

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4306-R

Appeal MA20-00157

Ottawa Police Service

Order MO-4260

December 21, 2022

Summary: The appellant submitted a request for reconsideration of Order MO-4260, claiming a lack of analysis, jurisdictional issues, and other errors and omissions. In this reconsideration order, the adjudicator finds that the appellant has not established any of the grounds for reconsideration in section 18.01 of the IPC's *Code of Procedure* and denies the reconsideration request.

Statutes Considered: IPC *Code of Procedure*, sections 18.01(a), (b) and (c).

Orders Considered: Orders PO-2358-R, PO-3062-R, MO-4260

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

OVERVIEW:

[1] This decision addresses the appellant's request for a reconsideration of Order MO- 4260. The appellant made a request to the Ottawa Police Service (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to himself and certain of his interactions with police. The police located seven responsive records. They issued a decision denying access to six of the responsive records on the basis that they were excluded from the application of the *Act* under the exclusion in section 52(3) (employment or labour relations). The police

withheld some information from a seventh record on the basis that it is exempt under the law enforcement exemptions in sections 8(1)(a) (law enforcement matter) and 8(1)(i) (security).

[2] In Order MO-4260, I upheld the police's decision and dismissed the appeal. I found that six of the seven records at issue are excluded from the *Act* by operation of section 52(3)1. I found that they are records relating to a complaint made to the Office of the Independent Police Review Director (OIPRD) against a police officer and are employment-related records in which the police have an interest as an employer.

[3] Regarding the seventh record at issue, a 125-page general occurrence report, I found that it contains the appellant's personal information and that the information the police withheld from three pages of the report is exempt under section 38(a) (discretion to refuse requester's own information), read with the law enforcement exemption in section 8(1)(a). I upheld the police's exercise of discretion to withhold portions of the occurrence report on pages 6, 7, and 8, while disclosing the balance to the appellant.

[4] The appellant contacted the IPC to express his dissatisfaction with Order MO-4260. He asked for a reconsideration of my decision, and gave notice of his intention to raise a constitutional question.

[5] For the reasons that follow, I find that the appellant has not established grounds in section 18.01 of the *Code of Procedure* for reconsidering Order MO-4260 and I deny the reconsideration request.

DISCUSSION:

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-4030?

[6] The IPC's reconsideration criteria and procedure are set out in section 18 of the *Code*. Section 18 reads, in part, that:

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.

[7] Ordinarily, under the common-law principle of *functus officio*, once a decision-maker has determined a matter, he or she does not have jurisdiction to consider it further.¹ I am *functus* unless the party requesting the reconsideration – in this case, the appellant – establishes one of the grounds in section 18.01 of the *Code*. The provisions in section 18.01 of the *Code* summarize the common law position acknowledging that a decision-maker has the ability to re-open a matter to reconsider it in certain circumstances.²

The appellant's reconsideration request

[8] The appellant cites all three grounds for reconsideration in section 18.01, claiming a lack of analysis, jurisdictional errors, and clerical and similar errors or omissions.

[9] The appellant maintains that I am a party to ongoing crimes, and that my "lack of adjudicator analysis" in Order MO-4260 represents fraudulent concealment under the *Criminal Code of Canada*. The appellant submits that he is relying on what he says is "new evidence" – an affidavit regarding a conspiracy to defraud his right to life, health, safety and security as enshrined in section 7 of the *Charter of Rights and Freedoms*.

[10] He argues that the exclusion and exemptions claimed by the police to deny access, as well as certain IPC *Practice Directions*, "lack jurisdiction to violate" sections of the *Criminal Code* and *Charter of Rights and Freedoms*, and that the police's affidavit describing their search for responsive records was "perjured."

[11] The appellant also submitted two Notices of Constitutional Questions (NCQ), one relating to a different institution whose decision was not before me in this appeal,³ and a second about the police and other agencies which alleges various criminal and constitutional breaches, and contains discussion of and submissions to Members of Parliament and others regarding proposed legislative changes (relating to, among other things, complaints against the police). Both NCQs discuss sections of the *Act* that were not properly before me in the appeal that resulted in Order PO-4260.

Analysis and findings

[12] The reconsideration process in section 18 of the IPC's *Code of Procedure* is not intended to provide parties who disagree with a decision a forum to re-argue their case.

