

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-4440-R

Appeal PA20-00252

Queen's University

Order PO-4423

September 22, 2023

Summary: The university submitted a request for reconsideration of Order PO-4423, in which the adjudicator reduced its fee estimate for the time to be spent preparing records for disclosure. The university sought reconsideration claiming an accidental error in the adjudicator's calculation.

In this order, the adjudicator finds that the university has established grounds for reconsideration on the basis of an accidental error under section 18.01(c) of the *IPC Code of Procedure* and upholds the university's original fee estimate for preparation time.

Statutes Considered: *IPC Code of Procedure*, section 18.01(c).

Order Considered: Order PO-3062-R.

OVERVIEW:

[1] In this order, I consider Queen's University's (the university's) request for reconsideration of Order PO-4423 as a result of an accidental error. In Order PO-4423, I upheld in part the university's fee estimate for the work to be done to respond to a request and reduced the estimate of the fee for preparation time from \$4,000 to \$2,010.

[2] Order PO-4423 disposed of the issues in Appeal PA20-00252 in which the

appellant challenged the university's fee estimate for responding to her/his¹ request for records pertaining to a member of the university's teaching staff. In December 2021, during the mediation stage of the appeal, the university issued a fee estimate of \$12,400 for responding to the outstanding parts of the appellant's request. The fee estimate was broken down as follows:

Search and locate records – 200 hours \$6,000.00
@ \$30 per hour

Prepare records for disclosure – 67 \$4,000.00
hours @ \$30 per hour

Photocopies – 12,000 pages @ \$30 per \$2,400.00
hour

(alternative \$10 for records in electronic
format on USB drive)

[3] As noted above, in Order PO-4423, I upheld the university's fee estimate in part. I reduced the fee estimate for time spent preparing the records for disclosure from \$4,000 to \$2,010.

[4] The university contacted the IPC stating that the reduction of the fee estimate for preparation time is based upon an accidental error and requesting a reconsideration of this part of my decision. The university submitted additional representations suggesting that the source of my error was its own error in the original fee estimate.²

[5] The university's request for reconsideration and its representations were shared with the appellant. I invited and received representations from the appellant in response.

[6] For the reasons that follow, I am satisfied that the university has established grounds for reconsidering Order PO-4423 on the basis of an accidental error under section 18.01(c) of the IPC *Code of Procedure* (the *Code*). Accordingly, in this decision, I correct the error in the calculation of the fee estimate for preparation time and uphold the university's initial fee estimate of \$4,000 for the preparation work.

¹ The appellant has requested that neutral pronouns "s/he" and/or "she/he" are used in all future orders when referring to the appellant.

² In the breakdown of the fee estimate, the university says it erroneously estimated 67 hours of preparation time but the fee for preparation time was correct at \$4,000.

DISCUSSION:

Are there grounds to reconsider Order PO-4423 under section 18.01 of the Code?

[7] The *Code's* reconsideration criteria and procedure are set out in section 18, which 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.

18.03 The IPC may reconsider a decision at the request of a person who has an interest in the appeal or on the IPC's own initiative.

[8] 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.³ This common law principle applies unless a party can establish one of the grounds for reconsideration 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.⁴

The university's reconsideration request

[9] The university seeks a reconsideration of my calculation of its fee estimate for preparation time to respond to the appellant's request, citing the ground in section 18.01(c); that there is an accidental error in my calculation.

[10] My analysis and findings in respect of the fee estimate for preparation time are at paragraphs [65] and [66] of Order PO-4423. In my analysis, I accepted the university's estimate that 4000 records would require severing prior to disclosure to the appellant.

[11] The university's calculation of its fee for preparing 4000 records for disclosure is based upon a time estimate of two mins per page. The university did not provide evidence of the number of pages that it anticipates will require preparation, however, I made the calculation based upon an assumption that each record would comprise at

³ *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.

⁴ Order PO-2879-R.

least one page. In my analysis, I noted that the IPC has generally accepted that it takes two minutes to sever a page that requires multiple severances.⁵ Using this generally accepted rate, I then concluded that the time estimate to sever 4000 pages is 67 hours. The university submits that the correct application of the generally accepted rate of two mins per page for 4000 pages should be 133.33 hours.

[12] Following its submission of the reconsideration request, the university provided me with representations. The university states that upon review of its file, it has realised that it made an error in its original fee estimate that was issued to the appellant in December 2021, which I have set out above. In its fee estimate the university estimates the time for preparing the records to be 67 hours. The university submits that this is the possible source of my calculation error in Order PO-4423.

[13] The university acknowledges that in the fee estimate issued to the appellant during the mediation stage of the appeal, it gave a time estimate of 67 hours for the preparation of the records for disclosure. The university applied the hourly rate of \$30 to its estimate of 67 hours to calculate its fee estimate for the work of preparing the records and arrived at a fee of \$4,000. The university states that the fee estimate of \$4,000 is correct but that it made a mistake in the time estimate of 67 hours. The university submits that the time estimate should have been 133.33 hours.

The appellant's response

[14] The appellant provided a copy of the original fee estimate issued by the university in December 2021. The appellant's position is that there is no evidence of an accidental error. The appellant submits that the university did not provide evidence to substantiate that one-third of the records will require severing or that a mistake had been made.

[15] The appellant submits that in Order PO-4423, I reduced the fee for preparation from \$10,000 to \$8,000 and that this finding is final. If there is an error in the fee estimate, the appellant submits that the university neglected to correct it in its representations during appeal PA20-00252 and prior to the order being issued.

