

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4606-R

Appeal MA22-00543

The Corporation of the City of North Bay

Order MO-4507

December 19, 2024

Summary: A company submitted a request for reconsideration of Order MO-4507, where the adjudicator upheld the city's decision to withhold a report under the closed meeting exemption. The company claimed that there was a fundamental defect in the adjudication process.

In this reconsideration order, the adjudicator finds that neither a fundamental defect in the adjudication process nor any of the other grounds for reconsideration under section 18.01 of the IPC's *Code of Procedure* has been established and denies the request for reconsideration.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 6(1)(b); *IPC Code of Procedure*, sections 18.01(a), (b) and (c).

Orders Considered: Orders PO-2358-R, PO-3062-R, MO-4260 and MO-4507.

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

OVERVIEW:

[1] This reconsideration order arises from a request from the appellant to reconsider Order MO-4507.

[2] Order MO-4507 resolved an appeal from an access decision made by the City of

North Bay (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) in response to a request for access to a staff report to council (the report) and correspondence written by the named former Chief Administrator Officer.

[3] The city granted access to the correspondence but denied access in full to the report pursuant to section 6(1)(b) of the *Act*.

[4] In Order MO-4507, I upheld the city's decision to withhold the report under section 6(1)(b).

[5] After Order MO-4507 was issued, the appellant contacted the IPC to convey that it believed there was a fundamental defect in the adjudication process which is a ground for reconsideration under section 18.01(a) of the IPC's *Code of Procedure* (the *Code*). The appellant requested that the order be reconsidered on that basis.

[6] For the reasons that follow, I find that the appellant has not established that there are grounds under section 18.01 of the *Code* to reconsider Order MO-4507. I deny the reconsideration request.

DISCUSSION:

[7] The sole issue to be determined is whether there are grounds under section 18.01 of the *Code* to reconsider Order MO-4507.

[8] The IPC's reconsideration criteria and procedure are set out in section 18 of the *Code*. Section 18 reads, in part:

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 omission 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.

[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

¹ *Chandler v. Alberta Assn. of Architects* (1989), 62 D.L.R. (4th) 577 SCC.

“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] For me to reconsider Order MO-4507, the appellant’s request must fit within one of the three grounds for reconsideration in section 18.01 of the *Code*.

[11] In its reconsideration request, the appellant claims that there was a fundamental defect in the adjudication process. Section 18.01(a) of the *Code* specifies that the IPC may reconsider an order where it is established 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).³ Examples of such breaches would include a failure to notify an affected party,⁴ or to invite sur-reply representations where new issues or evidence are provided in reply.⁵

[12] In this case, the appellant submits that a fundamental defect occurred when I did not consider whether it was appropriate for the city to apply the section 6(1)(b) exemption to the report in its totality. It submits that the principles of transparency and openness (along with natural justice) require that the city sever the advice portion of the report from the background and recommendation portions of the report so that the advice portion is the only portion considered “in camera” by council and the background and recommendation portions are disclosed.

[13] The appellant also submits that there is a fundamental defect in the decision as I did not consider the city’s historic practice to divide the report into two components and consider the background information and recommendation portions of the report during the open session. The appellant submits that due to this historic practice, it is inappropriate for the city to consider the report, in its totality, during the “in camera” session and I should not have upheld the city’s decision to withhold it under section 6(1)(b). As such, the appellant submits that its right to be aware of what city staff was reporting to council and its right to be heard were not considered in Order MO-4507.

[14] In my view, the appellant has not established grounds that there is a fundamental defect in Order MO-4507.

[15] In Order MO-4507, I upheld the city’s decision to withhold the report, in its entirety, under section 6(1)(b) because I found that the city has established that disclosure of the record, in its entirety, would reveal the substance of deliberations of council because a statute authorizes holding that meeting in the absence of the public. As I noted in Order MO-4507, section 6(1)(b) is a discretionary exemption. As such, if

² *Ibid.*

³ Order PO-4134-I.

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

⁵ Orders PO-2602-R and PO-2590.

section 6(1)(b) applies, the city has the discretion to withhold (or disclose) portions of the report or the report in its entirety from the appellant.

[16] In Order MO-4507, I reviewed the city's exercise of discretion not to disclose the report. I note that in exercising its discretion, the city considered both the principles of transparency and openness and the city's historic practice with respect to the disclosure of records of this nature.⁶

[17] On my review, I found the city's exercise of discretion to withhold the report in its entirety under section 6(1)(b) was properly exercised. As stated in Order MO-4507, although the IPC may review an institution's exercise of discretion to determine whether it was properly exercised, the IPC may not substitute its own discretion for that of the institution.⁷

[18] Moreover, I note that the concerns raised by the appellant in his reconsideration request are issues that he raised in his original representations. 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 case⁸ – whether or not they made those arguments during the inquiry.⁹ In other words, even if a party disagrees with an adjudicator's interpretation of the facts or the legal conclusions drawn in a decision,¹⁰ the reconsideration process is not meant as a chance to convince the adjudicator to make a different decision.

[19] In my view, the appellant's reconsideration request repeats the arguments it made during the adjudication stage of the appeal. I note that the appellant's arguments that the city should have severed the report into two components were made in its initial representations. I also note that the appellant acknowledges that it reiterates the principles of transparency and openness espoused by the Commissioner from its initial representations in its reconsideration request. In particular, at the adjudication stage, the appellant argued that the principles of transparency and openness required that the city to sever the report into two components.

[20] As noted above, section 18.02 of the *Code* stipulates that the IPC will not reconsider a decision simply on the basis that a party disagrees or is dissatisfied with the result. In my view, the appellant's disagreement with my decision forms the basis of its request for reconsideration of Order MO-4507.

⁶ While historic practice is a consideration that the city may take into account in its exercise of discretion, each record is considered on its content and in the particular context of the request.

⁷ Section 43(2) of the *Act*.

⁸ See Order PO-2538-R. Later IPC orders followed the approach in Order PO-2538-R (see, for example, Orders PO-3062-R, PO-3558-R and MO-4004-R).

⁹ See Order PO-3602-R.

¹⁰ See Orders PO-2538-R and PO-3602-R. Examples of legal conclusions include an adjudicator's finding that an exemption applies (or does not apply), or that a search was reasonable in the circumstances (or not reasonable).

[21] Although the appellant did not claim that section 18.01(b) and/or (c) applies in its reconsideration request, I also find that they do not apply.

[22] Section 18.01(b) relates to whether an adjudicator has the jurisdiction under the *Act* 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 the *Act* to disclose records. From my review of Order MO-4507, I find no evidence of a jurisdictional defect with respect to the order I made in that decision.

[23] Section 18.01(c) refers to a clerical error, accidental error or other similar error in the decision. A clerical error, accidental error or other similar error would commonly be a typographical error in the decision or a misplaced word, such as "not", in the decision. It is an error that generally originates with this office rather than with a party and is usually obvious to the reader. From my review of Order MO-4507, I find no evidence of a clerical error, accidental error or other similar error.

[24] In summary, I find that the appellant has not established that there was a fundamental defect in the adjudication process (section 18.01(a)), a jurisdictional defect in the decision (section 18.01(b)), and/or a clerical error, accidental error or omission or other similar error in the decision (section 18.01(c)). As none of the relevant grounds for reconsideration under section 18.01 of the *Code* have been established, I therefore deny the appellant's reconsideration request.

ORDER:

I deny the appellant's reconsideration request.

Original Signed by: _____
Lan An
Adjudicator

December 19, 2024 _____