

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4577-R

Appeal MA23-00242

Order MO-4530

City of Toronto

October 8, 2024

Summary: The city submitted a request for reconsideration of Order MO-4530, claiming a fundamental defect in the adjudication process and a jurisdictional defect. In this reconsideration order, the adjudicator finds that the city has not established grounds for reconsideration under the IPC's *Code of Procedure* and denies the reconsideration request.

Statutes Considered: IPC's former *Code of Procedure*, sections 18.01(a) and (b) and current *Code of Procedure*, sections 15.01(a) and (b); *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended.

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

OVERVIEW:

[1] The City of Toronto (the city) asked that I reconsider and vacate Order MO-4530, where I ordered the city to issue an access decision.

[2] Order MO-4530 addressed an appeal under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) where the appellant sought the property addresses of all people who, as of December 31, 2022, owed municipal tax arrears in the city, as well as the amounts owing. The city refused access to the requested information, relying on the exemptions in sections 15(a) (information

published or available to the public) and 14(1) (personal privacy) of *MFIPPA*. The appellant (then the requester) was not satisfied with this response and appealed the decision to the Information and Privacy Commissioner of Ontario (IPC).

[3] I issued Order MO-4530, where I ordered the city to issue an access decision for records related to tax arrears owed for properties that were not owned by individuals. I upheld its decision to withhold records for properties owned by individuals, finding that such records were exempt from disclosure under section 14(1) of *MFIPPA*.

[4] The city submitted a reconsideration request, stating that there was a fundamental defect in the adjudication process. It requested a stay of the order and asked that I vacate Order MO-4530, and instead issue an interim order regarding one of the findings in Order MO-4530. I agreed to grant an interim stay of the order pending the reconsideration request and informed the parties of this.

[5] I intended to share the city's reconsideration request with the appellant to keep him apprised of the request and to give him the opportunity to provide representations in response to the city's arguments. The city did not agree to providing the appellant with a copy of its reconsideration request, stating that it objected to the appellant's participation in the reconsideration process. After considering its arguments in support of the reconsideration request, I determined that I did not need to seek representations from the appellant.

[6] For the reasons that follow, I dismiss the city's reconsideration request and lift the stay of the order.

DISCUSSION:

[7] The sole issue in this appeal is whether there are grounds under the IPC's *Code of Procedure* (the *Code*) to reconsider the order.

[8] 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

[9] Section 15.01 of the *Code*³ summarizes the common law position, acknowledging

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

² *Ibid.*

³ At the time of the city's reconsideration request, the current *Code of Procedure* had not yet come into effect. The analogous provision in the former *Code* is section 18.01. Section 18.01(b) has slightly different language than section 15.01(b): "some other jurisdictional defect in the decision ...", but otherwise the language is identical.

that a decision-maker has the ability to re-open a matter to reconsider it in certain circumstances. It says:

15.01 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) a jurisdictional defect in the decision; or
- (c) a clerical error, accidental error or other similar error in the decision.

[10] The city relied on sections 18.01(a) and (b) of the former *Code*. As discussed above, in the current *Code*, in effect as of September 9, 2024, section 18.01 has been renumbered to 15.01. As this reconsideration order is issued under the revised *Code* and because, aside from the numbering and slightly different language, there is no difference between the two sections, when discussing the city's request I have used the language in the revised *Code*.⁴

[11] Section 15.01(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,⁵ such as:

- a failure to notify an affected party;⁶
- a failure to invite representations on an issue;⁷ or
- a failure to invite sur-reply representations where new issues or evidence are provided in reply.⁸

[12] Section 15.01(b) relates to whether an adjudicator has the jurisdiction under *MFIPPA* 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 *MFIPPA* to disclose records.

[13] 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 cases⁹ whether or not they

⁴ While the language in the revised *Code* has been used throughout the decision, the orders referenced use the language in the old *Code*.

⁵ Orders PO-3960-R and PO-4134-R.

⁶ Orders M-774, R-980023, PO-2879-R and PO-3062-R.

⁷ Order M-774.

⁸ Orders PO-2602-R and PO-2590-R.

⁹ Order PO-2538-R, citing *Chandler*, and Orders PO-3062-R, PO-3558-R, and MO-4004-R.

made those arguments during the inquiry.¹⁰

The city's reconsideration request

[14] The city raised sections 15.01(a) and (b), as well as more general concerns about a duplication of proceedings if its reconsideration request is not granted. I summarize and address the city's arguments below. As stated above, I did not seek representations from the appellant.

