Information and Privacy Commissioner,
Ontario, Canada

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

RECONSIDERATION ORDER MO-4194-R

Appeal MA13-610-2

Interim Order MO-3812-I

Interim Order MO-3865-I

Final Order MO-4085-F

Toronto Police Services Board

May 11, 2022

Summary: This reconsideration order denies the appellant's request for reconsideration of Interim Orders MO-3812-I and MO-3865-I, in which the adjudicator found the Toronto Police Services Board (the police) had not conduct a reasonable search for records responsive to the appellant's two access requests, and Final Order MO-4085-F, in which she found the police had subsequently conducted a reasonable search. The adjudicator finds the appellant did not establish that grounds exist under section 18.01 of the IPC's *Code of Procedure* to reconsider those decisions and denies the appellant's reconsideration request.

Statutes and Rules Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17; IPC *Code of Procedure*, sections 18.01, 18.02, 18.04 and 18.08.

Orders Considered: Orders MO-4085-F, MO-3865-I, MO-3812-I, P-373, PO-2538-R and PO-3062-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 the appellant's request for reconsideration of Interim Orders MO-3812-I and MO-3865-I, and Final Order MO-4085-F (final order). In both interim orders, the adjudicator previously assigned to this appeal found that the Toronto Police Services Board (the police) had not conducted a reasonable search and ordered further searches. In the final order, she concluded the police had by then conducted a reasonable search and dismissed the appeal. The appellant submitted a reconsideration request pertaining to all three decisions.

[2] By way of background, the appellant submitted two requests for access to information to the police in 2013. One request was for "all personal information" (the personal information request) and the other request was for "all records" (the general information request) in physical or electronic form, from all locations, in respect of:

1. [the appellant],

2. the residence at [identified location in Toronto, Ontario] for the period from January 1, 2001 to February 15, 2013,

3. the residence at [identified location in Hamilton, Ontario] for the period January 1, 1989 to November 20, 2013 (the Hamilton property).

[3] After conducting a search and locating responsive records, the police issued a decision granting partial access to the records. The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC), on the basis that the police had not located all responsive records.[1]

[4] Following an inquiry into the appeal, the adjudicator issued Interim Order MO-3812-I (the first interim order), concluding that the police had failed to establish they had conducted a reasonable search, and ordering them to conduct further searches. She subsequently issued Interim Order MO-3865-I (the second interim order), after receiving evidence from the police as to their further searches, concluding, again, that the police had not conducted a reasonable search, and again ordering the police to conduct further searches. Following her review of the additional evidence by the police submitted in response to the second interim order, the adjudicator issued Final Order MO-4085-F, as she was satisfied that the police had now met their obligation to conduct a reasonable search under section 17 of the *Municipal Freedom of Information and Protection of Privacy Act* (*Act*). A more detailed overview of the appeal's history, as described in the previous interim orders and final order, is provided in the background below.

[5] After Final Order MO-4085-F was issued, the appellant requested reconsideration

[1] The appellant also appealed the redactions made to the records disclosed to him. Those redactions are not at issue in this reconsideration request.

of the interim orders and the final order.[2]

[6] As the adjudicator was not available to consider the reconsideration request at that point, the file was assigned to me to address it.

[7] In this reconsideration order, I find that the appellant has not established any of the grounds in section 18.01 of the IPC's *Code of Procedure* (the *Code*) upon which I could reconsider the interim orders or the final order, and I deny the reconsideration request.

BACKGROUND:

Interim Orders MO-3812-I and MO-3865-I

[8] In Interim Order MO-3812-I, the adjudicator determined, among her other findings,[3] that the appellant had provided a reasonable basis to conclude that additional records related to his requests may exist and that the police had not conducted a reasonable search in response to the appellant's personal information and general information requests.

[9] The adjudicator made several findings in relation to the scope of the appellant's access requests, which were relevant to her findings on the adequacy of the police's search. Among these findings, the adjudicator noted that the police improperly combined the appellant's requests, having incorrectly concluded that any records responsive to the general information request would contain the appellant's personal information, thereby rendering them responsive to the appellant's personal information request. She found it reasonable to conclude that a request for "all records" would include emails. She also found that in certain circumstances, and depending on the nature of a request, a search for responsive records may need to include records held by both the Toronto Police Service and the Toronto Police Services Board.

