

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-3546-R

Appeal MA16-646

Toronto Police Services Board

December 22, 2017

Summary: This is a reconsideration of Order MO-3457. In this Reconsideration Order, the adjudicator finds that the ground for reconsideration under section 18.01(c) of the *Code* is established. She also finds that one small portion of the I/CAD Event Details Report for December 18, 2015 is not responsive to the request, and amends the order provision in MO-3457.

Statutes Considered: *IPC Code of Procedure*, section 18.01.

OVERVIEW:

[1] This order sets out my decision on a reconsideration request from the Toronto Police Services Board (the police) stemming from Order MO-3457, issued on May 16, 2017.

[2] The police received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to various records relating to particular incidents. The police located a responsive record and issued an access decision granting partial access to the record. After the appellant appealed, the police located various additional records and issued further access decisions relating to those records. The details of these requests and decisions are particularized in Order MO-3457.

[3] As noted in MO-3457, during the inquiry, the police issued a supplemental

decision letter confirming the existence of additional records. The police initially took the position that these records were not responsive to the appellant's request; however, the police subsequently confirmed that they were responsive to the request, but denied access to them under the mandatory personal privacy exemption at section 14(1) of the *Act*.

[4] As a result of the above, I removed the issue of responsiveness of records from this appeal, as the police had confirmed that all of the records were responsive to the request. I then reviewed the application of the personal privacy exemptions to the information, and upheld the decision by the police to withhold information on the basis of those exemptions. However, I also found that other portions of the records did not contain personal information, and ordered that they be disclosed.

[5] The police request a reconsideration of one aspect of MO-3457, as it relates to one small portion of an I/CAD report which I ordered disclosed.

RECORD:

[6] This reconsideration request relates to a small portion of the I/CAD Event Details Report for December 18, 2015 (the record responsive to Part 1 of the request).

DISCUSSION:

Are the grounds for reconsideration set out in section 18.01 of the IPC's *Code of Procedure* (the *Code*) established?

[7] This office's reconsideration process is set out in section 18 of the *Code* which applies to appeals under the *Act*. This section states, in part:

18.01 The Commissioner 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.

[8] In the police's request, they refer to the ground in section 18.01(c) as the reason to reconsider the request. They take the position that, by ordering disclosure of a small portion of the I/CAD report that contains information that is not responsive to the request, Order MO-3457 contains "a clerical error, accidental error or omission or other similar error in the decision."

[9] The appellant was provided with a non-confidential copy of the police's request for reconsideration, and invited to provide representations, which she did. Her representations (which are identical to the ones she provided at the inquiry stage), do not address the police's request for reconsideration.

[10] On my review of the circumstances of this appeal, I find that the ground for reconsideration under section 18.01(c) is established. After the police had confirmed that all of the newly-located records were responsive to the request, I removed the issue of the responsiveness of records from this appeal. However, in the representations provided to me from the police in Order MO-3457, the police specifically stated as follows with respect to some information contained in the I/CAD report at issue in this reconsideration:

The [record responsive to Part 1 of the request] was the I/CAD Event Details Report ... which was ... provided to the appellant with minimal information withheld, as it was non-responsive to the request.

[11] In this portion of their representations, the police clearly indicate that a portion of the I/CAD report was withheld because it was not responsive to the request. By removing the issue of the responsiveness of records from this appeal because additional responsive records were located, I failed to consider the responsiveness issue raised by the police as it related to this small portion of the I/CAD report. Doing so constituted an accidental error or omission or other similar error in the decision, and I will accordingly reconsider that aspect of Order MO-3457.

[12] Accordingly, I find that the ground for reconsideration under section 18.01(c) has been established, and I will reconsider my decision to order disclosure of the portion of the I/CAD report at issue.

Is the disputed portion of the I/CAD Report responsive to the request?

[13] As set out in the Notice of Inquiry provided to the parties, section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records.

[14] To be considered responsive to the request, records must "reasonably relate" to the request.

[15] In their reconsideration request, the police submit that the portion at issue is not responsive to the request. They point out the following:

The above noted terminology relates to resource capacity; officers were assigned other events unrelated to this incident and the number of outstanding incidents are non-responsive to this particular event. The above comments are *entered by the dispatcher* and are not a result of information provided by an individual contacting emergency services. The

information is considered police-related and withholding the information would not have any impact on the appellant.

[16] As noted above, although the appellant provided representations in response to the police's reconsideration request, her representation did not address this issue.

[17] After carefully reviewing the parties' representations, I am satisfied that the small portion of the I/CAD report at issue is not responsive to the request. I accept the police's explanation that the small portion relates to resource capacity, specifically the number of officers assigned to other events unrelated to the incidents requested by the appellant.

[18] Accordingly, I find that the police have established the ground in section 18.01(c), and that the small portion of the I/CAD report at issue is not responsive to the request. As such, I will reconsider Order MO-3457 and grant the police's request. I will amend order provision 1 of MO-3457 to reflect this finding.

ORDER:

1. I grant the police's reconsideration request.
2. I find that the small portion of the I/CAD report at issue is not responsive and amend provision 1 of Order MO-3457. That provision should now read:

I uphold the police's decision in part. I order the police to disclose to the appellant the information that I have found is not personal information, in accordance with the highlighted records I have enclosed with the police's copy of the order. To be clear, the highlighted information should **not** be disclosed to the appellant. In addition, the police are **not** to disclose the small portion of the I/CAD report which I have found to be non-responsive to the request.

3. I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant.

Original Signed by: _____
Lan An
Adjudicator

December 22, 2017 _____