

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-4129-R

Appeal MA19-00327

The Corporation of the City of Kingston

Order MO-4089

November 24, 2021

**Summary:** This order addresses the appellant's request to reconsider Order MO-4089. The appellant first made an access request to the city under the *Act* that was appealed to the IPC.

In Order MO-4089, the adjudicator partially upheld the city's decision to withhold some of the information at issue on the basis of the personal privacy exemption at section 14(1) of the *Act*. After the records were disclosed in accordance with Order MO-4089, the appellant submitted the request for reconsideration. Because the request for reconsideration was submitted after the deadline to submit such requests as set out in the IPC's *Code of Procedure*, the appellant also asked that the adjudicator extend the time period for making the request.

In this order, the adjudicator decides to consider the appellant's request despite it being filed after the deadline. However, she finds that the appellant has failed to establish that any of the grounds for reconsideration are present as required by section 18.01 of the *Code of Procedure* and she therefore denies the reconsideration request.

**Statutes Considered:** IPC *Code of Procedure*, sections 18.01, 18.02, 18.01(c), 18.04(a) and 20.01; *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O., Ch. M.56.

**Orders Considered:** Orders PO-2538-R and MO-4057-R.

**Cases Considered:** *Chandler v. Alberta Assn. of Architects* (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4th) 577 (S.C.C.).

## **OVERVIEW:**

[1] This order addresses a request that I reconsider Order MO-4089. The reconsideration request is made by the appellant, who first made an access request under the *Municipal Freedom of Information and Protection of Privacy Act*<sup>1</sup> (the *Act*) to Corporation of the City of Kingston (the city).

[2] The access request was for records relating to building permit applications for specified residential properties. The appellant was dissatisfied with the city's decision to refuse access to responsive records on a variety of grounds including that the records were excluded from the *Act* pursuant to the prosecution exclusion at section 52(2.1) and that the information was exempt on the basis of a variety of discretionary and mandatory exemptions.<sup>2</sup>

[3] In Order MO-4089, I found that the prosecution exclusion at section 52(2.1) of the *Act* did not apply. I also found that the exemptions at sections 8(1) and 12 did not apply; however, I upheld the city's decision to withhold portions of the records on the basis of the personal privacy exemption at section 14(1) of the *Act*.

[4] After the records were disclosed in accordance with Order MO-4089, the appellant submitted a request for reconsideration. Because the request for reconsideration was submitted after the deadline to submit such requests (as set out in the IPC's *Code of Procedure* (the *Code*)), the appellant also asked that I waive the requirement that the request be filed in the time period established by section 18.04 of the *Code*.

[5] I notified the city and the affected parties of the request, although I did not find it necessary to seek their views.

[6] In this order, I decide to consider the appellant's request despite it being filed after the deadline. However, I find that the appellant has failed to establish that any of the grounds for reconsideration in section 18.01 of the *Code* apply and I therefore deny the reconsideration request.

## **ISSUES:**

- A. Should I waive the requirement that the request for reconsideration be filed in accordance with the time period in section 18.04 of the *Code*?

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<sup>1</sup> R.S.O. 1990, c. M.56.

<sup>2</sup> Initially, the city claimed that sections 14(1) (personal privacy) and 8(1) (law enforcement) applied; during the inquiry, the city also claimed the application of section 12 (solicitor-client privilege).

- B. Does the request for reconsideration establish any grounds for reconsideration in section 18.01 of the *Code*?

## **DISCUSSION:**

### **Issue A. Should I waive the requirement that the request for reconsideration be filed in accordance with the time period in section 18.04 of the *Code*?**

[7] In Order MO-4089, dated July 20, 2021, I ordered as follows:

By **September 3, 2021** but not before **August 30, 2021**, I order the city to disclose to the appellant the information in the records that is not subject to section 14(1). ...

[8] According to the *Code*, a request for reconsideration must be received by the IPC before the first date specified in the order at issue (Section 18.04(a)):<sup>3</sup> in this case, August 30, 2021. The appellant filed the reconsideration request on September 22, 2021, although he inquired about how to challenge the Order shortly after he received the records from the city on August 31, 2021.