[10] As a result, the adjudicator ordered the police to conduct another search for records responsive to the appellant's requests, including for records responsive to the general information request, records relating to the identified Hamilton address and

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[2] The appellant requested and was granted a four-week extension to submit his request. According to section 18.04 of the IPC's *Code of Procedure*, the appellant had 21 days from the date of Final Order MO-4085-F (July 26, 2021) to submit his reconsideration request. Section 18.04 of the *Code* states: "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 specified date or time period has passed; or (b) where decision does not require any action within any specified time period or periods, within 21 days after the date of the decision."

[3] The adjudicator also ordered the police to disclose information she determined was not exempt under the *Act* and to issue a decision in relation to information she found was responsive to the appellant's requests. Those determinations are not at issue in this reconsideration order.

records held by the Toronto Police Services Board, all of which she noted should include searches for responsive email records.

[11] The police conducted an additional search in response to Interim Order MO-3812-I, and located an additional record in relation to the Hamilton address. On September 4, 2019, the police issued a decision with respect to this record and provided the adjudicator with an affidavit outlining its search efforts.

[12] After inviting the appellant's response to the police's decision and affidavit, the adjudicator issued Interim Order MO-3865-I. Finding the police's search evidence lacking, she concluded that they had still not demonstrated that they conducted a reasonable search. She ordered the police to carry out another search, specifying the same parameters as she did in the first interim order.

Final Order MO-4085-F

[13] In response to Interim Order MO-3865-I, the police conducted an additional search, and on January 20, 2020 issued an access decision further to its search, granting access to two "Address History Reports."[4] In the decision, the police confirmed that their Intelligence Services Unit conducted additional searches relating to the appellant and/or the addresses listed in his requests, and how the appellant may possibly be involved in the "Provincial Counter-Terrorism Plan and any related bio-collections, the Hate Crime Extremism Investigation Team, covert operations, 'incidental' collections, intelligence gathering, joint-force projects, and virtue-testing initiatives."[5] The police relied on section 8(3) of the *Act* to refuse to confirm or deny the existence of such records. The appellant appealed that decision to the IPC. Appeal MA20-00110 was opened to address the new appeal and it was subsequently resolved by Order MO-4188, issued by a different adjudicator.

[14] On February 17, 2020, the police also provided the adjudicator with affidavits of search from the Access and Privacy Coordinator (the coordinator) and two individuals who conducted searches of the police's intelligence databases.

[15] The adjudicator invited the appellant's representations on whether the police had conducted a reasonable search, further to their most recent decision and affidavits of search. For various reasons, including the ongoing effects of the COVID-19 pandemic, the appellant was unable to provide representations but expressed an interest in continuing the appeal.

[16] The adjudicator invited supplementary representations from the police,

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[4] In their January 20, 2020 decision, the police also noted that they had not located additional records related to the appellant's personal information request and that emails between the appellant, members of the Toronto Police Service and the Toronto Police Services Board and City of Toronto employees had already been disclosed to him.

[5] This was wording provided by the appellant.

requesting clarification of certain inconsistencies or omissions, including the fact that the individuals who had searched intelligence databases refered to an incorrect Hamilton address in their affidavits. In response, the police provided an additional affidavit of search on March 3, 2021 in which the coordinator confirmed, among other things, that the searches were conducted using the Hamilton address specified in the requests, and that the address had been incorrectly noted in the previous affidavits. The police also issued a supplemental access decision dated March 3, 2021,[6] granting the appellant full access to additional records.

[17] The adjudicator invited the appellant's representations on whether the police had conducted a reasonable search, in light of its January 20, 2020 and March 3, 2021 decisions, and February 17, 2020 and March 3, 2021 affidavits. The appellant first submitted a request for variance of the adjudication process under section 20.01 of the IPC's *Code of Procedure* (the *Code*), which the adjudicator denied. He subsequently provided written representations setting out his views on why the police had still failed to conduct a reasonable search.

