

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4470-R

Appeal MA23-00506

Kingston Police Services Board

Order MO-4403

December 12, 2023

Summary: An affected third party opposed disclosure of a record ordered disclosed by Order MO-4403. They submitted a request for reconsideration of the order, claiming a defect pursuant to section 18.01(a) of the IPC's *Code of Procedure*. The adjudicator finds that the grounds for reconsideration in section 18.01(a) have not been established and denies the reconsideration request.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, sections 14(1), 14(2)(a) and (f); *IPC Code of Procedure*, section 18.01(a).

Orders Considered: Orders PO-2358-R, PO-3062-R, and MO-4403.

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

OVERVIEW:

[1] This decision addresses an affected third party's request for a reconsideration of Order MO-4403, which dealt with a request for access to a list of homicides involving intimate partners cleared by the Kingston Police Services Board (the police) over a five-year period between 2015 and 2020.

[2] The police created a record that lists homicides the police determined involved

intimate partners during the requested time period.¹ The record contains names, locations and outcomes,² and indicates whether there had been any peace bonds in place. The police denied access to the record, and the appellant appealed the police's decision to the Office of the Information and Privacy Commissioner of Ontario (IPC). The appellant is the original requester, a member of the media.

[3] I conducted an inquiry during which I sought representations from the appellant and the police, as well as from individuals whose interests might be affected by disclosure of the record (affected parties).³ The affected party making this reconsideration request is one of two affected parties who submitted representations during the inquiry. The affected party's family members are identified in the record, and the affected party opposes disclosure of their names.

[4] In his representations submitted during the inquiry, the affected party resisted disclosure of "any of the information contained in the [police files] being released to anyone, for any purpose." He wrote that his family had been victimized by an intrusive media in the aftermath of his family members' deaths, and that the request for access to information about them has caused immeasurable stress and concern about the spectre of anonymous individuals prying into their lives. The affected party argued that the request is a violation of his family's privacy and represents a revictimization and an "abuse of the system." He asked that the police's decision be upheld, and that the appellant be censured for making the request.

[5] In Order MO-4033, I found that the record contains personal information belonging to victims and accused individuals. I found that, although the record contains information that is highly sensitive (a factor weighing against disclosure in section 14(2)(f)), this factor was outweighed in the circumstances by the factor in section 14(2)(a), which favours disclosure where it is desirable for the purpose of subjecting government or its agencies – in this case law enforcement and the criminal justice system – to public scrutiny. I found that disclosure would not constitute an unjustified invasion of personal privacy and that the record was therefore not exempt under section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

¹ The request defined intimate partners as individuals where the closest accused-victim relationship (as reported to the Canadian Centre for Justice Statistics at Statistics Canada) was a current or former romantic partner, and included a current or former spouse, common law partner, boyfriend/girlfriend, same-sex partner or other intimate partner. The requester – the appellant in this appeal – sought access to the names of the victims and accused, dates and locations of the homicides, a list of any charges or convictions, and any police records associated with peace bonds (pursuant to section 810 of the *Criminal Code*) in these cases.

² Charges, convictions, or deaths of perpetrators, whether as part of a murder-suicide or after.

³ Individuals whom I notified of the appeal and whom I invited to submit representations if they believed their interests might be affected by disclosure of some or all of the record at issue. These were an accused individual, and survivors of victims and deceased perpetrators. The record at issue does not contain personal information belonging to the affected party making this request.

[6] I also wrote that, even if I had found the record to be exempt under section 14(1), I would have ordered it disclosed pursuant to the public interest override in section 16 of the *Act*.⁴

[7] The affected party asks that the order be reconsidered pursuant to section 18.01(a) of the IPC's *Code of Procedure (Code)*, claiming that my interpretation of "public interest" is defective.

[8] For the reasons that follow, I find that the affected party has not established grounds in section 18.01 of the *Code* for reconsidering Order MO-4403 and I deny the reconsideration request.

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-4403?

[9] The *Act* does not contain an express power of reconsideration.⁵ The procedure and criteria for reconsideration of an order are set out in section 18 of the *Code*. Section 18.01 states 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.

[10] The affected party relies on the grounds for reconsideration in section 18.01(a), stating that:

⁴ The appellant had raised the application of the public interest override in section 16 of the *Act*.

⁵ 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. *Functus officio* is a common law principle which means that once a decision-maker has determined a matter, he or she has not jurisdiction to consider it further. I am *functus* unless the party requesting the reconsideration – in this case, the affected party whose deceased parents' personal information appears in the record – 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. See Order PO-2879-R.

The defect I see is the interpretation of “public interest” and I think the release of the personal information is not needed to meet the public interest argument.

Analysis and findings

[11] The reconsideration process in section 18 of the *Code* is not intended to provide parties who disagree with a decision a forum to re-argue their case in an attempt to obtain a more agreeable decision.

[12] 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*.⁶ 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.*].⁷

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.

[13] Subsequent IPC orders have adopted this approach.⁸ 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...

⁶ [1989] 2 SCR 848 (SCC).

⁷ 1996 CanLII 11795 (ON SC), 28 OR (3d) 67 (Div. Ct.).

⁸ See, for example, Orders PO-3062-R, PO-3558-R and MO-4004-R.

[14] I accept and adopt this approach in this reconsideration request.

[15] For me to reconsider Order MO-4403 under section 18.01(a), I must be satisfied 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).⁹ Failure to notify an affected party is an example of such breach.¹⁰

[16] The affected party's representations do not identify a defect in the adjudication process. The affected party's representations describe why he believes his family members' personal information ought not be disclosed and reasons he believes their names should not be on a list associated with intimate partner violence. The affected party argues that he has a right to privacy that is not overridden by public interest considerations discussed in the order.¹¹ The affected party has not addressed my decision that the record is not exempt under section 14(1), which is the primary basis for the order for disclosure. In any event, however, disagreement with the order is not a ground for reconsideration.¹²

[17] In the circumstances, I find that the reconsideration request is an expression of dissatisfaction with my decision and an attempt to reargue the affected party's position. It does not establish a fundamental defect in the adjudication process, as required by section 18.01(a).

[18] The affected party has also not raised, and I find that there is not, a jurisdictional defect in the decision for the purpose of section 18.01(b), or a clerical or other similar error as described in section 18.01(c).

[19] Having found that the reconsideration request does not establish the grounds for reconsideration in section 18.01(a) of the *Code*, I deny it.

ORDER:

1. The reconsideration request is denied.
2. The interim stay of Order MO-4403 is lifted and the police are ordered to comply with Order MO-4403 by **January 12, 2024**.

Original signed by: _____

Jessica Kowalski
Adjudicator

December 12, 2023

⁹ Order PO-4134-R.

¹⁰ Orders M-774, R-980023, PO-2879-R and PO-3062-R.

¹¹ The record does not contain the affected party's personal information.

¹² See, for example, Orders PO-2538-R, PO-3062-R, PO-4199-R, MO-4154-R and MO-4167-R.