

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-4520-R

Appeal PA20-00244

Ministry of the Attorney General

Order PO-4491

May 28, 2024

Summary: The ministry of the Attorney General (the ministry) requested reconsideration of Order PO-4491 on the basis that there was an accidental error in relation to one record ordered to be disclosed. In this reconsideration order, the adjudicator finds that an accidental error occurred and that there are sufficient grounds to reconsider Order PO-4491 in accordance with the IPC's *Code of Procedure*. After reconsidering the order, the adjudicator finds that the discretionary exemption at section 14(1)(j) (law enforcement) applies to the record, and she upholds the ministry's exercise of discretion to withhold it.

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

OVERVIEW:

[1] In Order PO-4491, I ordered the Ministry of the Attorney General (the ministry) to disclose various records, including record 9, which is comprised of two pages of diagrams of the New Toronto Courthouse (the NTC). I rejected the ministry's claim that any of the discretionary law enforcement exemptions at section 14(1) of the *Freedom of Information and Protection of Privacy Act* (the *Act*) applied to record 9. I also concluded that the discretionary exemption at section 20 (danger to health or safety) of the *Act* did not apply and I ordered the ministry to disclose record 9 in its entirety to the appellant.

[2] The ministry requested reconsideration of my decision regarding record 9 only. It

asserts that there is an accidental error and that record 9 ought to be exempt pursuant to either section 14(1)(j) or section 20 of the *Act*. The ministry requested a stay of Order PO-4491 as it related to record 9, pending the resolution of its reconsideration request.¹ The appellant did not object to this request and after considering the matter, I granted a temporary stay pursuant to section 18.06 of the IPC *Code of Procedure* (the *Code*) so that I could consider the ministry's reconsideration request.

[3] I provided the appellant with a copy of the ministry's reconsideration request and invited it to make representations in response. It declined to do so.

[4] In this order, I grant the ministry's request for reconsideration on the basis that a valid ground for reconsideration exists under section 18.01 of the *Code*. After reconsidering Order PO-4491, I revise it regarding record 9. I find that section 14(1)(j) applies to record 9 and I uphold the ministry's exercise of discretion to withhold it from the appellant.

RECORD:

[5] As outlined above, the only record at issue in this reconsideration is record 9, as identified in Order PO-4491. It consists of two pages of circulation diagrams and layouts of the public and staff areas of Levels 1, 2 and 3 of the NTC.

DISCUSSION:

[6] The first step in considering the ministry's request for reconsideration of Order PO-4491 is to determine whether there are sufficient grounds pursuant to section 18.01 in the IPC's *Code of Procedure* (the *Code*). Section 18.01 of the *Code* requires that one of the following grounds be present before an order may be reconsidered:

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.

[7] It is important to note that the reconsideration process set out in the *Code* is not

¹ The ministry complied with the remaining provisions of Order PO-4491 and provided the IPC with confirmation that it disclosed the other records to the appellant, as ordered.

intended to provide parties with a forum to re-argue their cases.²

[8] The ministry makes its reconsideration request on the basis that there was an accidental error in Order PO-4491, as contemplated by section 18.01(c) of the *Code*. The ministry argues that the accidental error was in my characterization of record 9, which it says impacted my finding that section 14(1)(j) did not apply.³

[9] The ministry says that the accidental error arose because I overlooked some of the content of record 9 and treated it in a manner that was not consistent with findings about similar information contained in other records where I upheld the ministry's application of section 14(1)(j), in particular record 13.

[10] At paragraphs 71 to 76 of Order PO-4491 I concluded that record 13 was subject to the law enforcement exemption at section 14(1)(j) because it contained information that could reasonably be expected to compromise the ministry's capacity to retain custody of persons under lawful detention. I noted that the diagrams in record 13 were detailed in nature and included information about spaces not known to, or accessible by, the public. However, I concluded that record 9 did not contain similar details about private spaces and explained my finding that the risks associated with disclosing record 13 did not exist for record 9.

[11] The ministry submits that record 9 contains sufficient detail about areas not known to, or accessible by, the public to conclude that disclosure of the information at issue could be expected to facilitate the escape from custody of a person who is under lawful detention. It argues that my accidental error arose because I overlooked some of the content of record 9, and that as a result, my finding about record 9 was not consistent with my finding about similar information in record 13.

[12] The ministry points to my statement at paragraph 75 of Order PO-4491 that record 9 contains only general diagrams showing predominantly public areas and does not reveal information about any areas that could assist a person in lawful custody escape and argues that this is not accurate. The ministry submits that my analysis overlooks the significance of areas in record 9 that are not open to the public. It argues that my finding disregards potential security risks related to the disclosure of that information, in particular, the depiction of hallways that may be used exclusively for prisoner transport.

[13] The ministry argues that by overlooking the impact of what use the non-public areas of record 9 could have, and also overlooking the potential impact of releasing information about these non-public areas, record 9 was improperly distinguished from record 13. The ministry says that this amounts to a serious accidental error that could

² Order PO-2538-R, citing *Chandler v. Alberta Assn. of Architects* (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4th) 577 (S.C.C.) and Orders PO-3062-R, PO-3558-R, MO-3975-R and MO-4004-R, as examples.

³ While the ministry made additional representations about section 20 of the *Act* I do not refer to them because they are not relevant to my reconsideration decision.

have negative implications for the security of the NTC and the individuals within it.

[14] I have re-reviewed record 9 in conjunction with record 13, and I have also compared record 9 with the other 14 records before me in the appeal that resulted in Order PO-4491. It is now clear to me that I made an accidental error by overlooking the fact that some of the information available in the other records at issue overlaps with record 9 and provides critical detail and context that was not apparent to me when I issued Order PO-4491. Specifically, I accept the ministry's submission that record 9 contains more than "predominantly public areas" and that specifically, it contains depictions of hallways that may be used for prisoner transport, as well as other private spaces similar to those that I determined were subject to the law enforcement exemption at section 14(1)(j) of the *Act* for other records before me.

[15] I find that the accidental error arose due to the voluminous nature of the records, and because I did not take sufficient notice of the fact that information before me in the other records at issue in PA20-00244 provided critical contextual information about record 9. Had I not accidentally overlooked this information in the other records, I would have concluded that section 14(1)(j) also applied to record 9, for the same reasons that I determine it applied to record 13.

[16] When I consider the nature of the error, the reason it was made, and that if it is not corrected, the Order will contain an unintentional internal inconsistency, I find that an accidental error within the meaning of section 18.01(c) has occurred. Furthermore, given the sensitive nature of the information I overlooked in record 9, and the purpose of section 14(1)(j) of the *Act*, it is necessary that my decision in that regard be revised, and the ministry be permitted to withhold record 9.

[17] As a result, I reconsider my decision in Order PO-4491 and find that the discretionary exemption at section 14(1)(j) applies to record 9, such that the ministry may withhold it from the appellant.⁴

ORDER:

I reconsider Order PO-4491 regarding record 9 only based on section 18.01(c) of the *Code* and uphold the ministry's application of section 14(1)(j) of the *Act* with respect to record 9.

Original signed by: _____

Meganne Cameron
Adjudicator

_____ May 28, 2024

⁴ I note that I considered whether the ministry exercised its discretion to withhold records 1 to 7, 10 to 13, 15 and 16 in Order PO-4491 and the same analysis applies with respect to record 9.