[9] In his request, the appellant explains that based on his review of Order MO-4089, the city would be disclosing to him portions of several responsive records. However, he did not realize until he saw the disclosed records which portions would be disclosed and which portions would be withheld. He says that he was therefore not in a position until August 31, 2021 – the day after the deadline – to make the reconsideration request. On these bases, the appellant requests that I exercise my discretion under section 20.01 of the *Code* to extend the timeline for filing the reconsideration request.

[10] Section 20.01 of the *Code* permits me to waive the requirements of the *Code* if to do so would be advisable in order to secure the just and expeditious determination of the issues.

[11] It is my view that in order to secure the just and expeditious determination of the issues in this appeal, it is appropriate to waive the ordinary time limit to file the reconsideration request. The appellant acted reasonably promptly after he received the records and again, after he was informed of the applicable procedure. Accordingly, I will consider the appellant's reconsideration request.

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<sup>3</sup> 18.04 A reconsideration request shall be made in writing to the individual who made the decision in question. The request must be received by the IPC:

(a) where the decision specifies that an action or actions must be taken within a particular time period or periods, before the first date specified or time period has passed; or...

**Issue B. Does the request for reconsideration establish any grounds for reconsideration in section 18.01 of the *Code*?**

[12] A reconsideration request is not an appeal nor, as will be explained below, an opportunity to make additional arguments. As a threshold matter, I must first determine whether there are sufficient grounds to reconsider Order MO-4089.

[13] The *Code* establishes how the IPC considers requests for reconsideration. The *Code* provisions are reflective of the common law pertaining to when an administrative tribunal is no longer able to re-open a proceeding after a final decision.<sup>4</sup> Order MO-4089 is a final decision.

[14] The relevant *Code* provisions are:

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.

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.

[15] The reconsideration process set out in the *Code* is not intended to provide parties with a forum to re-argue their cases.<sup>5</sup>

***Representations***

[16] The appellant submits that there is a “defect in the adjudication process and/or decision.” He says that my findings are at odds with one of the purposes of the *Act*, that exemptions from the right of access should be limited and specific.

[17] In particular, the appellant disputes my conclusion at paragraph 58 of the Order, which is:

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<sup>4</sup> This is referred to as *functus officio*. See Order PO-2538-R.

<sup>5</sup> Order PO-2538-R, citing *Chandler v. Alberta Assn. of Architects* (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4th) 577 (S.C.C.) (“*Chandler*”) and Orders PO-3062-R, PO-3558-R, MO-3975-R, MO-4004-R and MO-4057-R, as examples.

[58] However, despite this important objective [the purposes of the *Act*], based on my review of the personal information, the only scrutiny that disclosure in this appeal would advance is scrutiny over the property owners' actions, not the city's. I therefore concluded that section 14(2)(a) does not apply in this appeal.

[18] He submits that my conclusion about the impact of disclosure – “the only scrutiny that disclosure in this appeal would advance is scrutiny over the property owners' actions, not the city's” – is made without any factual evidence and based on an erroneous assumption. The appellant submits that my conclusion is a “defect” in the adjudication process or decision, and that I should have found that disclosure would advance the factor at section 14(2)(a) of the *Act*, subjecting the city to public scrutiny.

[19] The appellant refers to statements made by the Supreme Court of Canada<sup>6</sup> about the overarching purpose of access to information legislation and its ability to facilitate democracy. He argues that the principles stated by the Supreme Court of Canada supersede my findings.

[20] The appellant disputes findings that I made about whether the information in the records consists of personal information, particularly my conclusions at paragraph 35, which states:

[35] With the exception of four of them, the records pertain to whether the residential property owners are acting in compliance with the building permit or other relevant building requirements supervised by the city. These records reveal the approaches taken by, and priorities of, the property owners to comply with bylaw and permit obligations. In my view, this information reveals something personal in nature about identifiable individuals and it is personal information in that it is "recorded information about an identifiable individual."

[21] The appellant refers to my findings as “argument” and submits, referencing Order P-230, that information is only personal information if it an individual can be identified by the information. Further, he submits that my reference to “approaches” and “priorities” may refer to thoughts and if so, once put into action, such thoughts are properly subject to scrutiny.

[22] The appellant also refers to my findings at paragraph 58:

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<sup>6</sup> Although uncited, I understand the appellant to be referring to statements made in *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC).

[58] However, despite this important objective, based on my review of the personal information, the only scrutiny that disclosure in this appeal would advance is scrutiny over the property owners' actions, not the city's. I therefore concluded that section 14(2)(a) does not apply in this appeal.

