

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-3478- R

Appeal MA15-402-2

City of Hamilton

August 3, 2017

Summary: The appellant made a request to the City of Hamilton (the city) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a listing of accounts receivable and accounts payable related to police services. The city transferred the request to the police pursuant to section 18(3) of the *Act*. In Order MO-3435, the adjudicator upheld the city's transfer of the request. In this order, the adjudicator denies the appellant's request for a reconsideration of Order MO-3435.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 18(2), 18(3), and 18(4).

Orders and Investigation Reports Considered: Orders PO-2538-R and PO-3062-R.

Cases Considered: *Chandler v. Alberta Assn. of Architects*, (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4th) 577 (S.C.C.).

OVERVIEW:

[1] The appellant has asked that I reconsider my findings in Order MO-3435. That order arose out of a request dated November 23, 2015 that the appellant made to the City of Hamilton (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

- 2013 Year end listing of Accounts receivable and Accounts payable related to Police Services with account charged
- 2014 Year end listing of Accounts receivable and Accounts payable related to Police Services with account charged
- 2015 Year end listing of Accounts receivable and Accounts payable related to Police Services the period ending Oct 31/15 including account charged

[2] In a decision letter dated December 7, 2015, the city advised that it was transferring the appellant's access request to the Hamilton Police Services Board (the police). The city advised as follows:

The details of your request were forwarded to the Financial Services division of the City's Corporate Services department. Division staff reviewed the request and on behalf of the Hamilton Police Service, produced a "Detailed General Ledger Transaction" report for each of the respective years; these reports are believed to be responsive to your request. It is also noted that the staff in the Hamilton Police Service have the ability to produce the same records.

Upon review of the record contents and discussion with division staff and the Hamilton Police Service Freedom of Information Co-ordinator, it is determined that the Hamilton Police Service, which is a separate institution under the provisions of the *Act*, have a greater interest in the records. Therefore, in accordance with section 18(3) of the *Act*, the records and the request are transferred to the Hamilton Police Services.

[3] The appellant appealed the city's decision to transfer his request. After conducting an inquiry on the issue, I issued Order MO-3435, in which I upheld the city's decision. The appellant now seeks a reconsideration of my order, making two main arguments. First, he appears to argue that the city, not the police, has a greater interest in the records, and that I was incorrect to find otherwise. Second, he argues that the authority to respond to his access request lay with the city's General Manager, Finance and Corporate Services, and that the junior city staff who responded to his request had no authority to do so.

[4] In this order, I find that the appellant has not established any basis upon which I should reconsider Order MO-3435, and I deny the reconsideration request.

DISCUSSION:

Background

Transfer of request provisions

[5] Section 18 of the *Act* contains provisions relating to the forwarding and transferring of access requests. It provides as follows:

(1) In this section,

“institution” includes an institution as defined in section 2 of the *Freedom of Information and Protection of Privacy Act*.

(2) The head of an institution that receives a request for access to a record that the institution does not have in its custody or under its control shall make reasonable inquiries to determine whether another institution has custody or control of the record, and, if the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

(a) forward the request to the other institution; and

(b) give written notice to the person who made the request that it has been forwarded to the other institution.

(3) If an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

(4) For the purpose of subsection (3), another institution has a greater interest in a record than the institution that receives the request for access if,

(a) the record was originally produced in or for the other institution; or

(b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy of it.

(5) Where a request is forwarded or transferred under subsection (2) or (3), the request shall be deemed to have been made to the institution to

which it is forwarded or transferred on the day the institution to which the request was originally made received it.

Order MO-3435

[6] In Order MO-3435, I upheld the city's decision to transfer the request to the police pursuant to section 18(3). My reasons included the following:

Although the city approves the overall budget of the police, the police approve their own expenditures and, as explained by the city, provide the city's financial staff with the billing information and the particular police service account to be charged or credited. City financial staff input the data into the software system on the police's behalf. The city ran the unedited and unsorted reports as a courtesy to the police, who have the ability to produce the records themselves.

Section 18(4) provides two circumstances under which another institution has a greater interest in a record than the institution that receives the request for access, for the purposes of section 18(3).

Beginning with section 18(4)(b), it would appear that both the city and the police received the records at the same time, as they became available to both institutions once the information had been inputted by the city. Therefore, the police cannot be said to have been the first institution to receive the records.

As for section 18(4)(a), although the information about expenditures originated with the police, the records were, arguably, created by the city (by inputting the expenditures into the applicable software) and, therefore, originally produced "in" the city, not the police.

