

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-4538-R

Appeal PA21-00547

Sheridan College Institute of Technology and Advanced Learning

Order PO-4512-I

July 31, 2024

Summary: The college submitted a request for reconsideration of Interim Order PO-4512-I, claiming a fundamental defect in the adjudication process. In this reconsideration order, the adjudicator finds that the college has not established grounds for reconsideration in section 18.01 of the IPC's *Code of Procedure* and denies the reconsideration request.

Statutes Considered: IPC's *Code of Procedure*, sections 18.01(a); *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31.

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

OVERVIEW:

[1] Sheridan College Institute of Technology and Advanced Learning (the college) asked that I reconsider Interim Order PO-4512-I (interim order), in which I did not uphold the college's search for records responsive to the appellant's access request.

[2] The appellant made an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the college for "all notes" pertaining to him from two associate deans. The college granted the appellant complete access to seven records, all emails from one associate dean, and stated that there were no responsive records with respect to the other associate dean and from a specified meeting. The college's

decision described the request as one for “notes and correspondence”.

[3] The appellant was not satisfied with the college’s decision and appealed it to the Information and Privacy Commissioner of Ontario (IPC).

[4] I issued the interim order, in which I ordered the college to conduct a further search for responsive records and issue a new access decision to the appellant. While I upheld the college’s search for notes of the specified meeting of one of the associate deans, I held that it did not conduct a reasonable search for other notes of that associate dean, notes of the other associate dean and correspondence of both associate deans.

[5] The college submitted a reconsideration request asserting that there was a fundamental defect in the adjudication process. The college also requested a temporary stay of the interim order. I granted the stay pending my decision on the reconsideration request.

[6] I shared the college’s reconsideration request with the appellant to keep him apprised of the stay and the request. He provided brief representations, which were shared with the college.

[7] In this reconsideration order, I dismiss the college’s reconsideration request and lift the stay of the interim order. The college is ordered to comply with the interim order.

DISCUSSION:

Are there grounds under section 18.01 of the IPC’s *Code of Procedure* to reconsider the interim order?

[8] The sole issue in this appeal is whether there are grounds under section 18.01 of the IPC’s *Code of Procedure* (the *Code*) to reconsider the interim order.

[9] Under the common-law principle of *functus officio*, once a decision-maker has determined a matter, they do not have jurisdiction to consider it further. However, in *Chandler v Alberta Assn. of Architects*,¹ the Supreme Court of Canada said that while “there is a sound policy reason for recognizing the finality of proceedings before administrative tribunals,” an administrative decision could be reopened in certain circumstances.²

[10] Section 18.01 of the *Code* summarizes the common law position, acknowledging that a decision-maker has the ability to re-open a matter to reconsider it in certain circumstances. It says:

¹ 1989 CanLII 41 (SCC), 62 D.L.R. (4th) 577 (S.C.C.) (*Chandler*).

² *Ibid.*

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.

[11] The college relies only on section 18.01(a). Section 18.01(a) of the *Code* allows the IPC to reconsider its decision or order if a party requesting reconsideration establishes that there was a fundamental defect in the adjudication process. A fundamental defect would be a breach of rules of procedural fairness,³ such as:

- a failure to notify an affected party;⁴
- a failure to invite representations on an issue;⁵ or
- a failure to invite sur-reply representations where new issues or evidence are provided in reply.⁶

[12] It is important to note that the reconsideration process set out in the *Code* is not intended to provide parties with a forum to re-argue their cases⁷ whether or not they made those arguments during the inquiry.⁸

College's reconsideration request

[13] The college relies on section 18.01(a) of the *Code* (that there was a fundamental defect in the adjudication process) to argue that the interim order must be reconsidered. The college argues that I expanded the scope of the access request by ordering the release of "all notes and correspondence" relating to the appellant. The college notes that the access request states that the appellant seeks access to "all notes" related to him from two associate deans.

[14] The college also challenges my conclusion that the parameters it used to search for correspondence were too narrow. It argues that it might be impossible to identify email correspondence that relates to the appellant if it does not contain identifiers, such as the appellant's first name, last name and student number. The college says that it would be required to speculate about whether emails relate to the appellant, which would

³ Orders PO-3960-R and PO-4134-R.

⁴ Orders M-774, R-980023, PO-2879-R and PO-3062-R.

⁵ Order M-774.

⁶ Orders PO-2602-R and PO-2590-R.

