

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 PO-4330-R

Appeal PA21-00147

Algonquin College of Applied Arts and Technology

Order PO-4318

December 21, 2022

**Summary:** The appellant requested a reconsideration of Order PO-4318 that upheld a search for records by a college in response to the appellant's request made under the *Freedom of Information and Protection of Privacy Act*. The appellant relies upon the grounds under section 18.01(a) and (b) of the IPC *Code of Procedure* as the basis for the request: a defect in the adjudication process and a jurisdictional defect in the decision. In this reconsideration order, the adjudicator finds that the appellant has not established any grounds for reconsidering Order PO- 4318. The adjudicator dismisses the reconsideration request.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31. as amended, section 24; *IPC Code of Procedure*, section 18.01.

### OVERVIEW:

[1] Order PO-4318 disposed of the issues in an appeal arising from a request made by the appellant to the Algonquin College of Applied Arts and Technology (the college) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The appellant sought access to records relating to the withdrawal of a specified student from the college's Veterinary Technician program in 2010.

[2] The college issued an access decision granting the appellant full access to the responsive record it located, which was an email chain. In response to the college's

decision, the appellant stated that they believed that additional records should exist and appealed the college's decision to the Information and Privacy Commissioner (IPC). Mediation did not resolve the appeal.

[3] At the adjudication stage, an inquiry was conducted and representations were invited and received from the parties. At each stage of the inquiry process, the parties' representations were shared in accordance with section 7 of the IPC's *Code of Procedure* (the *Code*) and Practice Direction 7.

[4] On October 28, 2022, I issued Order PO-4318 disposing of the sole issue in the appeal, which was the reasonableness of the college's search in response to the appellant's request. I determined that the college conducted a reasonable search for responsive records and dismissed the appeal.

[5] On November 19, 2022, I received a reconsideration request from the appellant. The appellant seeks a reconsideration of Order PO-4318 on the basis that there has been a fundamental defect in the adjudication process and a jurisdictional defect in my decision.

[6] The appellant cites and makes submissions in relation to sections 18.01 to 18.05 of the *Code* in support of their reconsideration request. In addition, the appellant has provided an academic transcript record for the student specified in their request and submits that this record supports their explanation for why the college's searches did not identify additional records. The appellant explains that reconsideration of Order PO-4318 is sought to support a concurrent process before the Ontario Ombudsman.

[7] In this reconsideration order, I find that the appellant has failed to establish that any of the grounds for reconsideration in section 18.01 of the *Code* are met and I therefore deny the reconsideration request.

## **DISCUSSION:**

### **Are there grounds under section 18.01 of the *Code* to reconsider Order PO-4318?**

[8] The IPC's reconsideration process is set out in sections 18.01 and 18.02 of the *Code*, which applies to appeals under the *Act*. These sections state:

18.01 The IPC may reconsider an order or other decision where it has 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.

[9] Previous orders of the IPC have held that a fundamental defect in the adjudication process may include a failure to notify an affected party,<sup>1</sup> a failure to invite representations on the issue of invasion of privacy,<sup>2</sup> or a failure to allow for sur-reply representations where new issues or evidence are provided in reply.<sup>3</sup> These examples demonstrate that for a party to establish grounds for reconsideration under section 18.01(a) of the *Code*, there must be evidence of a breach of natural justice.

[10] A jurisdictional defect in the decision under section 18.01(b) of the *Code* goes to whether the adjudicator had jurisdiction to make the decision under the *Act*. It is not about a disagreement with the assessment of the evidence in the decision.<sup>4</sup>

[11] Section 18.01(c) contemplates "clerical or accidental error, omission or other similar error in the decision," such as, an order provision containing inconsistent severance terms with respect to the records.<sup>5</sup>

[12] 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, 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>6</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>7</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

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<sup>1</sup> Orders M-774, PO-2879-R and PO-3062-R.

<sup>2</sup> Orders M-774 and R-980023.

<sup>3</sup> Orders 2602-R and PO-2590.

<sup>4</sup> Order MO-3917-R.

<sup>5</sup> See, for example, Order PO-2405 corrected in Reconsideration Order PO-2538-R.

<sup>6</sup> 1989 CanLII 41 (SCC).

<sup>7</sup> 1996 CanLII 11795 (Div. Ct.)

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.

[13] Adjudicator Higgins' approach has been adopted and applied in subsequent orders of this office.<sup>8</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 *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.