Neither the city nor the police made representations specifically addressing the issue of for whom the records were produced. In my view, the records were produced "for" both the city and the police. The overall budget for the police comes from the city, while the police clearly have an interest in managing their expenditures within that budget. Both the city and the police have the software capability of producing the record from the relevant software.

Moreover, I do not read section 18(4) as containing an exhaustive list of circumstances under which another institution is considered to have a greater interest in a record. In my view, other circumstances can be relevant, including the circumstances of the record's creation and dissemination. As noted above, the information in the records originated with the police and consists of a detailed, itemized list of police expenses. This is readily apparent from my review of the information which, as

noted by the police, includes employment information about police staff, and information that the police argue relates to undercover operations. While the information was inputted into the relevant software by city financial staff, the city explained that this was done on the police's behalf. Having reviewed the records, I agree with the city and the police that they relate solely to the operation of the police service, and that this is a matter in which the police have a greater interest than the city.

...

I conclude that the city was entitled to transfer the appellant's request to the police under section 18(3). I am also satisfied that the city appropriately exercised its discretion in doing so. The city considered that it did not have sufficient knowledge of police operations to respond properly to the access request under the *Act*. In my view, this was a legitimate factor for the city to consider.

Reconsideration process

[7] This office's reconsideration process is set out in section 18 of the *Code of Procedure*. Section 18 reads in part as follows:

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.

18.08 The individual who made the decision in question will respond to the request, unless he or she for any reason is unable to do so, in which case the IPC will assign another individual to respond to the request.

The appellant's reconsideration request

[8] The appellant has raised two main arguments in support of his reconsideration request. The appellant submits as follows:

It is my position that:

1. The City has the responsibility to respond to all freedom of information (FOI) requests pertaining to accounting records including police financial matters. If the Manager has a concern that the request involves privacy or sensitive operational concerns, the Manager must inform the author of the FOI request that the request is being transferred to [the police], and

2. All of the City's responses to FOI requests must be authorized by the General Manager, Finance and Corporate Services (the Manager).

The appellant's argument that the city should have responded to the access request rather than transfer it to the police

[9] The appellant argues that the city performs the day-to-day accounting functions of the police, and is in possession of the records at issue. He argues that the city is the ultimate authority over police finances as the police budget is funded from the tax levy administered by the city, and that the city is therefore the relevant institution to administer access requests for accounting records. He argues that his request was for accounting information, not information about law enforcement activities. He argues that section 10(2) of the *Municipal Act* gives the city power over the financial management of the police, and that the only financial authority given to the police is the power to estimate a budget pursuant to section 39(1) of the *Police Act*. He states that he is not requesting records pertaining to the budgeting process, nor is he contesting the police budget.

[10] The appellant also argues that his request was for a summary of accounts receivable and accounts payable, not the detailed list of accounts that required extensive redaction. He argues that if he had been notified by the Manager, as required by the *Act*, that his request was being transferred to the police, he would have had the opportunity to clarify or emphasize that his request was for a summary only.

[11] The appellant provided a number of items in support of his arguments, including copies of the *Act*, the *Police Act* and the *Municipal Act* containing his annotations; emails passing between him and city staff; city reports and city financial statements. I have reviewed all of the material submitted by the appellant and refer to some of it below.

The appellant's argument that all of the city's responses to access requests under the Act must be authorized by the General Manager, Finance and Corporate Services

[12] The appellant submits that pursuant to sections 2(1) and 3(1) of the *Act*, access requests must be responded to by the relevant head of an institution, and that the head is a person designated by city council to perform that function. He argues that the

designated head of the city is the General Manager, Finance and Corporate Services (the General Manager), and that all responses to access requests should be issued or authorized by him, not by junior city staff.

Analysis and findings

[13] I note at the outset that the reconsideration process set out in this office's Code of Procedure is not intended to provide parties with a forum to re-argue their cases. In Order PO-2538-R, Adjudicator John Higgins reviewed the case law regarding an administrative tribunal's power of reconsideration, including the Supreme Court of Canada's decision in *Chandler v. Alberta Assn. of Architects*.¹ With respect to the reconsideration request before him, he 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 v. Metro Toronto Trucks Ltd.*²

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 LCBO and the affected party. ... As Justice Sopinka comments in *Chandler*, "there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals." I have concluded that this rationale applies here.