[18] In the final order, the adjudicator determined that the police had now met their obligation to conduct a reasonable search as required by section 17 of the *Act*, and that her concerns regarding the scope and reasonableness of the police's searches for records responsive to the appellant's requests had been addressed. She dismissed the appeal.

DISCUSSION:

[19] Generally, the adjudicator who issues a decision in an appeal will respond to any reconsideration request. However, in the case where that adjudicator is no longer available, the reconsideration request will be assigned to another adjudicator, as anticipated by section 18.08 of the *Code*, which reads:

> The individual who made the decision in question will respond to the request, unless he or she for any reason is unable to do so, in which case the IPC will assign another individual to respond to the request.

[20] In this case, as the original adjudicator is not available to respond to the reconsideration request, it was assigned to me.

Does the appellant's request meet any of the grounds for reconsideration in section 18.01 of the *Code of Procedure*?

[21] There is no express reconsideration power in the *Act*. The IPC's power to

[6] The date of this supplemental access decision has variously been stated as March 3 or March 8, 2021. The former adjudicator refers to the date as March 8 in the final order, but the letter itself appears to be dated March 3, 2021. This discrepancy has no impact on my finding in this reconsideration decision.

reconsider a decision is therefore limited to the grounds at common law, which are reflected in the IPC's reconsideration criteria and procedure set out in section 18 of the *Code*, which reads in part as follows:

> 18.01 The IPC may reconsider an order or other decision where it is established that there is:
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> (a) a fundamental defect in the adjudication process;
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> (b) some other jurisdictional defect in the decision; or
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> (c) a clerical error, accidental error or omission or other similar error in the decision.
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> 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.

[22] The IPC has recognized that a fundamental defect in the adjudication process may include a failure to notify an affected party,[7] a failure to invite representations on an issue to be decided,[8] or a failure to allow for sur-reply representations where new issues or evidence are provided in reply.[9] These orders demonstrate that a breach of the rules of natural justice respecting procedural fairness qualifies as a fundamental defect in the adjudication process as described in section 18.01(a) of the *Code*.

[23] Section 18.01(b) of the *Code* relates to whether an adjudicator has the jurisdiction under the *Act* to make the order in question. An example of a jurisdictional defect would be if an adjudicator ordered a body that is not an institution under the *Act* to disclose records.

[24] Previous IPC orders have held that an error under section 18.01(c) may include a misidentification of the "head" or the correct ministry,[10] or another mistake that does not reflect the adjudicator's intent in the decision.[11]

[25] 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, former 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 Assn. of Architects*.[12] With respect to the reconsideration request before him, he concluded:

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[7] Orders M-774, R-980023, PO-2879-R, and PO-3062-R.
[8] Orders M-774 and R-980023.
[9] Orders PO-2602-R and PO-2590.
[10] Orders P-1636 and R-990001.
[11] Order M-938.
[12] ([1989] 2 SCR 848 (*Chandler*).

> [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*.[13]
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> 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.

[26] Senior Adjudicator Higgins' approach has been adopted and applied in subsequent IPC orders.[14] In Order PO-3062-R, for example, I was asked to reconsider my 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. I 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...

[27] The appellant raises all three grounds set out in section 18.01 of the *Code* in support of his request for reconsideration, which are addressed below. He also introduces his request by setting out his perspective on the IPC's reconsideration process and procedural fairness. This part of his reconsideration request consists largely of quotes from varied sources, including court cases and IPC orders.

[28] While I have reviewed and considered the appellant's representations in their entirety, I have only set out the most relevant submissions on his four main concerns below. I have not addressed all of the appellant's arguments, in part because some were previously raised and responded to by the former adjudicator, either in the interim orders or the final order, or in response to his variance application (other aspects of which I discuss below). As mentioned above, past IPC reconsideration orders and section 18.02 of the *Code* make clear that a reconsideration request is not a forum to re-argue a case or to present new evidence, whether or not that evidence was available

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[13] 1996 CanLII 11795 (ON SC), 28 O.R. (3d) 67 (Div. Ct.).
[14] See, for example, Reconsideration Orders PO-3558-R and PO-3062-R.

at the time of the decision.

