



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

Reconsideration Order MO-1886-R

Appeal MA-030326-1

Order MO-1865-I

City of Toronto



Tribunal Service Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télec: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

BACKGROUND:

In Order MO-1865-I, dated November 16, 2004, I partially upheld the City of Toronto's (the City's) decision to withhold certain records related to the outbreak of severe acute respiratory syndrome (SARS) in the spring of 2003. In Provision 2, I ordered the City to disclose a number of responsive records to the appellant.

On December 7, 2004, I received a copy of the City's letter to the appellant, disclosing 167 pages of records in compliance with Provision 2. I also received a request from the City asking me to reconsider my decision in Order MO-1865-I with respect to 62 other pages also covered by Provision 2. The City subsequently agreed to disclose five pages (Pages 20, 66, 104, 105 and 108). This letter constitutes my decision on the City's request for reconsideration as it relates to the remaining 57 pages, specifically Pages 3, 5, 13, 14, 16, 17, 19, 21-26, 28-36, 39-43, 45, 50-54, 57, 65, 67, 68, 78, 81, 102, 103, 106, 107, 120, 122, 130, 132, 169, 170, 179, 180, 195, 209, 217, 223, 234 and 235.

THE RECONSIDERATION REQUEST

The City's request for reconsideration is made on the grounds that there were fundamental defects in the adjudication process and that the order contains typographical and other errors. Specifically, the City takes the position that I did not consistently apply the reasoning in my order, and that certain typographical errors in the highlighted records provided by me to the City would result in the disclosure of information that I had found should be withheld in the body of the order.

THE RECONSIDERATION PROCESS

This office's *Code of Procedure*, which applies to appeals under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*, contains provisions governing the process and grounds for reconsideration of decisions. Section 18.01 of the *Code* states:

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.

In assessing the merits of the City's request for reconsideration I have taken into account section 18.01 and all of the circumstances of this appeal.

ANALYSIS AND FINDINGS

Name, birth date and family status

In Interim Order MO-1865-I, I determined that the name, birth date and family status of SARS patients are excluded from the scope of the appellant's request. I neglected to highlight this type of information on Pages 5, 13, 17, 28, 43, 78, 81, 102, 106, 107, 120, 169, 170, 179 and 180. This represents an accidental error. I have attached a revised highlighted version of Pages 5, 13, 17, 28, 43, 78, 81, 102, 106, 107, 120, 169, 170, 179 and 180 with the copy of this reconsideration order sent to the City which remedies this error and identifies the portions that should **not** be disclosed.

Other "identifiable" information

In Interim Order MO-1865-I, I determined that any information about SARS patients that was "identifiable", as that term was interpreted and applied in the interim order, was also excluded from the scope of the appellant's request. The City takes the position that certain information that I ordered disclosed should have been characterized as "identifiable". The grounds for the City's position, as outlined to me by a representative of the Corporate Access and Privacy Office, are:

- disclosing reference to dates associated with SARS patients from the beginning of the crisis to March 15, 2003 that appear on a number of pages could reasonably be expected to identify individual patients;
- the requisition number and report number contained on Pages 29-36 and Page 57 could reasonably be expected to identify individual patients;
- a particular descriptor of one SARS patient that appears on Pages 19, 21, 23, 24, 26, 51 and 68 could reasonably be expected to identify this patient; and
- the hospital room number that appears on Page 39 could reasonably be expected to identify the SARS patient who occupied that room.

Based on the information now provided by the City, I accept that disclosing the requisition number and report number on Pages 29-36 and Page 57 could reasonably be expected to identify individual SARS patients, and that this information should be withheld along with the other identifiable information that appears on these pages. I have attached a revised highlighted version of Pages 29-36 and Page 57 with the copy of this reconsideration order sent to the City identifying the portions that should **not** be disclosed.

Although the particular descriptor of the one SARS patient is included among the portions of records already disclosed by the City to the appellant, I accept that further disclosure of this same descriptor that appears on Pages 19, 21, 23, 24, 26, 51 and 68 could facilitate the identification of this patient, and that this information should be withheld along with the other identifiable

information that appears on these pages. I have attached a revised highlighted version of Pages 19, 21, 23, 24, 26, 51 and 68 with the copy of this reconsideration order sent to the City identifying the portions that should **not** be disclosed.

I do not accept that disclosing reference to dates associated with SARS patients from the beginning of the crisis to March 15, 2003 that appear on various pages should be withheld. The date references contained on the various pages of records at issue in this appeal are, by necessity, within the relatively narrow date range identified by the appellant in his request. This range corresponds, for the most part, to the period identified by the City and is clearly already known by the appellant. Also, and significantly, a number of pages of records already disclosed to the appellant by the City contain reference to dates associated with SARS patients covering the identified period. In addition, I am unable to accept that date references up to March 15, 2003 are “identifiable”, yet others from March 16-18, 2003, the period remaining in the appellant’s request, are not. In Interim Order MO-1865-I, I withheld the names and a significant amount of other identifying information for all SARS patients, and I am not persuaded that the various date references identified by the City need be withheld in order to adequately address issues of identifiability in the circumstances of this appeal.

As far as the hospital room number on Page 39 is concerned, the City has already provided similar information to the appellant through the disclosure of other pages of records, and I am not persuaded that any valid distinction can or should be made with respect to similar information that appears on Page 39.