### ***Appellant's request for reconsideration***

[14] The appellant submits that there was a defect in the adjudication process in the manner in which the appeal was disposed of by the IPC, which they state has deprived the Ontario Ombudsman of "optimum FIPPA disclosure." The appellant states that through their request under the *Act*, they were seeking "evidence-based facts" to put before the Ontario Ombudsman. The appellant submits that in Order PO-4318, I failed to draw conclusions from the fact that the academic transcript record for the student specified in their request was not identified by the college as a responsive record.

[15] The appellant's submission is that the specified student's transcript record should be responsive to their access request as it pertains to the student's withdrawal from the program. The appellant submits that the fact that it was not located by the college as responsive and there are no official academic records responsive to their request, is evidence that the record has been falsified.

[16] The defect in the adjudication process advanced by the appellant is my failure to make evidence based findings from the fact that the college's searches did not identify the student transcript as responsive to the request.

### ***Analysis and findings***

[17] I have considered the appellant's request for reconsideration and the attached transcript record. For the reasons set out below, I am not satisfied that the appellant has established grounds for reconsideration of Order PO-4318.

[18] The student's academic transcript record is new information that was not before

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<sup>8</sup> See, for example, Orders PO-3062-R and PO-3558-R.

me when I made my decision in Order PO-4318. The existence of the transcript record is not new information as the appellant made reference to the record in their representations. Section 18.02 of the *Code* provides that new information is not, by itself, a basis for the reconsideration of an order, whether or not the information was available at the time of the decision.

[19] I have reviewed the transcript record and find that it does not affect the result in Order PO-4318. I am also satisfied that the transcript record establishes no basis for reconsidering the order. The veracity of the student's transcript record is not an issue that was before me to be determined in the appellant's appeal.

[20] The appellant's request for reconsideration repeats the submissions made in their representations during the inquiry stage of the appeal. As I summarise in paragraph [29] of Order PO-4318, the appellant's representations included submissions regarding the due process of the student's withdrawal from the college program. The appellant relies upon the fact that records are "missing" in response to their request as the basis for advancing broader concerns about the validity of the specified student's withdrawal from the program and the college's processes. The appellant has maintained throughout their representations that the reason the college's searches have not located academic records is because they believe that records have been "falsified."

[21] The appellant now submits that my failure to make these determinations is a defect in the adjudication process that meets the reconsideration criteria in section 18.01(a) and a jurisdictional defect in my decision that meets the reconsideration criteria in section 18.01(b).

[22] I do not accept the appellant's submissions. My decision to decline to make the findings that the appellant seeks from the IPC appeal process establishes no grounds for reconsideration under section 18.01 of the *Code*.

[23] The appellant's appeal raised the sole issue of "missing documents". As I noted in paragraph [22] of Order PO-4318, the appellant accepts that the college processed the request in a manner consistent with the *Act* and that the searches to locate responsive records were reasonable.

[24] It is beyond the scope of the appellant's appeal and the access to information regime of the *Act*, for me to make the evidence based findings that the appellant is seeking. In my view, the appellant's dissatisfaction at the outcome of their appeal arises from a misunderstanding of the IPC appeal process. The issues identified to be determined in the appeal were set out in a Notice of Inquiry that was sent to the appellant in April 2022. The appellant provided representations raising unrelated issues regarding the student withdrawal from the program, the college's actions, calculation of grades and whether it had complied with its policies set out in its handbook. In May 2022, the adjudicator originally assigned to this appeal wrote to the appellant advising them that the sole issue in the appeal was the reasonableness of the college's searches

and that the other matters raised by the appellant were all matters that were outside the scope of the appeal.

[25] As set out above, the reconsideration process is not intended to be a forum for parties to re-argue their case.<sup>9</sup> I do not agree with the appellant's repeated submission that the IPC appeal process under the *Act* is the correct forum for the evidence based findings that they seek in support of their broader concerns regarding the college's withdrawal process or the validity or otherwise of the specified student's record transcript and program withdrawal.

[26] I remain of the view that these are matters that are outside the IPC's jurisdiction. I find that the reasons for the appellant's disagreement with my decision do not fit within any of the grounds for reconsideration in section 18.01 of the *Code*. The appellant is seeking to re-argue the submissions made during the appeal.

[27] Finally, the appellant asks that the IPC reconsider Order PO-4318 pursuant to section 18.03 of the *Code* on its own initiative for "truth" and "justice". As this reconsideration request has been made by the appellant and the IPC is not reconsidering the order of its own initiative, section 18.03 of the *Code* does not apply.

[28] Accordingly, I decline to reconsider Order PO-4318.

**ORDER:**

I deny the appellant's reconsideration request

Original signed by: \_\_\_\_\_  
Katherine Ball  
Adjudicator

December 21, 2022 \_\_\_\_\_

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<sup>9</sup> See Order PO-2538-R.