

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-4375-R

Appeal MA20-00227

Toronto Police Services Board

Order MO-4327

May 3, 2023

**Summary:** The appellant submitted a request for reconsideration of Order MO -4327, claiming that the adjudicator erred by not ordering all of the personal information of the appellant's late son to be disclosed to her. 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 she denies the reconsideration request.

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

**Orders Considered:** Orders MO-4327, PO-2358-R and PO-3062-R.

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

### OVERVIEW:

[1] This decision addresses the appellant's request for a reconsideration of Order MO-4327, which disposed of an appeal to the Information and Privacy Commissioner of Ontario (the IPC) of an access decision made by the Toronto Police Services Board (the police). The police received the appellant's request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a police occurrence report and the full report of first responders and the investigating detective concerning the sudden and tragic death of the appellant's adult son.

[2] The police located records responsive to the request and granted partial access to the records. The police advised the appellant that section 14(4)(c) (compassionate grounds) of the *Act* applied in the circumstances of the request. The police withheld other information from the appellant, claiming the application of the personal privacy exemption in section 38(b), read with section 14(3)(b).

[3] In Order MO-4327, I found that the withheld information contained the personal information of the appellant, her son and an affected party. I upheld the police's decision to withhold most of the personal information under either section 14(1) or 38(b), the personal privacy exemptions. However, I also found that the compassionate grounds exception in section 14(4)(c) applied to some of the personal information in the records, such that this information was not exempt from disclosure under section 14(1) and I ordered the police to disclose this information to the appellant.

[4] The appellant subsequently contacted the IPC to express her dissatisfaction with Order MO-4327, requesting a reconsideration of my decision on the basis that I did not order the disclosure of all of her late son's personal information contained in the records to her.

[5] For the reasons that follow, I find that the appellant has not established any of the grounds in section 18.01 of the *Code of Procedure* for reconsidering Order MO-4327, and I deny the reconsideration request.

## **DISCUSSION:**

[6] The sole issue in this reconsideration order is whether there are grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-4327. The IPC's reconsideration criteria and procedure are set out in section 18 of the *Code*. Section 18 reads, in part:

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.<sup>1</sup> 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.<sup>2</sup>

### **The appellant's reconsideration request**

[8] The appellant does not cite any of the three grounds for reconsideration in section 18.01. The appellant's position is that I may have made errors in Order MO-4327 in not ordering the police to disclose all of her late son's personal information contained in the records, and that, on compassionate grounds, she wishes to have this information to complete her grieving process.

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

[9] 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.

[10] 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*.<sup>3</sup> 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.*].<sup>4</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 sound policy basis for recognizing the finality of proceedings before administrative tribunals." I have concluded that this rationale applies here.

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<sup>1</sup> *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.

<sup>2</sup> Order PO-2839-R.

<sup>3</sup> [1989] 2 SCR 848 (SCC).

<sup>4</sup> 1996 CanLII 11795 (ON SC), 28 OR (3d) 67 (Div. Ct.).

[11] Subsequent IPC orders have adopted this approach.<sup>5</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 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...

[12] I accept and adopt this reasoning here.

[13] For me to reconsider Order MO-4327, the appellant's request must fit within one of the three grounds for reconsideration in section 18.01 of the *Code*.

[14] 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 the purpose of section 18.01(a).<sup>6</sup> Examples of such breaches would include a failure to notify an affected party,<sup>7</sup> or to invite sur-reply representations where new issues or evidence are provided in reply.<sup>8</sup>

[15] 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.

[16] The appellant's reconsideration request does not identify or address whether there has been a fundamental defect in the adjudication of her appeal, a jurisdictional defect, or a clerical or similar error. Rather, the appellant's reconsideration request is in my view an attempt to re-argue her appeal such that I order the police to disclose further information about her late son to her. In other words, the appellant disagrees with my findings in Order MO-4327.

[17] I find that the appellant has not established any of the grounds in section 18.01 for a reconsideration of Order MO-4327. I therefore deny the appellant's

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<sup>5</sup> See, for example, Orders PO-3062-R, PO-3558-R and PO-4004-R.

<sup>6</sup> Order PO-4134-I.

<sup>7</sup> Orders M-774, R-980023, PO-2879-R and PO-3062-R.

<sup>8</sup> Orders PO-2602-R and PO-2590.

reconsideration request.

**ORDER:**

I deny the appellant's reconsideration request.

Original Signed by: \_\_\_\_\_  
Cathy Hamilton  
Adjudicator

\_\_\_\_\_ May 3, 2023