15.01(a) – fundamental defect in the adjudication process

[15] The city states that the order reveals fundamental defects in the adjudication process. It explains that its position during the appeal was that the appellant was seeking to utilize *MFIPPA* to make a mass request of individual records that were permitted to be provided under section 317 of the *City of Toronto Act, 2006*, and that based on this understanding, section 15 of *MFIPPA* was the appropriate exemption to claim. The city states that during the appeal, the appellant indicated that he wanted this information in a specific format, and states that the appellant's arguments against the application of section 15 relied on this format.

[16] In its reconsideration request, the city reiterates the arguments that it made during the appeal, and submits that I did not "meaningfully engage with these submissions in the context of the appeal as a whole." Overall, it submits that I erred in my determination of the scope of the appellant's request, stating that I treated the request as something other than what the appellant was seeking, and what the city believed was being requested. It states that, after making this determination, the city should have been invited to provide submissions on the application of *MFIPPA* to this record.

[17] In support of its position, the city explains that it routinely provides tax certificates to individuals using the *City of Toronto Act, 2006* process, providing millions in fee revenue for the city, and that as such, the information at issue may be exempt under section 11 of *MFIPPA*, which allows institutions to withhold information if its disclosure would harm its economic interests. It states that because I did not provide the city with an opportunity to provide representations on all relevant issues after I determined the scope of the records, there was a fundamental defect in the adjudication process, and I should reconsider Order MO-4530.

[18] The core of the city's argument relates to the scope of the request for records and my findings for this issue. I have considered the city's arguments in support of their reconsideration request, and for the following reasons I find that the city has not established that there was a fundamental defect in the adjudication process. The city submits that after I made a finding on the scope of the request for records, which it states was distinct from both what the appellant was seeking, and what the city

¹⁰ Order PO-3062-R.

understood the request to be, I should have then invited representations from the city on the application of *MFIPPA* as a whole.

[19] First, I note that, as I stated in paragraph 14 of Order MO-4530, during the inquiry I sought representations from the city on its understanding of the scope of the request. In the letter that I wrote to the city, I explained that I understood the appellant's request to be for aggregate information about property taxes in the city, and I asked the city to provide representations on the scope of the access request and how the city responded to it. The city's response reiterated that it considered the request to be for tax certificates, and that it would be relying on its original representations.

[20] Considering that the city was invited to provide representations on my findings of the scope of the request, and it declined to do so, I do not agree that my decision to not issue an interim order represents a fundamental defect in the adjudication process. While there may have been procedural issues (that would have been addressed during the inquiry) if the city were to raise the discretionary section 11 exemption at that time, the city was provided the opportunity to do so. It was not, as it claims in its reconsideration request, limited to providing representations solely on the application of section 15 of *MFIPPA*.

[21] Furthermore, I do not agree with the city's characterization of my findings of the scope of the request as being different than what the appellant was seeking, or different from what the city understood the request to be. The purpose of my findings on the scope of the request was not to make a new determination on what the appellant was seeking, but rather to clarify that: "[w]hether the appellant is seeking access to a compilation of individual tax certificates for properties for which there are tax arrears, with only the property addresses and amounts owing shown (the appellant stated that he is not seeking access to names or other information on the certificates), or a list containing this same information, it is clear that the appellant is seeking the addresses and amounts owing for all properties in the city that owe municipal tax arrears, in aggregate – or summary – form."¹¹

[22] In other words, my finding on the scope of the request was that regardless of the specific format of the information at issue, the information the appellant was seeking was clear, and the application of *MFIPPA* to the information, regardless of the format, is the same. Accordingly, it does not follow that my findings on the scope of the request warranted further representations from the city (although, as described above, the city was given the opportunity to provide them, and declined to do so).

[23] Last, even if my findings on the scope of the request required that I seek additional representations from the city, and even if I had not provided it this opportunity, there is nothing in Order MO-4530 that prevents the city from making these additional claims while remaining in compliance with the order. As stated in order

¹¹ Order MO-4530 at para 16.

provision 2, I ordered the city to issue an access decision for records related to properties that are not owned by individuals. I did not require the city to disclose these records. If the city believes that the information at issue should be withheld under the discretionary section 11 exemption (or, as discussed below, for some other reason), it is able to claim that as part of its new access decision.

[24] Considering all the above, I find that the city has not established the ground for reconsideration at section 15.01(a).