Section 18.01(a) fundamental defect in the adjudication process and section 18.01(b) jurisdictional defect in the decision

"Failure to afford the appellant a meaningful right to be heard"

[29] The appellant submits that he was denied procedural fairness because the adjudicator failed to provide him a "meaningful right to be heard." As mentioned above, a breach of procedural fairness would qualify as a fundamental defect in the adjudication process under section 18.01(a) of the *Code*. I have reviewed and considered the appellant's submissions and find that they do not establish any fundamental defects in the adjudication process.

[30] First, the appellant submits that the adjudicator refused to provide him sufficient time to prepare his representations in response to the decisions and affidavits the police submitted further to Interim Order MO-3865-I.

[31] The appellant argues that the adjudicator prejudged any extension request he could have made, citing her April 27, 2021 letter responding to his variance application. In this letter, the adjudicator extended the appellant's deadline to May 18, 2021, noting that "should [his] representations not be received by the deadline…the decision making process will proceed and an order will be issued in [their] absence."

[32] The appellant also notes that the adjudicator imposed a 10-page limit on his representations for the first time on May 17, 2021, while he was in the final stages of preparing them. He submits that, as a result, he was forced "to remove significant portions of the draft submissions, in haste," and he enumerates several matters that he would have included were it not for the page limit.[15]

[33] Finally, the appellant submits that the adjudicator "removed the Adjudication Review Officer (ARO)'s discretion to grant even a one to seven day extension of time, with no notice to the appellant…" In support of this assertion, he quotes the ARO's May 19, 2021 email, in which the ARO confirmed that he did "not have the discretion to grant a short extension as would otherwise be customary."

[34] Previous orders issued by the IPC have held that adjudicators have the power to control their inquiry process, including the authority to set time limits for the receipt of representations. In Order P-373, certain affected parties claimed that the time period allowed for submitting written representations was unreasonable. The parties were initially allowed three weeks and those who asked for additional time were granted extensions. Former Assistant Commissioner Tom Mitchinson made the following comments, which I find helpful in the present case:

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[15] The appellant includes a list of these matters at paragraph 47 of his reconsideration request, which I do not reproduce here.

In Order 164, former Commissioner Sidney B. Linden stated:

> ... while the *Act* does contain certain specific procedural rules, it does not in fact address all of the circumstances which arise in the conduct of inquiries under the *Act*. By necessary implication, in order to develop a set of procedures for the conduct of inquiries, I must have the power to control the process.
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> In my view, the authority to set time limits for the receipt of representations and to implement procedures for identifying and notifying affected persons is included in the implied power to develop and implement rules and procedures for the parties to an appeal. In my view, the procedures followed for setting time limits for receipt of their representations and the identification of parties was appropriate, in the circumstances of these appeals.

[35] I agree with these views and adopt them for the purposes of my review of the appellant's reconsideration request.

[36] Nearly one year passed after the adjudicator initially invited the appellant's reply to the police's decision and affidavits of search in response to Interim Order MO-3865-I. As mentioned above, the appellant was unable to provide representations during this time, in part due to the ongoing effects of the COVID-19 pandemic. The adjudicator then requested supplementary representations from the police. When the adjudicator received the police's supplemental decision and affidavit, these were also provided to the appellant for his response. He was given four weeks to submit representations and, subsequently, granted an additional four-week extension.

[37] Given that the appellant's representations were received over a year after the initial due date, and given that the IPC's usual practice is to allow parties three weeks to submit their initial representations and two weeks to submit replies, I do not accept the appellant's claim that he was denied a right to be heard. He had ample opportunity to prepare his representations[16] and was granted multiple extension and hold requests throughout the course of the appeal. In setting a final deadline and denying the further extension request the appellant directed to the ARO, the adjudicator was acting within her authority to control the inquiry process in the interest of moving the appeal along.