[14] Adjudicator Higgins' approach has been adopted and applied in subsequent orders of this office.³ In Order PO-3062-R, for example, Adjudicator Daphne Loukidelis was asked to reconsider her finding that the discretionary exemption in section 18 did not apply to the information in the records at issue in that appeal. She determined that the institution's request for reconsideration did not fit within any of the grounds for reconsideration set out in section 18.01 of the *Code*, stating as follows:

It ought to be stated up front that the reconsideration process established by this office is not intended to provide a forum for re-arguing or substantiating arguments made (or not) during the inquiry into the appeal...

[15] I will begin by addressing the appellant's second main argument. The appellant

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

² 1996 CanLII 11795 (ON SC), 28 O.R. (3d) 67 (Div. Ct.).

³ See, for example, Orders PO-3558-R and PO-3062-R.

implies that there was a procedural defect in the process followed by the city when he states that the General Manager, not junior city staff, ought to have responded to his access request. However, the designated head of the city is its Mayor, and section 49(1) of the *Act* allows a head to delegate his or her powers and duties under the *Act* to an officer or officers of an institution. It is common for an institution's Freedom of Information Coordinator or Manager to be the one to respond to an access request, which is what occurred here. The appellant has not provided me with any basis upon which to conclude that the Mayor did not properly delegate his duty to respond to the access request to the Freedom of Information Manager who responded to the appellant's request. There are no grounds for me to find that there was a procedural defect as alleged by the appellant.

[16] I now turn to the appellant's first main argument, which is that the city has the duty to respond to all requests for accounting records relating to the police. In a sub argument, the appellant argues that his request was for a summary of accounts receivable and accounts payable, not the detailed list that required extensive redaction. He states that he did not request private or secure information and that if the city had given him notice that his request was being transferred, he would have had the opportunity to clarify or emphasize that his request was for a summary only.

[17] The appellant seems to be implying that the city misinterpreted his request and that if the city had properly interpreted his request, it would not have concluded that the request should be transferred to the police. However, if the appellant was of the view that the city had misinterpreted his request, this could have been raised earlier. Contrary to the appellant's assertion that the city did not give him notice of the transfer of his request to the police, the city in fact advised the appellant by letter dated December 7, 2015 that his request was being transferred to the police.

[18] The remainder of the appellant's submissions re-argue his position that the city has the ultimate authority over police finances and therefore should have responded to his access request. Much of the information that the appellant has attached to his submissions was previously submitted by him with his representations during my inquiry. Some of it is new information, such as the city's 2016 Financial Report, which (like the 2015 report, submitted by the appellant during my inquiry) confirms that the city's consolidated financial statement includes the activities of the police. As well, the appellant has provided a copy of his municipal tax bill which shows that a portion of the taxes collected by the city are allocated to the police's budget. The appellant also resubmitted evidence that prior to 2015, there was no separate external audit for the police's operations but they were included as part of the overall consolidated city audit, and that as of 2015, the audit of the city's financial statements includes an audit of the police's operations. The appellant provided a copy of an email exchange with a city employee who confirmed that all police accounting records go through city books. He also provided a copy of a police board report dated June 16, 2017, which notes by way of background that "[f]or financial reporting purposes, the financial information of a municipal police service in Ontario is included as part of the municipality's financial

reporting”.

[19] As noted above, a reconsideration is not an opportunity to re-argue the appeal. In my view, the appellant is doing just that. The IPC will also 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.

[20] In any event, the appellant’s arguments do not change my analysis under sections 18(3) and (4) of the *Act*. In Order MO-3435, I acknowledged the appellant’s argument that police transactions go through city books. I found, however, based on my review of the records at issue, that they relate to the police’s operations and that the police have a greater interest in these particular records than the city. It should be noted that Order MO-3435 does not stand for the proposition that all access requests to the city for accounting information relating to the police can be transferred to the police pursuant to section 18(3). An analysis under sections 18(3) and 18(4) of who has the greater interest in the records is a contextual one.

[21] Having reviewed the appellant’s reconsideration request and attachments, I find that there was no fundamental defect in this office’s adjudication process; that there is no other jurisdictional defect in Order MO-3435; and that there is no clerical error, accidental error or omission or other similar error in Order MO-3435. The appellant is in large part attempting to reargue his appeal.

[22] In conclusion, I find that the appellant’s reconsideration request does not establish any of the grounds upon which this office may reconsider a decision.

ORDER:

I deny the appellant’s reconsideration request.

Original Signed by: _____
Gillian Shaw
Adjudicator

August 3, 2017
