

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-3859-R

Appeal MA18-487

Order MO-3842

Chatham-Kent Police Services Board

November 8, 2019

Summary: The Chatham-Kent Police Service requested a reconsideration of Order MO-3842 on the basis that there was an error or omission in the decision, as contemplated by section 18.01(c) of the IPC's *Code of Procedure*. In this Reconsideration Order, the adjudicator finds that the police have not established the grounds for reconsidering Order MO-3842 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; *IPC Code of Procedure*, section 18.01(c).

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

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-3842, which arose as a result of an individual appealing a decision issued by the Chatham-Kent Police Service (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The appellant sought access to a record indicating the total number of firearms that the police have, which the police denied on the basis of the law enforcement exemptions in sections 8(1)(a), (e), (i), (j), and (l), and the danger to health or safety exemption at section 13 of the *Act*.

[2] I conducted an inquiry and issued Order MO-3842 on September 25, 2019. In that order, I found that the exemptions relied on by the police were not applicable in the circumstances. I ordered the police to disclose the record at issue to the appellant.

[3] On October 21, 2019, I received a reconsideration request from the police. The police sought a reconsideration of Order MO-3842 under section 18.01(c) of the IPC's *Code of Procedure* (the *Code*). I invited and received submissions from the police in support of their request.

[4] For the reasons that follow, I find that the police have not established the grounds for a reconsideration under section 18.01 of the *Code*, and I deny the request.

DISCUSSION:

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-3842?

[5] This office's reconsideration process is set out in section 18 of the *Code*, which applies to appeals under the *Act*. Sections 18.01 and 18.02, in particular, set out the following grounds for requesting that a decision be reconsidered:

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.

The police's reconsideration request

[6] The police requested that their representations in support of their reconsideration request remain confidential; however, they provided consent for me to summarize portions, as required, in order to explain my decision on the request before me. While I will not set out the specific details in support of the police's request in this order, I have considered them in reaching my conclusions.

[7] The police base their reconsideration request on the ground set out in section 18.01(c) of the *Code*, which permits a reconsideration of an order where there is "a clerical error, accidental error or omission or other similar error in the decision." The

police submit that unlike a typical reconsideration request on this basis,¹ the error or omission in Order MO-3842 was *theirs* because they did not include certain information in their decision letter or in the representations that they submitted during my inquiry into Appeal MA18-487. The police maintain that the additional facts that were omitted from their representations during my initial inquiry may have led to a different outcome.

[8] The police reiterate their initial submissions regarding each of the exemptions relied upon to withhold the records at issue, and then provide additional information in support of each. The additional information includes, for example, an overview of the relationship between the appellant and the police (among other municipal offices and employees), including a description of various incidents, civil actions, and communications between the parties. The police maintain that the appellant's "disdain" for the police could lead him to misuse the information at issue.

Analysis and findings

[9] To begin, I observe that 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*.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 institution] 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.

[10] The senior adjudicator's approach has been adopted and applied in subsequent

¹ See, for example, Orders MO-3546-R, MO-3219-R, and PO-3522-R.

² [1989] 2 SCR 848 (S.C.C.).

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

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...

[11] In my view, the police's reconsideration representations are a clear attempt to re-argue the appeal. The police have raised new evidence in support of their reliance on the exemptions in sections 8 and 13, some of which they could have submitted during my inquiry. I note that the police's initial representations were submitted in November 2018. While the police's reconsideration representations refer to some incidents or communications that occurred after November 2018, that is not true for all of the additional information relied upon in support of their reconsideration request. Regardless, section 18.02 of the *Code* states that this office 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*. Therefore, the additional evidence relied on by the police in support of their reconsideration request is not sufficient to establish a basis for reconsidering Order MO-3842.

[12] In any event, I would not have accepted the police's submission that *their* failure to put certain evidence before me during my initial inquiry amounts to a "clerical error, accidental error or omission or other similar error in the decision" as contemplated by section 18.01(c) of the *Code*. This would put section 18.01(c) in conflict with section 18.02, which specifically states that new evidence is not a ground for reconsidering a decision.

[13] As the police have not established that there is a clerical error, accidental error or omission, or other similar error in Order MO-3842, I find that the police's request does not establish the ground in section 18.01(c) of the *Code*. I also find that the police's reconsideration representations do not provide any basis upon which to find that either of the other two grounds for reconsideration in section 18.01 are established. Accordingly, there is no basis upon which this office may reconsider Order MO-3842.

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

ORDER:

1. I deny the police's reconsideration request.
2. I lift the interim stay of Order MO-3842 and order the police to disclose the record at issue in accordance with that decision to the appellant by **December 9, 2019**

Original signed by: _____

Jaime Cardy
Adjudicator

November 8, 2019