¹ *Functus officio* is a common law principle which means that, once a decision-maker has determined a matter, he or she has no jurisdiction to consider it further.

² Order PO-2839-R.

³ The Royal Ottawa Mental Health Centre.

[13] In Order PO-2538-R, 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 Association of Architects*.⁴ Regarding 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.*].⁵

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.

[14] Subsequent IPC orders have adopted this approach.⁶ 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 information in records at issue in that appeal. In determining 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*, Adjudicator Loukidelis wrote that:

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...

[15] I accept and adopt this reasoning here.

[16] For me to reconsider Order MO-4260, the appellant's request must fit within one of the three grounds for reconsideration in section 18.01 of the *Code*.

[17] Section 18.01(a) of the *Code* specifies that the IPC may reconsider an order where it is established that there is a fundamental defect in the adjudication process. Past orders have found that various breaches of the rules of natural justice respecting procedural fairness will qualify as a fundamental defect in the adjudication process for

⁴ [1989] 2 SCR 848 (SCC).

⁵ 1996 CanLII 11795 (ON SC), 28 OR (3d) 67 (Div. Ct.).

⁶ See, for example, Orders PO-3062-R, PO-3558-R and PO-4004-R.

the purpose of section 18.01(a).⁷ Examples of such breaches would include a failure to notify an affected party,⁸ or to invite sur-reply representations where new issues or evidence are provided in reply.⁹

[18] Section 18.01(b) 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. Section 18(1)(c), meanwhile, allows for reconsideration of an order that contains clerical or other similar errors or omissions.

[19] The appellant has not specifically addressed my findings in Order MO-4062 in his reconsideration request. His representations do not describe or address whether there has been a fundamental defect in the adjudication of his appeal or a jurisdictional defect, and although his request claims clerical or similar errors, the appellant has not identified any. Rather, the appellant's representations list a series of complaints that he has about various institutions and the IPC that are unrelated to the grounds in section 18.01 for reconsideration of Order MO-4062. Similarly, although the appellant argues that his *Charter* rights have been violated, the appellant has provided no basis for me to conclude that this is the case.

[20] In his accompanying NCQs, the appellant describes various harms that he says other institutions (which were not involved in the appeal or the decision under appeal) intend to cause him, and says that, by my "acting without jurisdiction to defraud a constitutional question, then other adjudicators will do the same..." The appellant has not provided any evidence for me to conclude that the adjudication process, including the inquiry and the resulting order, infringed on his "section 7, 8, 9, 10, 12 [or] 15 Charter Rights to life, health, safety and security...." The appellant has not explained the relevance of his NCQs to the appeal of the police's decision or the reconsideration request. The appellant does not explain how the adjudication process and the order violated his constitutional rights, or the relationship between his complaints about another institution and his appeal of the police's decision in response to an access to information request that was before me.

[21] I find that the appellant's request is an attempt to re-argue his appeal and to repeat his complaints about the police and other agencies and institutions that were not properly before me in the appeal or the subject of Order MO-4260. The appellant's representations repeat the tests for reconsideration in section 18.01 of the *Code*, but do not explain how the circumstances fit within section 18.01(a) of the *Code*. Nor does the appellant demonstrate how his request for reconsideration establishes either a jurisdictional defect in the decision for the purpose of section 18.01(b), or a clerical error as described in section 18.01(c).

⁷ Order PO-4134-I.

⁸ Orders M-774, R-980023, PO-2879-R and PO-3062-R.

⁹ Orders PO-2602-R and PO-2590.

[22] I also find the appellant's allegation that I am engaged in a criminal conspiracy with the police to be without merit. The IPC is an independent tribunal and its decisions are presumed to have been made in an impartial manner in accordance with the law.¹⁰ The appellant has provided no evidence in support of his allegations that I am conspiring with the police to cause him harm, or that I was influenced by the police in the adjudication of his appeal.

[23] In summary, I am not satisfied that the appellant's reconsideration request establishes a relevant ground for reconsideration in section 18.01 of the *Code*. I therefore deny the appellant's reconsideration request.

ORDER:

I deny the appellant's reconsideration request.

Original Signed By: _____
Jessica Kowalski
Adjudicator

December 21, 2022 _____

¹⁰ See Orders PO-3692, MO-4065-R and PO-4143.