

Information and Privacy Commissioner,  
Ontario, Canada



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

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## RECONSIDERATION ORDER MO-4055-R

Appeal MA20-00311

Order MO-4039

City of Toronto

May 26, 2021

**Summary:** The appellant requested a reconsideration of Order MO-4039. In particular, the appellant seeks a reconsideration of the adjudicator's finding upholding the City of Toronto's refusal to correct the appellant's Record of Employment. In this Reconsideration Order, the adjudicator finds that the appellant did not establish that grounds exist under section 18.01 of the IPC's Code of Procedure for reconsidering Order MO-4039 and denies the reconsideration request.

**Statutes Considered:** *IPC Code of Procedure*, sections 18.01 and 18.02.

**Cases Considered:** *Chandler v. Alberta Assn. of Architects*, 1989 CanLII 41 (SCC).

**Orders Considered:** Orders MO-4039, PO-2538-R and PO-3062-R.

### OVERVIEW:

[1] The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*), from the appellant to correct her Record of Employment. The request arose because the appellant disputed the accuracy of the information in the Record of Employment and wished for it to be changed.

[2] The city denied the request but advised the appellant of her right to attach a statement of disagreement under section 36(2)(b) of the *Act*. The appellant did not wish to attach a statement of disagreement to her Record of Employment and maintained her position that it should be corrected.

[3] In Order MO-4039, I upheld the city's decision not to correct the information at

issue in the appellant's Record of Employment.

[4] After I issued Order MO-4039, the appellant sought a reconsideration of that decision.

[5] In this order, I find that the appellant has not established any grounds for reconsidering the order. The request for reconsideration is denied.

## **DISCUSSION:**

### **Reconsideration criteria and procedure**

[6] This office's reconsideration criteria and procedure are set out in section 18 of the *Code of Procedure*. Section 18 reads in part as follows:

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.

[7] The reconsideration process set out in this office's *Code of Procedure* 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*.<sup>1</sup> With respect to the reconsideration request before him, he concluded:

[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 International Trucks Ltd.*].<sup>2</sup>

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

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<sup>1</sup> 1989 CanLII 41 (SCC).

<sup>2</sup> 1996 CanLII 11795 (Div. Ct.).

sound policy basis for recognizing the finality of proceedings before administrative tribunals." I have concluded that this rationale applies here.

[8] Adjudicator Higgins' approach has been adopted and applied in subsequent orders of this office.<sup>3</sup> 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 *Freedom of Information and Protection of Privacy Act* 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...

[9] The appellant provided the following grounds in support of her reconsideration request:

That she had received an email from the IPC advising her that the original order she received contained a sequential paragraph numbering error.

That her Record of Employment and Order MO-4039 contained an error regarding her sick leave and absence from work and why, in her view, that was an error.

That the error in her Record of Employment was based, amongst other things, on the city's erroneous opinion, and her view as to how it should be corrected.

That the city failed to correct the error in her Record of Employment.

[10] Addressing the appellant's first ground, the original copy of order MO-4039 provided to the appellant contained a sequential paragraph numbering error. When the IPC noticed that an error was made in the numbering, it sent an email to the appellant along with a corrected copy of the order. The email advised that the substance of the order had not changed, just the paragraph numbering. This is not a ground to reconsider an order.

[11] With respect to the other grounds, the appellant's initial request arose because the appellant disputed the accuracy of the information in the Record of Employment and wished for it to be changed.

[12] In Order MO-4039, I reviewed the representations provided by the parties in support of their positions, including the appellant's, who made similar arguments to the ones she provides in support of her reconsideration request. In that order, I wrote:

[16] The city explains that a Record of Employment provides information on employment history and that is the record that is used by employees to apply for Employment Insurance benefits. It adds that Service Canada uses

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<sup>3</sup> See, for example, Orders PO-3062-R and PO-3558-R.

the information to determine whether a person is eligible to receive Employment Insurance benefits.

[17] The city submits that it issued the Record of Employment because the appellant started a sick leave of absence with no pay. It explains that no new Record of Employment was issued after the appellant's resignation because she had no additional earnings to be reported.

[18] The city submits that information that the appellant wishes to have corrected is not "inexact, incomplete or ambiguous" as set out in the second requirement of the test for a correction to be granted. The city takes the position that the Record of Employment was accurate at the time that it was produced and no adjustment is needed or required. It adds that it cannot make the correction simply on the basis of the appellant's opinion.

[19] The appellant's submissions with respect to her correction request set out her position that the Record of Employment contains criminal misinformation that is without foundation and does not reflect her side of the events regarding her sick leave and resignation, which she states arose as a result of the improper environment at her workplace. She states that the content of the Record of Employment is adversely impacting her pension entitlement and her ability to work. She adds that she refuses to provide a statement of disagreement on the basis that the Record of Employment is inaccurate and should be corrected itself.

[20] I have reviewed the parties' submissions, the record at issue and have considered the information that the appellant requests to have corrected. I am satisfied that the information in the Record of Employment is based on information in the city's record holdings and reflects its understanding of the circumstances leading to the end of the appellant's employment. Therefore, I accept that the record is based on information in the city's possession and I find that it is not inexact, incomplete or ambiguous.

[21] As noted above, all three requirements of section 36(2)(b) must be met in order to qualify for a correction. As the second requirement for correction has not been met, I do not need to consider the third requirement - whether the requested correction is a substitution of opinion. Accordingly, I find that the corrections requested by the appellant do not satisfy the requirements of the three-part test for granting correction under section 36(2)(a) of the *Act*.

[22] Finally as set out above, it is not necessary for me to consider the addition of a statement of disagreement under section 36(2)(b) because the appellant does not want this to be done.

[23] As a result, I uphold the city's decision to refuse the appellant's request to have her personal information in the Record of Employment corrected.

[13] The representations the appellant provided in support of her reconsideration request, are a clear attempt to re-argue the appeal that resulted in Order MO-4039. The

substance of the arguments the appellant makes on this reconsideration request are ones that she made, or could have made to me in the adjudication of the appeal. To the extent that the appellant has provided new information, this also is not a basis for reconsidering my decision. 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. In any event, I am not satisfied that any of the material provided would alter my determinations in Order MO-4039, or otherwise be a ground for reconsidering my order.<sup>4</sup>

[14] While the appellant may disagree with my findings in Order MO-4039, she has not established that there is a fundamental defect in the adjudication process; some other jurisdictional defect in the decision; or a clerical error, accidental error or omission or other similar error in the decision. I find that the appellant has not established any of the grounds upon which I may reconsider Order MO-4039.

[15] Accordingly, the appellant's reconsideration request is denied.

**ORDER:**

The appellant's request to reconsider Order MO-4039 is denied.

Original Signed by: \_\_\_\_\_  
Steven Faughnan  
Adjudicator

\_\_\_\_\_ May 26, 2021

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<sup>4</sup> I pause to note here that section 36(2)(a) will not apply if the information consists of an opinion: see Orders P-186 and PO-2079.