[38] As the appellant points out, the 10-page limit was communicated to him for the first time on May 17, 2021. In my view, it was also within the adjudicator's discretion to do so in managing her inquiry, particularly in light of the length of the proceedings to that point. I note that the appellant nevertheless exceeded the page limit.

[39] In support of his claim that he was denied a "meaningful right to be heard," the

[16] The appellant continued to submit representations and supporting materials up until May 31, 2021, two weeks after the extended deadline.

appellant makes additional arguments that I find are substantively similar to those he made in his variance application. For instance, he argues that the adjudicator imposed a "variable burden of proof" on him in relation to the issue of reasonable search. He submits that in the final order, the adjudicator "ambushed [him] with the notion that [he] ought to have provided a "reasonable basis" for the reasonable search claim in the face of the [police's] section 8(3) claim to neither confirm nor deny the existence of records."[17] He also suggests that he should have been invited to comment on the applicability of Order MO-3575, "given that the Tribunal opted to proceed with its reasonable search inquiry in advance of adjudication of the institution's late-raised section 8(3) exemption claim."

[40] In my view, the appellant's arguments here are variations of those he made in his variance application, in which he argued that the adjudicator's failure to address the police's section 8(3) claim in the context of his reasonable search appeal undermined his ability to respond, amounting to a breach of procedural fairness.[18] As described above, the appellant appealed the police's January 20, 2020 decision refusing to confirm or deny the existence of records under section 8(3) and Appeal MA20-00110 was opened. In his variance application, the appellant requested that this appeal (MA13-610-2) be placed on hold until such time as certain "preliminary issues" in Appeal MA20-00110 were disposed of, in the hopes of having both appeals consolidated. Among his arguments, he claimed that in light of the adjudicator's decision not to consider the police's section 8(3) claim in the present appeal, he was put in the unfair position of having to comment on the police's search "without the requisite knowledge." The adjudicator considered and dismissed the appellant's arguments. Among her findings, she determined that he had been provided sufficient information to respond to the police's position on the only issue before her – whether they had conducted a reasonable search – and that his ability to fully and fairly present his case on that issue in the context of this appeal was not compromised by the police's section 8(3) claim.[19]

[41] The appellant's additional arguments in the reconsideration request are essentially the same as those he made in his variance application. In both cases, he takes the position that he was prejudiced by there being two separate appeals to address the issues of reasonable search and the police's section 8(3) claim, which, as he argued in his variance application, should be combined for reasons of fairness and

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[17] The appellant cites the following passage at paragraph 61 of the final order in support of his claim that he only found out about the burden of proof in the final order: "Although the appellant continues to refer to various initiatives or program areas that he maintains the police's searches have not included, in my view, his representations do not provide a reasonable basis for concluding that responsive records might exist relating to those program areas or initiatives."

[18] The appellant also made similar arguments in his last set of representations, which are summarized in Final Order MO-4085-F at para 47. Citing Order MO-3575, he argued that he was no longer required to provide a reasonable basis for concluding that additional records exist in light of the police's section 8(3) claim, and that the burden of proof was on the police.

[19] The adjudicator's April 27, 2021 letter responding to the appellant's variance application.

efficiency. The adjudicator addressed this matter in detail in her April 27, 2021 response to the appellant's variance application. Furthermore, on my review of that decision, the adjudicator made it quite clear that the only issue before her in this appeal was the reasonableness of the police's search. As mentioned above, the appellant may not use the reconsideration process to present arguments he made during the inquiry process. To the extent that his arguments can be said to raise issues of procedural fairness, I see no procedural defect in the adjudicator's decision not to combine the two appeals.[20]

"Issuing a finding about which there was no evidence"

[42] The appellant submits that the adjudicator made a finding that was not based on, nor could have been inferred from, the evidence before her. Specifically, he takes issue with the adjudicator's conclusion with regard to the Automated Criminal Intelligence Information System (ACIIS) database. He also suggests that issuing a finding without evidence would amount to a jurisdictional defect under section 18.01(b).[21]

