

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-4744-R

Appeal PA24-00341

University of Toronto

Order PO-4518

October 15, 2025

Summary: The University of Toronto received two requests under the *Freedom of Information and Protection of Privacy Act* for records related to the appellant's interactions with the university and its staff.

The university denied access to the records in full, claiming that the exclusion for employment or labour relations information at section 65(6)3 applies to an internal investigative report about an employee and emails about the report and that disclosure of the remaining records, which are emails and other reports, would be a threat to safety or health (section 49(a), read with section 20).

In Order PO-4518, the adjudicator upheld the university's decision to deny access to the records. The appellant then made a request to reconsider this order.

In this reconsideration order, the adjudicator finds that the appellant has not established any of the grounds for reconsideration in section 18.01 of the IPC's *Code of Procedure* (2004) and dismisses the appellant request for a reconsideration.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31. *IPC Code of Procedure* (2004), section 18.01.

Orders Considered: Order PO-4518.

OVERVIEW:

[1] This order addresses a request that I reconsider Order PO-4518. The reconsideration request is made by the appellant, who made two access to information requests under the *Freedom of Information and Protection of Privacy Act*¹ (the *Act*) to the University of Toronto (the university).

[2] The access requests were for records relating to the appellant's interactions with the university and its staff. The appellant was dissatisfied with the university's decision to refuse access to the responsive records on the grounds that the exclusion at section 65(6)3 (employment or labour relations) applied to an internal investigative report about a university employee and to the emails about this report and that the exemption at section 49(a) (discretion to refuse requester's own information), read with section 20 (threat to safety or health), applied to the remaining records, which are emails and other reports.

[3] In Order PO-4518, I upheld the university's decision that the report, which relates to a complaint made by the appellant against a university employee, and emails about this report, were excluded from the application of the *Act* under section 65(6)3. I also upheld the university's decision that the remaining records were exempt under section 49(a), read with section 20.

[4] The appellant then submitted a request for reconsideration under the Information and Privacy Commissioner of Ontario (the IPC's) *Code of Procedure* (the *Code*).

[5] In this reconsideration order, I find that the appellant has failed to establish that any of the grounds for reconsideration in section 18.01 of the *Code* apply and I therefore deny the reconsideration request.

DISCUSSION:

Does the request for reconsideration establish any grounds for reconsideration in section 18.01 of the *Code*?

[6] As a threshold matter, I must first determine whether there are sufficient grounds to reconsider Order PO-4518.

[7] The *Code* establishes how the IPC considers requests for reconsideration. The *Code* provisions are reflective of the common law pertaining to when an administrative tribunal is no longer able to re-open a proceeding after a final decision.² Order PO-4518 is a final decision.

¹ R.S.O. 1990, c. M.56.

² This is referred to as *functus officio*. See Order PO-2538-R.

[8] The relevant *Code* provisions are:

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.³

[9] The reconsideration process set out in the *Code* is not intended to provide parties with a forum to re-argue their cases.⁴

Analysis and Findings

[10] For me to reconsider Order PO-4518, there must be a basis to do so that fits within one of the three grounds for reconsideration in section 18.01 of the *Code*.

[11] In Order PO-2538-R, the adjudicator reviewed the case law regarding an administrative tribunal's power to re-open a matter, including the Supreme Court of Canada's decision in *Chandler*.⁵ With respect to the reconsideration request before him, the adjudicator in PO-2538-R 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*.^[6]

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 [parties requesting reconsideration]. ... As Justice Sopinka comments in *Chandler*,

³ The *Code* was amended on September 9, 2024. As this reconsideration request was filed before September 9, 2024, I will consider it under the provisions of the *Code of Procedure* of October 2004, which was the *Code of Procedure* applicable at that time. The grounds for a reconsideration request are essentially the same in both *Codes*.

⁴ 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.) ("*Chandler*") and Orders PO-3062-R, PO-3558-R, MO-3975-R, MO-4004-R and MO-4057-R, as examples.

⁵ Cited above.

⁶ Referring to *Grier v. Metro Toronto Trucks Ltd.* (1996), 28 O.R. (3d) 67 (Div. Ct.).

"there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals." I have concluded that this rationale applies here.

