

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-4132-R

Appeal PA17-551

Order PO-4075

Ministry of Natural Resources and Forestry

March 30, 2021

Summary: This is an IPC-initiated reconsideration to address issues raised by the Ministry of Natural Resources and Forestry regarding the records it was ordered to disclose in Order PO-4075. In this order, the adjudicator finds that there was an accidental error or omission in the decision and clarifies the record numbers associated with the records that the ministry was ordered to disclose to the requester.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, as amended, section 17(1), IPC's *Code of Procedure*, section 18.01.

Order Considered: Order PO-4075.

OVERVIEW:

[1] On October 19, 2020, I issued Order PO-4075 in which I dismissed a third party appellant's appeal of a decision by the Ministry of Natural Resources and Forestry (the ministry) to disclose certain specified records relating to a proposed hydroelectric generating facility known as the Bala Falls Project under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The third party appellant claimed that section 17(1) (third party information) of the *Act* applied to the records at issue, which were comprised of emails, correspondence, and a drawing. I disagreed and upheld the ministry's decision to disclose the records at issue to the requester.

[2] After Order PO-4075 was issued, the ministry contacted this office to explain that

it was unsure which specific records it had been ordered to disclose to the requester. The ministry advised that the numbering system it used to identify the records at issue was not the same as the numbering system used by the third party appellant. In Order PO-4075, I used the third party appellant's numbering system and the ministry advised that it did not have access to that numbering system so it could not identify which records it was ordered to disclose.

[3] The ministry also advised that some of the records that were listed as being at issue in the Notice of Inquiry it received at the beginning of the inquiry did not appear to be addressed in Order PO-4075. The ministry asked this office for clarification on how to proceed.

[4] After reviewing the appeal file, Order PO-4075, and the ministry's representations, I formed the preliminary view that I should reconsider Order PO-4075 on the basis that it contained accidental errors. I wrote to the ministry explaining this, provided the ministry with the third party appellant's index of records, and stated that it was my preliminary view that I should issue a reconsideration order as follows:

- Clarifying that the record numbers mentioned in the orders are those referred to in the third party appellant's index; and
- Ordering the disclosure of the records that the third party appellant stated it does not object to being disclosed.

[5] The ministry confirmed receipt of the third party appellant's index and advised that it resolved the confusion about the numbering of the records. However, it confirmed that it was still not clear which records the third party consented to being disclosed.

[6] For the reasons that follow, I find that Order PO-4075 should be reconsidered to rectify accidental errors regarding how the records are identified and which specific records I ordered disclosed.

DISCUSSION:

[7] The sole issue in this order is the reconsideration of Order PO-4075 to address the discrepancies in the numbering of the records and to provide the ministry with clarity on which specific records I ordered it to disclose.

[8] The rules governing a reconsideration of a decision issued by the Information and Privacy Commissioner (IPC) are set out in section 18 of the IPC's *Code of Procedure* (the *Code*). Under section 18.03 of the *Code*, the IPC may reconsider a decision at the request of a person who has an interest in the appeal or on the IPC's own initiative.

[9] Section 18.01 of the *Code* sets out the grounds for reconsideration. It states:

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.

[10] I have reviewed the records at issue in Order PO-4075, as well as all of the representations of the parties and I have concluded that there are accidental errors and omissions in Order PO-4075.¹ While none of the parties have requested that I reconsider Order PO-4075, I have determined that it is necessary to do so to provide clarity on what specific records I ordered the ministry to disclose.

[11] This reconsideration order will address the following errors and omissions in Order PO-4075:

- Certain pages of records were accidentally listed in the Notice of Inquiry sent to the parties that were, in fact, not at issue in the appeal;
- Records that I ordered disclosed did not have the appropriate numbering for the ministry identify the records; and
- I did not include a direction for the ministry to disclose specific records that the third party appellant consented to the disclosure of during the inquiry process.

[12] The Notice of Inquiry for this appeal sent to the ministry listed the following records as being at issue:

- A0302703 – pages 181-182;
- A0302733 – pages 183-184;
- A0302735 – pages 185-187;
- A0303695 – pages 1013-1014;
- A0303825 – page 1580;

¹ Order PO-4075 deals with the issues that were on appeal in appeal file number PA17-551. When I refer to the “appeal” in this order, I am referring to appeal PA17-551.