[43] The appellant raised the matter of the ACIIS database twice, and the adjudicator addressed it both times. In Interim Order MO-3812-I, the adjudicator determined that the reasonableness of the police's search was not undermined by the fact that they had not searched the ACIIS database. She considered both the appellant's[22] and the police's[23] positions with respect to the ACIIS database, and accepted the police's position that it is a federally-owned database that they are unable to query for records responsive to access to information requests.[24] In Final Order MO-4085-F, the adjudicator considered the appellant's additional representations on this matter[25] and concluded that they did not provide a reasonable basis to review her earlier findings regarding this database.[26]

[44] To the extent that the appellant disagrees with the manner in which the adjudicator weighed the evidence, this is not a ground for reconsideration. The adjudicator considered the parties' representations in arriving at her conclusion. It would appear the appellant disagrees with these findings and seeks to reargue the point. However, as noted, a reconsideration is not an opportunity to reargue an appeal.

[45] Additionally, to the extent that the appellant is arguing that the police brought

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[20] In any event, as it turned out, Order MO-4188, issued to dispose of the appellant's other appeal (MA20-00110), addressed only the police's section 8(3) claim, and did not deal with reasonable search. See Order MO-4188, paragraph 12.

[21] The appellant cites the Alberta Court of Appeal in *Industries Limited v. Industrial, Wood and Allied Workers of Canada, (Local 1-207)*, 2014 ABCA 236, at para. 15: "A decision reached by an administrative body without evidence is a jurisdictional error."

[22] Order MO-3812-I, paras 42 and 54.

[23] Order MO-3812-I, paras 49.

[24] Order MO-3812-I, para 63.

[25] The appellant's representations are summarized at paras 51-53 of Final Order MO-4085-F.

[26] Order MO-4085-F, para 63.

forth no evidence on the matter of the ACIIS database, the police did submit evidence which was shared with the appellant. Insofar as the appellant takes issue with the quality of the evidence, I refer to Adjudicator Steve Faughnan's comments in Reconsideration Order MO-4003-R:

> … I note that the IPC as a tribunal is not bound by the traditional rules of evidence. Rather, it is open to adjudicators to rely on unsworn evidence, hearsay evidence, and opinions.[27] In fact, it is well established that hearsay evidence is generally admissible in tribunal proceedings,[28] so long as the adjudicator is alive to the "inherent unreliability"[29] of such evidence and accords it the appropriate weight.[30]

[46] In light of the above, I am satisfied that the adjudicator considered and weighed both parties' evidence, and made her finding accordingly. It cannot be said that the adjudicator made her finding in the absence of evidence. I do not accept the appellant's argument and find he has not established a jurisdictional defect or a fundamental defect in the adjudication process, under sections 18.01(b) or (a) of the *Code*, on this basis.

"Rejection of relevant evidence and submissions"

[47] The appellant submits that the adjudicator rejected relevant evidence and submissions, amounting to a breach of procedural fairness and fundamental defect in the adjudication process. He lists several arguments submitted by both parties during the inquiry, which he maintains the adjudicator did not consider or summarily dismissed.

[48] The appellant cites arguments put forth by the police "in its April 30, 2021 representation." However, these were not before the adjudicator during her inquiry. These representations were made in the context of Appeal MA20-00110 (which was, as noted, before another adjudicator), and not in the present appeal. Accordingly, the adjudicator could not have been expected to consider evidence that was not before her.

[49] To the extent that the appellant argues that the adjudicator rejected, or failed to consider, evidence that he deems relevant to the determination of this appeal, again, this is not a ground for reconsideration. As the appellant points out himself, his arguments were before the adjudicator during her inquiry. The appellant's disagreement with her assessment of the evidence is not a breach of procedural

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[27] The original footnote in Reconsideration Order MO-4003-R reads: *Cooper v. Canada (Human Rights Commission)*, 1996 CanLII 152 (SCC) at paragraph 60.
[28] The footnote in Reconsideration Order MO-4003-R reads: Orders PO-2242 and MO-3404.
[29] The footnote in Reconsideration Order MO-4003-R reads: *Dayday v. MacEwan*, 1987 CanLII 4325 (Dist. Ct.).
[30] The footnote in Reconsideration Order MO-4003-R reads: *Krabi et al. v. Ministry of Housing*, 1989 CanLII 2079 (Div. Ct.).

fairness, nor is it a fundament defect in the adjudication process. It is an attempt to revisit the inquiry in order to obtain a different outcome.