[12] As observed by the adjudicator in MO-4057-R, this approach has been adopted and applied in subsequent IPC orders,⁷ including Order PO-3062-R, where the same adjudicator affirmed that the reconsideration process established by the IPC is not intended to provide a forum for re-arguing or substantiating arguments made (or not) during the inquiry into the appeal.

[13] I have taken these principles into account when reviewing the appellant's reconsideration request.

[14] The appellant has not specifically stated which ground under section 18.01 of the *Code* he relies upon for the basis of his reconsideration request. He refers, however, to a "fundamental defect" in the adjudication process, so I have considered the possible application of section 18.01(a). As his arguments seem to suggest he believes that there has been a jurisdictional defect, I have also considered the possible application of section 18.01(b). Finally, he argues that there was a clerical error, so I have considered section 18.01(c).

[15] I will consider each of these grounds separately.

[16] Regarding a fundamental defect under section 18.01(a) of the *Code*, the appellant's reconsideration representations focus on how he believes he was mistreated by the university in its interactions with him.

[17] The appellant also takes issue with the fact that a written process was used to determine the issues on appeal. Instead of a written process, the appellant submits that I should have conducted my own independent investigation of his complaint against the university employee, and the university's treatment of him. He states that this investigation should have me personally interviewing the witnesses to his complaint to verify that his complaint was a true complaint.

[18] As summarized in Order MO-4057-R, prior IPC reconsideration orders have found that various breaches of procedural fairness may qualify as a fundamental defect in the adjudication process for the purpose of section 18.01(a) of the *Code*.⁸ Examples of such breaches include failure to notify an affected party⁹ or to invite sur-reply representations where new issues or evidence are provided in reply.¹⁰ Another example of a fundamental

⁷ See for example, Orders PO-3062-R, PO-3558-R and PO-4004-R.

⁸ Order PO-4134-R.

⁹ Orders M-774, R-980023, PO-2879-R and PO-3062-R.

¹⁰ Orders PO-2602-R and PO-2590.

defect is when the adjudicator overlooked material evidence contained in the record.¹¹

[19] In this case, the appellant's arguments are not about a fundamental defect in the adjudication process as contemplated by section 18.01(a), instead they appear to me to be an argument under section 18.01(b) of the *Code* about my jurisdiction under the *Act*.

[20] 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.

[21] The appellant is not arguing that I did not have jurisdiction to make the order I did under the *Act* as to the application of the exclusion and the exemptions to the records. Instead, he is arguing that I did not properly consider the evidence before me and conduct my own investigation into the facts and circumstances that gave rise to the records creation.

[22] In my view, the arguments made by the appellant are about matters not within my jurisdiction under the *Act*. Under the *Act*, I do not have jurisdiction to decide whether the complaint made by the appellant, or the university's investigation into the complaint, were meritorious. Nor do I have jurisdiction to personally interview witnesses to conduct my own investigation into the complaint.

[23] Section 18.01(c) of the *Code* contemplates "clerical or accidental error, omission or other similar error in the decision."

[24] Regarding a clerical error under section 18.01(c), the appellant submits that the order should indicate that there are 359 pages of records that include emails, whereas it actually indicates that there are 359 pages of email records. He also argues that I did not acknowledge the actual pages of email records at issue after he agreed to not seek emails he sent or received.

[25] In the order, I recognized that not all of the information in the 359 pages of email records was at issue, as the appellant's emails to the university and the university's response to each of the appellant's emails was not at issue. I also identified in the order that these email records included a report and emails discussing and attaching this report.

[26] I do not agree that my characterization of these pages as email records as opposed to pages of records that include emails is a clerical error that needs correcting by means of a reconsideration order.

[27] It is clear that the appellant disagrees with my decision not to disclose records to him. Mere disagreement with a decision is not a ground for reconsideration under section 18.01 of the *Code*.¹² The appellant has not established that there was a fundamental

¹¹ See Orders MO-4004-R and PO-4044-R.

¹² Orders PO-2538-R and PO-3062-R.

defect in the adjudication process, a jurisdictional defect or a clerical error within the meaning of sections 18.01(a), (b) or (c) of the *Code*.

[28] As the appellant has not established any of the grounds upon which I may reconsider Order PO-4518, I deny his reconsideration request.

ORDER:

I deny the appellant's reconsideration request.

Original Signed by: _____
Diane Smith
Adjudicator

October 15, 2025 _____