[23] In relation to paragraph 58, the appellant submits that he is certain the information that I found to be exempt under section 14(1) consists information about what actions are required by the city and what actions the owners intend to take and that this information is properly subject to scrutiny and is not personal information.

[24] Lastly, the appellant argues that even if the actions of an individual could be personal information, the actions would "have to be unique and identifiable to that individual," such as their birthdate or fingerprint to qualify as "personal information" and therefore unless the actions documented in the records are unique and no one else could perform such actions, they are not personal information.

### ***Finding***

[25] For me to reconsider the Order, there must be a basis to do so that fits within one of the three grounds for reconsideration in section 18.01 of the *Code*.

#### *Reconsideration in general and the Code criteria*

[26] In Order PO-2538-R, the adjudicator reviewed the case law regarding an administrative tribunal's power to re-open a matter, including the Supreme Court of Canada's decision in *Chandler*.<sup>7</sup> With respect to the reconsideration request before him, the adjudicator in PO-2538-R 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*.<sup>[8]</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 [parties requesting reconsideration]. ... As Justice Sopinka comments in *Chandler*, "there is a sound policy basis for recognizing the finality of

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<sup>7</sup> Cited above.

<sup>8</sup> Referring to *Grier v. Metro Toronto Trucks Ltd.* (1996), 28 O.R. (3d) 67 (Div. Ct.).

proceedings before administrative tribunals." I have concluded that this rationale applies here.

[27] As observed by the adjudicator in MO-4057-R, this approach has been adopted and applied in subsequent IPC orders,<sup>9</sup> including Order PO-3062-R, where the same adjudicator affirmed that the reconsideration process established by the IPC is not intended to provide a forum for re-arguing or substantiating arguments made (or not) during the inquiry into the appeal.

[28] I have taken these principles into account when reviewing the appellant's reconsideration request.

[29] The appellant has not specifically stated which section 18.01 criterion that he believes is present. He refers, however, to a "defect" in the adjudication process, so I have considered the possible application of section 18.01(a): "a fundamental defect in the adjudication process." He does not argue that I did not have jurisdiction to make the order that I did, nor that there was any clerical or other simple mistake so I have not considered sections 18.01 (b) or (c).

[30] As summarized in Order MO-4057-R, prior IPC reconsideration orders have found that various breaches of procedural fairness may qualify as a fundamental defect in the adjudication process for the purpose of section 18.01(a) of the Code.<sup>10</sup> Examples of such breaches include failure to notify an affected party<sup>11</sup> or to invite sur-reply representations where new issues or evidence are provided in reply.<sup>12</sup> Another example of a fundamental defect is when the adjudicator overlooked material evidence contained in the record.<sup>13</sup>

[31] In my view, the arguments made by the appellant are further arguments about core issues that were before me in the appeal. The appellant had the opportunity to make arguments about these issues and they were considered by me in my deliberations. Mere disagreement with a decision is not a ground for reconsideration under section 18.01 of the *Code*.<sup>14</sup> The appellant has not established that there was a fundamental defect in the adjudication process within the meaning of section 18.01(a).

[32] Having concluded that there are no grounds to reconsider the Order, it is not necessary to examine the merits of the arguments made by the appellant. However, I point out to the appellant that the principles underlying the arguments made in this

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<sup>9</sup> See for example, Orders PO-3062-R, PO-3558-R and PO-4004-R.

<sup>10</sup> Order PO-4134-R.

<sup>11</sup> Orders M-774, R-980023, PO-2879-R and PO-3062-R.

<sup>12</sup> Orders PO-2602-R and PO-2590.

<sup>13</sup> See Orders MO-4004-R and PO-4044-R.

<sup>14</sup> Orders PO-2538-R and PO-3062-R.

reconsideration request are addressed in paragraphs 31 to 36 and 54 to 62 of the Order.

[33] I note that the appellant's request also includes some brief new confidential evidence and information that was not before me at the time I rendered the Order. As indicated 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 decision.

[34] As the appellant has not established any of the grounds upon which I may reconsider Order MO-4089, I deny his reconsideration request.

**ORDER:**

I dismiss the appellant's reconsideration request.

Original signed by \_\_\_\_\_  
Valerie Jepson  
Adjudicator

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November 24, 2021