[50] Regarding the appellant's submission that certain arguments were not addressed in the adjudicator's orders, I would point out that it is not necessary for adjudicators to summarize or refer to all of the arguments or evidence that are before them when providing reasons for a decision.[31]

"Failure to give functional reasons"

[51] The appellant submits that the adjudicator failed to provide him with "functional reasons." He prefaces his argument with a series of quotes from various court cases addressing the importance of providing adequate reasons, holding that a failure to do so amounts to a breach of procedural fairness, and confirming that unsupported findings are insufficient.

[52] The appellant submits that the adjudicator "fail[ed] to deal with a number of critical issues" in her order and provided inadequate reasons to the point of precluding judicial review. He does not specify the order in question, but he appears to be referring to the final order based on the matters he raises under this part of his reconsideration request. The appellant's argument appears to rest on two propositions: that the adjudicator's reasons, either overall or in relation to certain issues, were inadequate, and, as he argued above, that she failed to consider relevant matters. I find the appellant has not established either.

[53] Some of the issues the appellant raises are variations of arguments he raised elsewhere in his reconsideration request and are ones I concluded above the adjudicator had already addressed in the interim orders, final order or the variance application decision. For example, he continues to take issue with the adjudicator's findings with regard to the ACIIS database. Yet, as mentioned above, his representations in relation to the database were summarized and addressed in Interim Order MO-3812-I and again in Final Order MO-4085-F. The appellant also reframes previous arguments made with regard to Order MO-3575 and its relevance in relation to the police's section 8(3) claim.[32] As I stated above, the adjudicator already responded (in her April 27, 2021 decision on the variance application) to the appellant's attempts to include the matter of the police's section 8(3) claim in this appeal, and confirmed that the only issue remaining before her was the reasonableness of the police's search.

[54] The appellant also refers to affidavits sworn by two individuals who conducted searches of the police's intelligence databases, suggesting that they could not be indicative of a reasonable search when the affiants attested to searching for records relating to the appellant using an incorrect birthdate and Hamilton address. The matter of the incorrect Hamilton address was already canvassed and addressed on the

[31] Canada v. Vavilov, 2019 SCC 65, at para 106.
[32] As noted above, now addressed in Order MO-4188.

adjudicator's own initiative.[33] Regarding the birthdate, the appellant does not provide what would be the correct one, but in reading the affidavits in question, it is not apparent to me that the police even relied on the birthdate as a search parameter. In any event, even if an incorrect birthdate had been used, the adjudicator was evidently persuaded that the police's other search parameters were sufficient to satisfy their obligation of conducting a reasonable search.

[55] Finally, the appellant claims that the adjudicator's reasons are inadequate, to the point of preventing him from "meaningfully effectuat[ing] judicial review." The appellant offers a number of bald assertions, for example that the adjudicator's reasons "do not allow the supervising court to determine whether the decision-maker erred and thereby renders the Tribunal unaccountable to that court."[34] However, he provides no explanation in support of his assertions. Based on my review of the final order, I find no basis for this allegation.

[56] Again, the appellant's arguments amount to a disagreement with the adjudicator's assessment of the evidence. Her "failure to deal" with issues he finds critical comes down to her weighing of evidence. As noted, adjudicators are not required to expressly refer to every piece of evidence put forth by the parties.[35]

"Cumulative effect of acts and omissions"

[57] Citing all of his foregoing arguments, the appellant submits that the "cumulative effect of the [adjudicator's] acts and omissions amounts to significant unfairness." I have considered all of these arguments above. As I found that none amounted to grounds for reconsideration individually, I also find they do not warrant reconsideration collectively.