15.01(b) – jurisdictional defect

[25] The city states that my findings on the scope of the record also gave rise to a jurisdictional defect in the order. It submits that the city does not have the capacity to create the types of records proposed, and provided representations on this in the context of the issues listed in the notice of inquiry. It is not clear where the city claimed that it could not create the records at issue during the inquiry. Indeed, it provided a sample of tax certificates to explain what information the records would contain, and submitted representations in the context of the information at issue being multiple certificates with similar information. While the city states that my finding on the scope of the request differs from its understanding of it, its representations show that, regardless of the specific format of the records, it understood it to be for multiple tax certificates and that these records could be produced. Accordingly, I find that the city has not established a jurisdictional defect in the decision.

[26] The city also submits that I did not meaningfully respond to its claims that the appellant was trying to circumvent “legislative restrictions” through the *MFIPPA* process. In its original representations, the city did not mention legislative restrictions, but did claim that the appellant was attempting to circumvent the *City of Toronto Act, 2006* process for economic gain. I addressed this argument in my section 15 analysis and find the city’s argument in this regard does not establish a jurisdictional defect in the decision.

[27] The city is now claiming that it is unable to produce the requested information due to section 53(1) of the *Assessment Act*.¹² The city also submits that any parties affected by the disclosure of the records should be given the opportunity to participate in the inquiry process. Notwithstanding that the city did not raise these arguments during the appeal, either during the initial stages of the inquiry or after I sought further representations from it on the scope of the request, I do not agree that this amounts to a jurisdictional defect in the decision.

[28] As noted above, the order does not require the city to disclose the information at issue, or even to create a record in contravention of the *Assessment Act*. If the city’s position is that it is unable to do so because of an act that prevails over *MFIPPA*, it can

¹² R.S.O. 1990, c. A.31

state this in its new decision. Order MO-4530 addressed the application of the exemptions that the city claimed and found that section 15 of *MFIPPA* did not apply while section 14 of *MFIPPA* would only apply to certain types of information. I ordered the city to issue an access decision in light of my findings, but I did not order disclosure. Additionally, if notification of affected parties is necessary, this could be addressed as part of the new access decision, and any potential appeals of that decision to the IPC. As such, I find that the city has not established that there is a jurisdictional defect in the decision.

The city's requested outcome and duplication of proceedings

[29] The city also provided information on why it was requesting the reconsideration, the specific outcome it desired, and issues with a possible duplication of proceedings. While the city did not specify how these issues addressed the section 15.01 reconsideration criteria, I consider them below.

[30] The city submits that there are a number of possible affected parties who may need to be notified following the order, and that producing a document with the information may conflict with other statutes. It also states that the city is not in a position to make representations on the positions of other affected parties, and that these would need to be considered as part of an inquiry. It states that to avoid a "duplication of proceedings," Order MO-4530 should be vacated, with an interim order issued regarding my determination of the scope of the records, and then for the rest of the issues to be moved to the mediation stage of the IPC process. Alternatively, it asks that the matter be referred to the "appeal stage," with representations being sought from the city and the appellant simultaneously on other exemptions, as well as on which other parties should be provided notice of the appeal.

[31] If the city wants the opportunity to have the above issues addressed at the adjudication stage, it is not clear how this practically differs from the outcome if it were to comply with Order MO-4530. In the decision, I found that sections 14 and 15 of *MFIPPA* do not apply to the information at issue, which the city does not dispute. I then ordered the city to issue an access decision. If the city were to issue this decision and refuse access to the information at issue (or, as it states, claim that it cannot produce the record), it could cite the issues it has raised in this reconsideration request as part of that new decision to the appellant. The appellant may appeal the city's new decision if he chooses.

[32] The city states that this would be a duplication of proceedings, but based on the city's request, while the records at issue would be the same, the appeal would be based on entirely different exemptions that the city did not claim in response to the original request, including potential jurisdictional issues related to the production of the record. Given the different issues, it is not clear how this would amount to a duplication of proceedings, even if the records are the same.

[33] As such, I find that the city's concern about possibly duplicate proceedings does not establish that a reconsideration is warranted. Having also found that the reconsideration criteria in section 15.01(a) or (b) have not been met, I deny the city's reconsideration request.

ORDER:

1. I deny the city's reconsideration request.
2. I lift the stay of Order MO-4530 and order the city to comply with Order MO-4530, treating the date of this order as the date of the access request for procedural purposes, without recourse to a time extension.
3. In order to verify compliance with Order MO-4530, I reserve the right to require the city to provide me with a copy of the access decision referred to in provision 2 of the order in Order MO-4530 and any records disclosed with that decision.

Original Signed by: _____
Chris Anzenberger
Adjudicator

_____ October 8, 2024