Telephone numbers

In Interim Order MO-1865-I, I determined that home, pager and cell telephone numbers of identifiable individuals are excluded from the scope of the appellant’s request. Based on information now provided by the City’s Corporate Access and Privacy representative, I accept that I neglected to highlight certain numbers on Pages 14, 103, 217 and 235. This represents an accidental error. I have attached a revised highlighted version of Pages 14, 103, 217 and 235 with the copy of this reconsideration order sent to the City which remedies this error and identifies the portions that should **not** be disclosed.

Professional capacity information

In Interim Order MO-1865-I, I determined that information about health care professionals appearing in the records is information about them in a professional capacity and does not fall within the definition of “personal information”, and therefore falls within the scope of the appellant’s request. I also found:

. . . information that would directly or indirectly identify health care professionals as persons who themselves became patients or displayed symptoms of SARS, *as evidenced by the content of the records themselves*, is property considered to be information about these individuals in a personal rather than a professional capacity. This type of information meets the requirements of identifiability, for

the same reasons as other SARS patients, and falls outside the scope of the appellant's request. [emphasis not in original]

I applied these findings to information concerning a number of health care professionals. The City drew my attention to an inconsistency in the application of my reasoning relating to a particular physician. Specifically, on Page 235 I included this individual's name among the highlighted portions that should be withheld, while on Pages 13, 14, 17 and 130 the name was not highlighted. In the City's view, the name of this individual on Pages 13, 14, 17 and 130 should also be withheld.

While I agree that the inconsistency reflects an accidental error that should be corrected, I do not accept the remedy suggested by the City. As noted in Interim Order MO-1865-I, there is no evidence in the City's representations or on the face of the various records to establish that this particular doctor became a SARS patient or displayed symptoms of SARS. Accordingly, any information about this individual appears in his professional capacity and does not qualify as "personal information" and falls within the scope of the appellant's request. I have attached a revised highlighted version of Page 235 with the copy of this reconsideration order sent to the City removing this individual's name from the highlighted portions that should not be disclosed.

Test results and symptoms

The City takes the position that I have inconsistently applied the reasoning in Interim Order MO-1865-I to certain information that describes clinical tests, systems or treatment details of SARS patients. According to the representative of the Corporate Access and Privacy Office, the City objects to the apparent distinction I have made between positive and negative test results that appear on certain pages. She also identifies a particular term that evidences a positive test result that I included among the portions ordered disclosed. Finally, she identifies what I would describe as certain general symptom descriptions that, in her view, should be withheld along with other more serious symptom descriptions.

I accept the City's position as it relates to the one identified term. Including this term among the portions ordered disclosed represents an accidental error. I have attached a revised highlighted version of Pages 3, 24, 26, 51, 52, 53, 68 and 223 with the copy of this reconsideration order sent to the City which remedies this error and identifies the portions that should **not** be disclosed.

However, I do not accept the City's position as it relates to the other clinical tests, symptoms or treatment details. Clearly, negative results or the absence of symptoms do not evidence the presence of SARS, and I do not accept that disclosing information of this nature could reasonably be expected to identify a SARS patient. It is also significant to note that negative test results and/or the absence of symptoms have been included among the various pages of records already disclosed to the appellant.

As far as the general symptom descriptions are concerned, I find that they could be applied to a wide range of illnesses, including the common cold, and I do not accept that disclosing them could reasonably be expected to identify a SARS patient. It is also significant to note that

general symptom descriptions have been included among the various pages of records already disclosed to the appellant.

ORDER:

1. I amend Provision 1 of Interim Order MO-1865-I to include the portions of Pages 3, 5, 13, 14, 17, 19, 21, 23, 24, 26, 28-36, 43, 51, 52, 53, 57, 68, 78, 81, 102, 103, 106, 107, 120, 169, 170, 179, 180, 217, 223 and 235 described in the body of this reconsideration order among the category of information that falls outside the scope of the appellant's request.
2. I uphold Provision 2 of Interim Order MO-1865-I with respect to Pages 16, 20, 22, 25, 39-42, 45, 50, 54, 65, 67, 122, 130, 132, 195, 209 and 234, and the remaining portions of Pages 3, 5, 13, 14, 17, 19, 21, 23, 24, 26, 28-36, 43, 51, 52, 53, 57, 68, 78, 81, 102, 103, 106, 107, 120, 169, 170, 179, 180, 217, 223 and 235 not covered by Provision 1 of this reconsideration order, and I order the City to disclose these pages to the appellant by **December 31, 2004**. I have provided a highlighted version of Pages 3, 5, 13, 14, 16, 17, 19, 21-26, 28-36, 39-43, 45, 50-54, 57, 65, 67, 68, 78, 81, 102, 103, 106, 107, 120, 122, 130, 132, 169, 170, 179, 180, 195, 209, 217, 223, 234 and 235 with the copy of this reconsideration order sent to the City which identify the portions that should **not** be disclosed. If there is any inconsistency between any of the highlighted pages attached to this reconsideration order and highlighted versions of these same pages provided to the City with Interim Order MO-1865-I, the highlighted pages attached to this reconsideration order prevail.
3. I order the City to provide me with a copy of the pages of records disclosed to the appellant in compliance with this reconsideration order and Interim Order MO-1865-I by **December 31, 2004**.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

December 20, 2004 _____