Section 18.01(c) Clerical error, accidental error or omission or other similar error in the decision

[58] The appellant submits that the adjudicator made errors or omissions that would warrant reconsideration, citing three excerpts from the final order in which the adjudicator summarized his representations.[36] I have reviewed the alleged errors or omissions and find that, at most, they amount to nuances about the appellant's representations that he feels should have been reflected in the final order. None rise to the level of errors or omissions previously identified by the IPC under section 18.01(c), as I set out above, and none were material to the adjudicator's findings in the final order.

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[33] Order MO-4085-F, at para 57.
[34] The appellant cites *VIA Rail Canada Inc. v. Canada* (*National Transportation Agency*) 2000, [2001] 2 F.C. 25 (Fed. C.A.), at para. 19, in his reconsideration request.
[35] Reconsideration Order MO-4004-R, at para 16.
[36] The appellant includes a list at paragraphs 87 to 93 of his reconsideration request, which is not reproduced here.

[59] *Functus officio* is a common law principle, which means that once a matter has been determined by a decision-maker, she generally has no jurisdiction to further consider the issue. The appellant submits that the application of *functus officio* should be applied flexibly here, given that "there is not even a limited right of appeal," and he cites court cases that adopted Justice Sopinka's comments in *Chandler*.[37] Senior Adjudicator John Higgins included an in-depth discussion of *Chandler* in Reconsideration Order PO-2538-R, in relation to the IPC's reconsideration power. I find his comments instructive, in particular with regard to the principle of flexibility which the appellant refers to:

> I note that in *Chandler*, Justice Sopinka, for the majority, states that it is "necessary to consider (a) whether [the tribunal] had made a final decision, and (b), whether it was, therefore, functus officio." … Justice Sopinka also comments … that "there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals."
>
> The following passage from *Chandler*…contains the following qualification on the principle of "flexibility" that is highly relevant in this case:
>
> > Accordingly, *the principle* [of *functus officio*] *should not be strictly applied where there are indications in the enabling statute that a decision can be reopened* in order to enable the tribunal to discharge the function committed to it by enabling legislation. ...
> >
> > Furthermore, if the tribunal has failed to dispose of an issue which is fairly raised by the proceedings and of which the tribunal is empowered by its enabling statute to dispose, it ought to be allowed to complete its statutory task. [Emphasis added.]
>
> *Chandler* goes on to find that because the tribunal was mistaken as to which power it was exercising, and what its authority was, it had not fully exercised its statutory powers and therefore had not "used up" its jurisdiction…
>
> As well, the *Act* confers no express reconsideration power on the Commissioner. For this reason, in my view, the principle of "flexibility" ought to be exercised with caution in relation to decisions made under a delegated authority from the Commissioner.

[60] As Senior Adjudicator Higgins noted, the Supreme Court of Canada in *Chandler* acknowledged and confirmed the sound policy basis for respecting the finality of

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[37] The appellant cites *Gratton-Masuy Environmental Technologies Inc. v. Ontario (Building Materials Evaluation Commission) (2002)*, 60 O.R. (3d) 245 (Ont. Div. Ct.), at para. 24, and *Ontario (Employment Standards Officer) v. Metro International Trucks Ltd*. (1996), 28 O.R. (3d) 67 (Div Ct), at para. 22, in his reconsideration request.

decisions of administrative tribunals. In this case, the adjudicator issued a final decision disposing of the issues before her, pursuant to her delegated authority in section 43 of the *Act*. Having reviewed the appellant's representations in their entirety, I find that they amount to disagreement with the adjudicator's previous orders and an attempt to reargue the issues that were before the adjudicator. He has provided no basis warranting reconsideration, or the flexibility referred to in *Chandler*.

[61] As the appellant has not established any of the grounds in section 18.01 of the *Code* upon which I may reconsider Interim Orders MO-3812-I and MO-3865-I or Final Order MO-4085-F, I deny his reconsideration request.

ORDER:

I deny the appellant's reconsideration request.

Original signed by: May 11, 2022

Daphne Loukidelis
Adjudicator