- A0303866 – pages 1769-1770;
- A0304162 – pages 2400-2548;
- A0304192 – pages 2636-2638; and
- A0304289 – pages 3085-3086.

[13] Although pages 2402, 2477 to 2478, and 2517 to 2518 of Record A0304162 were listed in the Notice of Inquiry, these pages were not at issue in the appeal. This is because the requester sought access to the records “as per the ministry’s decision.” The ministry’s decision was to disclose the responsive records in part. It withheld pages 2402, 2477 to 2478, and 2517 to 2518 of Record A0304162 pursuant to section 17(1) of the *Act*. The requester did not take issue with that decision and therefore these pages were not at issue. To be clear, I did not address these pages in Order PO-4075 and I will not order their disclosure in this reconsideration order.

[14] In Order PO-4075, I provided the following description of the records at issue, which was originally used by the third party appellant in Appendix C of its representations:

Record Number	Description	Page Numbers	Exemption(s) Claimed
1	E-mails with the ministry	181-182	Section 17(1)
2	E-mails with the ministry	183-184	Section 17(1)
3	Correspondence to the ministry re LRIA Phase 2 Application	2403-2476 2479-2516 2519-2548	Sections 16, 17(1), 18(c), (d) and (g), and 20
4	Correspondence to [a third party] enclosing drawing	2636-2638	Sections 16, 17(1), 18(c), (d) and (g), and 20

[15] I upheld the ministry’s decision that section 17(1) of the *Act* did not apply to any of the records in the chart above. I dismissed the third party appellant’s appeal and ordered the ministry to disclose the records.

[16] After receiving a copy of Order PO-4075, the ministry notified this office that it had not received a copy of the third party appellant’s representations during the inquiry process and as a result, it could not reconcile the records numbered 1 to 4 above with those listed in the Notice of Inquiry it received at the beginning of the inquiry for the appeal. As a result, the ministry said it was uncertain which records it was being ordered to disclose.

[17] To resolve this issue, I have provided a table below that displays the ministry's numbering system as well as the third party's numbering system.

Third Party Record Number	Page Numbers	Ministry Record Number
1	181-182	A0302703
2	183-184	A0302733
3	2403-2476	A0304162
3	2479-2516	A0304162
3	2519-2548	A0304162
4	2636-2638	A0304192

[18] I note that some of the records listed in the Notice of Inquiry are not listed in the table above. This is because in its representations dated August 2, 2018, the third party appellant confirmed that it no longer opposed the disclosure of the following records, which were listed as Appendix B in its representations:

- A0302735 – pages 185- 187;
- A0303695 – pages 1013 – 1014;
- A0303825 – page 1580;
- A0303866 - pages 1769-1770;
- A0304162 – pages 2400-2401; and
- A0304289 – pages 3085-3086.

[19] The ministry's decision was to disclose these records. Given that the third party no longer opposes disclosure, I will order the ministry to disclose them to the requester. To be clear, the ministry is to disclose records noted above in the table at paragraph 17, along with the records listed in paragraph 18.

ORDER:

1. I order the ministry to disclose the following records, in accordance with its original decision, to the requester by **May 4, 2021** but not before **April 30, 2021**:

- A0302703 – pages 181-182
 - A0302733 – pages 183-184
 - A0302735 – pages 185-187
 - A0303695 – pages 1013-1014
 - A0303825 – page 1580
 - A0303866 – pages 1769-1770
 - A0304162 – pages 2400-2401, 2403-2476, 2479-2516, 2519-2548
 - A0304192 – pages 2636-2638
 - A0304289 – pages 3085-3086
2. In order to verify compliance with order provision 1, I reserve the right to require the ministry to provide me with a copy of the records disclosed to the requester.
 3. The timeline noted in order provision 1 may be extended if the ministry is unable to comply in light of the current COVID-19 situation. I remain seized of the appeal to address any requests for extension.

Original signed by: _____
Meganne Cameron
Adjudicator

March 30, 2021 _____