⁷ Order PO-2538-R, citing *Chandler*, and Orders PO-3062-R, PO-3558-R, and MO-4004-R.

⁸ Order PO-3062-R.

result in the college running afoul on a further search.

[15] If the IPC decides to not reconsider the interim order, the college asks for clarity on search parameters that would satisfy the interim order.

Appellant's representations

[16] The appellant submits that the college disclosed to him "correspondence" in response to his access request and therefore it understood the request to include notes, correspondence and any other documents.

[17] In response to the college's representations on parameters of the search, the appellant identifies means of verifying if a document relates to him, for example by checking if the document is referenced in another document or attached to another document that has an identifier related to the appellant.

Analysis and finding

[18] For the following reasons, I find that the college has not established that there was a fundamental defect in the adjudication process to require reconsideration of the interim order pursuant to section 18.01(a) of the *Code*.

Scope of the access request

[19] In my view, the college has not established that there was a fundamental defect in the adjudication process because of my description of the scope of the access request. In the interim order, I relied on the parties' common interpretation and understanding of the scope of the access request.

[20] The college's response to the access request and its representations in the inquiry during the appeal indicate that it understood the access request to be one for notes and correspondence. In particular, the college's decision describes the appellant's access request as one for "notes and correspondence" related to the appellant from the two associate deans. All seven records that were released to the appellant as part of the decision were emails. During the appeal, the college provided representations describing its efforts to search for correspondence and, as evidence that its search was reasonable, submitted an affidavit from its Senior Information Security Analyst that describes its search of inboxes of both associate deans.

[21] For the sake of clarity, I wish to address one of the appellant's arguments made in response to the reconsideration request. The appellant submits that the college understood the request to include not only notes and correspondence, but also "any other documents". I disagree. I have outlined above my reasons for concluding that the college understood the access request to be one for notes and correspondence. Most importantly, the appellant's representations submitted in the course of the inquiry focused on notes and email correspondence. The appellant has not previously argued that "any other

documents” were within the scope of the access request and the interim order makes no such finding.

[22] It is unclear from the college’s representations whether it also argues that I expanded the scope of the request by assuming that the request was for notes and correspondence broadly related to the appellant and not limited to notes and correspondence from two associate deans. If this is the college’s submission, I disagree. Throughout the interim order, I specifically referred to notes and correspondence *from* two associate deans.

Parameters of the college’s search for correspondence

[23] I also find that the college has not established that there was a fundamental defect in the adjudication process with regard to my conclusion about the parameters of its search for correspondence. I understand the college to argue that it was unreasonable for me to find that it used narrow keywords because the keywords that it used (first name, last name and student number) were the only keywords that would allow it to identify responsive records. The college’s submission constitutes a disagreement with my conclusion, which is not a ground for reconsideration.

[24] In the interim order, I referred to alternative keywords and information that the college can use to generate additional keywords. At paragraph 31, I noted that I was persuaded by the appellant’s representations that responsive records could contain only appellant’s first name. While the college’s representations supporting its reconsideration request appear to suggest that the appellant’s first name was a keyword used to search for correspondence, such assertion is not supported by the college’s affidavit provided during the inquiry. The affidavit states that the keywords used in the search were appellant’s last name, first and last name (as one keyword), and student number. Further, at paragraph 31, the interim order states that there might be responsive emails that discuss the appellant but do not use identifiers related to him. The access request provides some detail about the interactions between the appellant and the two associate deans, such as the date of the specified meeting, that the college could use to generate further keywords.

[25] For clarity, I would like to emphasize that I did not attempt to provide an exhaustive list of keywords that the college ought to use to comply with the interim order. It is the college’s duty under the *Act* to identify responsive records. It needs to establish that it made reasonable efforts to identify and locate responsive records.⁹ However, it does not need to prove with certainty that further records do not exist.

⁹ P-624 and PO-2559.

ORDER:

1. I deny the college's reconsideration request.
2. I lift the stay of Interim Order PO-4512-I and order the college to comply with the Interim Order PO-4512-I by **August 30, 2024**.
3. I remain seized with appeal PA21-00547 to deal with any outstanding issues arising out of provisions 1 to 3 of the Interim Order PO-4512-I.
4. In order to verify compliance with the Interim Order PO-4512-I, I reserve the right to require the college to provide me with a copy of the access decision referred to in provision 2 of the order in the Interim Order PO-4512-I and any records disclosed with that decision.

Original Signed By: _____
Anna Kalinichenko
Adjudicator

_____ July 31, 2024