not require that representations be shared or replies sought.

[18] In conducting my inquiry in Appeals MA18-200 and MA18-202, I was satisfied that the police's reply representations adequately responded to the appellant's representations and did not raise additional issues to which the appellant should be

⁷ Orders M-774, R-980023, PO-2879-R, and PO-3062-R.

⁸ Order M-774.

⁹ Orders PO-2602-R and PO-2590.

¹⁰ Orders P-164 and P-207.

given an opportunity to respond. I determined that it was not necessary, in the interest of fairness, to invite sur-reply representations from the appellant. Accordingly, I find that the appellant's submissions do not support a finding that issuing Order MO-3720 without inviting sur-reply representations from the appellant resulted in a fundamental defect in the adjudication process.

[19] The appellant also maintains that there was a fundamental defect in the adjudication of the appeals because of inconsistencies in the occurrence and institution file numbers referenced in the police's representations and other inquiry-related correspondence. In my view, these were minor typographical errors or omissions that arose during the adjudication process. These errors or omissions were not carried over to Order MO-3720 and, even if they had been, would not amount to a "fundamental defect" in the adjudication process, as contemplated by section 18.01(a) of the *Code*. I am satisfied that they did not result in a denial of procedural fairness to any party.

[20] The appellant's concern regarding information that was allegedly withheld from the records disclosed to her is beyond the scope of the correction request at issue in Appeals MA18-200 and MA18-202, and does not fit within the ground set out under section 18.01(a) of the *Code*. This concern was also not raised during my inquiry.

[21] I consider the appellant's remaining submissions on section 18.01(a) to reflect her disagreement with my decision that the requested corrections need not be made because I found that the records reflected the officers' observations and impressions, which cannot be said to be inexact, incomplete, or ambiguous. The appellant's submissions on why this amounts to a fundamental defect in the adjudication process largely reiterate arguments that were before me during the initial inquiry, and I addressed them in Order MO-3720.¹¹ In my view, these submissions are an attempt by the appellant to re-argue the appeals, which is not a valid ground for reconsidering an order as set out in the *Code*. As noted by Senior Adjudicator Higgins in Order PO-2538-R, an appellant's objection to an adjudicator's interpretation of the facts and the resulting legal conclusions does not fit within any of the criteria set out in section 18.01 of the *Code*.

[22] Based on the above, I find that the appellant has not established that there was a fundamental defect in the adjudication process for the purpose of section 18.01(a) and I dismiss this ground for reconsideration.

[23] In support of her claim that there was a jurisdictional defect in the order as contemplated by section 18.01(b) of the *Code*, the appellant maintains that all

¹¹ For example, the appellant's objection to the classification of the occurrence as a "verbal domestic" and the police's reasons for classifying it as such are addressed in paragraphs 24 and 27 of Order MO-3720. I also addressed the appellant's concern about receiving only a "revised" decision letter at paragraph 37 of Order MO-3720.

references to aliases and variants must be deleted from the records to “stop the fraud” that the appellant alleges is occurring with respect to a specific property. In my view, these submissions do not demonstrate that there was a jurisdictional defect in Order MO-3720. Accordingly, I find that the appellant has not established that a jurisdictional defect exists and I dismiss this ground for reconsideration.

[24] Regarding the reconsideration grounds in section 18.01(c) of the *Code*, the appellant refers to typographical errors and omissions in the records she received from the police and in correspondence that was sent during the inquiry. However, those errors do not appear in Order MO-3720, did not affect the result in Order MO-3720, and the appellant has not established that there is any other clerical error, accidental error, omission, or other similar error in Order MO-3720. Accordingly, I dismiss this ground for reconsideration.

[25] Having considered the appellant’s reconsideration request and representations, I find that she has not established the grounds for reconsideration under sections 18.01(a), (b), or (c) of the *Code*. Therefore, there is no basis upon which this office may reconsider Order MO-3720.

ORDER:

I deny the appellant’s reconsideration request.

Original Signed by: _____
Jaime Cardy
Adjudicator

_____ May 8, 2019