[16] The appellant submits that the university should be required to provide affidavit evidence to substantiate its claim that an honest mistake was made in the fee estimate issued in December 2021 and that by raising it at this late stage, the university is now employing a strategy to obstruct access to information. The appellant submits that the university should also provide affidavit evidence to substantiate the estimate of 133.33 hours to prepare the records and the claim that one third of the records will need severing.

[17] In addition, the appellant raises a new issue and makes allegations of bias in favour of the university on the part of the IPC. The appellant submits that the IPC's

⁵ Order PO-4423, para 65.

consideration of the university's request for reconsideration is evidence of bias. The appellant made similar allegations of bias in the course of my inquiry into the appeal.

Analysis and findings

[18] For the reasons that follow, I am satisfied that I made an accidental error in the calculation of the time that would be spent preparing 4000 records for disclosure using the IPC's generally accepted rate of two mins per page and this error is grounds for reconsideration of Order PO-4423.

[19] In my analysis of the fee estimate in Order PO-4423, I accepted the university's estimate that one-third of the responsive records will require severing prior to disclosure. I accepted the university's explanation in the interim access decision that a portion of the responsive records are likely to contain personal information. Based on the university's estimate that it would identify 12000 responsive records, I found that it was reasonable to estimate that a third of these records, 4000 records, would require severing.

[20] The university did not provide an estimate of the number of pages that would require severing in the 4000 records. In my analysis, I noted that the university had not provided a page estimate and based my time estimate calculation upon the assumption that each of the 4000 records would comprise at least a single page. I then used the IPC's generally accepted rate of two minutes to sever a page.

[21] From my review of the time estimate calculation, I am satisfied that I made an error when applying the two min per page rate to 4000 pages. This calculation should have given a time estimate of 133.33 hours. I arrived at an incorrect estimate of 67 hours.

[22] The appellant did not address the university's estimate of preparation time in her/his representations in the appeal. In her/his response to the reconsideration request, the appellant does not address my calculation in Order PO-4423. The appellant has not addressed my assumption that each of the 4000 records that are estimated to require severing comprise at least a single page or my use of the IPC's generally accepted rate of two minutes to sever each page. The appellant's submissions focus on the mistake that the university submits it made in the fee estimate issued in December 2021. The appellant's position is that no mistake has been made, either in the fee estimate or in Order PO-4423.

[23] For the first time, in response to the reconsideration request, the appellant submits that there is no evidence to substantiate that one-third of the records will require severing. This submission was not made during the appellant's appeal of the fee estimate. As I noted in Order PO-4423, the appellant's representations submitted as part of my inquiry did not directly address the university's calculation of the fee estimate. For the reasons set out in the order, I accepted the university's estimate that

a third of the responsive records would require severing. The IPC has previously held that the reconsideration process is not the forum for “re-arguing or substantiating arguments made (or not) during the inquiry into the appeal.”⁶ I accept and adopt this reasoning here. My findings in relation to the portion of records that the university estimates will require severing are final.

[24] I do not accept the appellant’s argument that in order for me to reconsider Order PO-4423, affidavit evidence is required to “substantiate” the doubling of the original time estimate of 67 hours for preparation time. The university is seeking reconsideration of my calculation of the preparation time based upon the findings that I made in the order. The university’s acknowledgement that there is an error in the calculation of the fee for preparation time in its original fee estimate is offered as the possible source of my error. As I explain below, I am not persuaded that the two errors are related. In finding that I have made an accidental error in Order PO-4423, I am not correcting or varying any mistake in the original fee estimate and this is not the nature of the reconsideration request before me.

[25] I have reviewed my calculation in paragraph [65] of Order PO-4423 and the university’s calculation in its fee estimate issued to the appellant. I find that the accidental error in my calculation of the fee estimate for preparation time in Order PO-4423 is independent of any error in the university’s fee estimate letter. In my view, the fact that both calculations use a time estimate of 67 hours is coincidental.

[26] I am satisfied that there is an accidental error giving grounds for reconsideration under section 18.01(1)(c) of the *Code*. I make no finding in relation to the university’s calculation of the estimated *time* to prepare the records for disclosure in its fee estimate issued to the appellant in December 2021. The university’s *fee* estimate for preparation time was \$4,000. I have accepted that the university reasonably estimated the number of records that would require severing to be 4000. Using the generally accepted rate of two mins per page and the fee of \$7.50 per 15 mins (\$30 per hour) from section 6.4 of Regulation 823, the correct fee estimate for preparing the responsive records is \$4,000.

[27] I uphold the university’s fee estimate for preparation time in the original amount of \$4,000 in the order provision below.

Allegations of bias

[28] In the course of my reconsideration of Order PO-4423, I noted typographical errors in my analysis of the appellant’s allegations of bias in paragraphs [24], [26] and [28]. Corrected versions of Order PO-4423 were provided to the parties on August 23, 2023. The appellant makes similar allegations of bias as a new issue in response to the university’s reconsideration request.

[29] The reconsideration criteria and process are set out in section 18 of the *Code*.

⁶ See Order PO-3062-R.

The *Code* is publicly available on the IPC website. As I have noted above, the reconsideration process is not the correct forum for resubmitting arguments made during the inquiry stage of an appeal. I addressed the appellant's allegations of bias as a preliminary issue in Order PO-4423 and the appellant has not sought a reconsideration of the order with reference to the criteria set out in section 18.01. Accordingly, my findings in response to the appellant's allegations of bias are final.

ORDER:

1. I allow the university's request for reconsideration of Order PO-4423 on the basis of an accidental error in accordance with section 18.01(c) of the *Code*.
2. I uphold the university's fee estimate for preparing records for disclosure issued on December 16, 2021, in the original amount of \$4,000.

Original signed by: _____
Katherine Ball
Adjudicator

_____ September 22, 2023