

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-3930-R

Appeal MA18-00856

Order MO-3882

York Regional Police Services Board

June 16, 2020

Summary: The appellant requested a reconsideration of Order MO-3882. In Order MO-3882, the adjudicator upheld the police's decision to deny the appellant's correction request. In this Reconsideration Order, the adjudicator denies the reconsideration request as she finds that the appellant has not established that grounds exist under section 18.01 of the *Code* for reconsidering Order MO-3882.

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

Orders Considered: *Chandler v. Alberta Assn. of Architects*, [1989] 2 S.C.R. 848.

OVERVIEW:

[1] The reconsideration request relates to Order MO-3882, an order upholding the police's decision to deny the appellant's correction request under section 36(2)(a) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The York Regional Police Services Board (the police) received an access request under the *Act* for access to all reports containing the appellant's name or all reports related to the appellant. The police located responsive records and issued an access decision granting partial access to them.

[3] After receiving the records, the appellant requested corrections to all but one of the responsive records under section 36(2)(a) of the *Act*.

[4] The police issued a decision denying the requested corrections but advised the appellant of his right under section 36(2)(b) of the *Act* to require them to attach a statement of disagreement to the records. The appellant submitted a statement of disagreement to the police but also appealed the denial of correction to the responsive records.

[5] In Order MO-3882, I found that the information at issue did not qualify for correction as it did not meet all three of the requirements under section 36(2)(a) of the *Act*. As such, I upheld the police's decision to deny the correction request.

[6] The appellant then submitted a request for reconsideration of Order MO-3882. The basis for his reconsideration request is that he continues to believe the information about his mental health status in the records is inaccurate or incorrect, and, therefore, should be corrected.

[7] The appellant provided lengthy submissions.¹

[8] In this order, I find that the appellant has not established that grounds exist under section 18.01 of the *Code* for reconsidering Order MO-3882, and I deny the reconsideration request.

DISCUSSION:

[9] The sole issue is whether the appellant's reconsideration request establishes any of the grounds for reconsideration set out in section 18.01 of the *Code*. Section 18.01 sets out this office's reconsideration process.

[10] Section 18.01 and 18.02 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.

¹ I did not ask the police to provide submissions in response to the appellant's reconsideration request.

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.

[11] The reconsideration process 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 Assn. 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.*

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.

[12] Adjudicator Higgins' approach has been adopted and applied in subsequent orders of this office. In Order PO-3062-R, for example, Adjudicator Daphne Loukidelis was asked to reconsider her finding that the discretionary exemption in section 18(1) did not apply to the information in the 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...

[13] I adopt this rationale for the purposes of this reconsideration.

[14] In his reconsideration request, the appellant does not identify the specific ground in section 18.01 he is relying upon.

² [1989] 2 S.C.R. 848.

[15] It appears that he simply disagrees with my finding that the information at issue should not be corrected. He states:

At point 24 you endorse YRP TPA's to their observations to my behavior, to navigate their occurrences, as valid and accurate.

At point 25 you advocate the records captured by police accurately wrote even though are with prejudice, ambiguity and you reflect that order comprehends with your writings on point 26, 27 endorsing YRP is accurate and finest in its work.

[16] As well, the appellant argues that the individual in question never stated to the police that the appellant has a mental health issue. He argues that there is a letter from this individual stating that she never made such comments to the police about him.

... that Ms. [M] never spoke with YRP the way YRP quotes about her interactions with Police that self has schizophrenia. They were to come back with a letter to let your office know that they never made such statements to YRP, on whose grounds you believe that your findings and analysis are accurate.

... If you need the updated copy of MSH reports, you are requested to seek them from Ms. [M] who is mentioned as TPA. She called me today as well, she told me again on phone that she has never made such statements with YRP officer. They had the duty to come back and give me their letter to send them to you, which they failed to give me during Adjudication stage. I hope your gap is filled, and again YRP cheated upon your office with false representations.

[17] In my view, the appellant's reconsideration request is an attempt to re-argue his case. It is clear that the appellant believes he does not have a mental health illness. As such, he argues that there is no evidence to substantiate the police's position that he has a mental health illness. However, the police's and the individual in question's comments about his mental health status are their opinion. By trying to convince me that there is no evidence of his mental health illness, the appellant is attempting to substitute his opinion for the police's opinion. I cannot grant a correction request where it is simply a substitution of opinion. In other words, the *Act* does not allow a requester to have a person's opinion in a record corrected. The appellant is essentially repeating the arguments that he had already made during the inquiry. As stated above, such disagreements with the adjudicator's finding does not meet the requirements for reconsideration set out in section 18.01 of the *Code*.

[18] The appellant also argues that he is aware that a letter from the individual in question existed but he was unable to provide it during the inquiry. As stated in section 18.02 of the *Code*, 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

original inquiry. In any event, the appellant is again attempting to convince me that the information in the records is incorrect which is not a basis for reconsidering Order MO-3882.

[19] Furthermore, the appellant has not claimed there is a fundamental defect in the adjudication process (under section 18.01(a) of the *Code*), some other jurisdictional defect in the decision (under section 18.01(b) of the *Code*) or a clerical error, accidental error or other similar error in the decision (under section 18.01(c) of the *Code*). Moreover, based on my review of Order MO-3882 and the adjudication process leading up to it, I find that none of these grounds are present in my decision.

[20] In conclusion, having reviewed the appellant's reconsideration request and submissions, I find that he has not established that there are any grounds for reconsideration under section 18.01 of the *Code*. Accordingly, I deny his reconsideration request.

ORDER:

The appellant's reconsideration request is denied.

Original signed by _____
Lan An
Adjudicator

_____ June 16, 2020