Information and Privacy Commissioner,
Ontario, Canada

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

RECONSIDERATION ORDER MO-3584-R

Appeal MA16-103

Halton Regional Police Services Board

March 29, 2018

Summary: The appellant requested a reconsideration of Order MO-3558, which partially upheld the police's decision on the appellant's access request under the *Municipal Freedom of Information and Protection of Privacy Act* for occurrence reports and 911 calls. The police's decision was to provide partial access to the records, with redactions made pursuant to the law enforcement exemption at section 38(a) in conjunction with section 8(1), and the personal privacy exemption at section 38(b). In this order, the adjudicator denies the appellant's reconsideration request.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 8(1)(l), 38(a) and 38(b).

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-3558. That order arose out of two requests the appellant made to the Halton Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to complaints, concerns, 911 calls and CAS information about her since August 20, 2009, as well as records involving specific

individuals. The appellant subsequently clarified that she was seeking access to all police occurrence reports involving her from August 20, 2009, as well as 911 calls for two particular dates.

[2] The police issued a decision in which they provided access to the records in part. Records with respect to two occurrences were withheld in full on the basis that they fall outside the scope of the *Act.* Access to the remainder of the records was provided in part, with portions of each record redacted in reliance on the law enforcement exemption at section 38(a) in conjunction with sections 8(1), and the personal privacy exemption at section 38(b). The appellant appealed the police's decision to this office. In Order MO-3558, I upheld the application of section 38(b) to the information that the police withheld under that section, and I partially upheld the application of section 38(a) in conjunction with section 8(1)(l) to the information that the police withheld under that section. I also upheld the police's search for responsive records as reasonable.

[3] The appellant now seeks a reconsideration of my order, and has filed several pages of argument and attachments in support of her request for reconsideration. I summarize the appellant's arguments below.

[4] In this order, I find that the appellant has not established any basis upon which I should reconsider Order MO-3558, and I deny the reconsideration request.

DISCUSSION:

Background

Order MO-3558

[5] In Order MO-3558, I upheld the police's access decision in part. My reasons on the application of the personal privacy exemption at section 38(b) included the following:

> [30] I found above that all of the information that the police withheld under section 38(b) consists of the personal information of third parties.
>
> [31] The records relate to a variety of domestic incidents where the police were called. I am satisfied from my review of the occurrence reports that some of them were compiled and are identifiable as part of investigations into possible violations of law. I find, however, that others were not prepared as part of an investigation into a possible violation of law. The police attended the appellant's residence for a variety of reasons, not all of which involved any alleged criminal wrongdoing. For example, one attendance was in anticipation of the appellant's return home following a hospital stay as a result of having been apprehended under the *Mental Health Act*. However, given my other findings, below, it is not

necessary for me to make a determination about whether section 14(3)(b) does or does not apply to each of the records at issue.

[32] I find that all of the third parties' personal information withheld from the appellant is highly sensitive within the meaning of the factor listed at section 14(2)(f), which weighs against disclosure. Previous orders of this office have found that to be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed. I find that to be the case here. It is evident from my review of the records, both the disclosed and undisclosed portions, that there are difficult personal issues existing as between the involved parties. The Children's Aid Society has been involved with the appellant's family, and the appellant was committed to hospital under the *Mental Health Act* for a period of time. It is evident that the events surrounding these and other circumstances would have been emotionally fraught for all parties involved. In the circumstances, I find the withheld information to be highly sensitive as its disclosure could reasonably be expected to cause the third parties significant personal distress.

[33] I have also considered whether there are any factors favouring disclosure. The appellant submits that she requires the information in order to obtain justice, implicitly raising the possible application of section 14(2)(d) (fair determination of rights).

[34] Previous orders of this office have found that for section 14(2)(d) to apply, the appellant must establish that:

> (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds;
>
> (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed;
>
> (3) the personal information to which the appellant is seeking access has some bearing on or is significant to the determination of the right in question; and
>
> (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[35] The appellant submits that the records could assist her in court, which I understand to mean the court presiding over a child protection proceeding involving her. The appellant provided me with a copy of a letter that the Children's Aid Society wrote in 2015 advising that it had no further protection concerns and that her file was closed. However, she

also provided a copy of an Ontario Court of Justice judge's endorsement dated 2017. The endorsement does not describe the nature of the proceeding but it is evident that at the time there was again an ongoing CAS proceeding.

[36] The appellant submits that the onus is on the police to provide her with all the records that have caused her to lose her child for more than a year and to be unjustly prosecuted by the CAS in court for the last two years. The appellant submits that if she had been in a "real court", instead of a "CAS controlled court", the police could not have obstructed justice in this matter.

[37] However, it is not clear from the information before me that the third party personal information, which dates back to 2015, is relevant to whatever the ongoing issues between the appellant and the CAS are. In addition, it is my view that any issue regarding the production or lack thereof of relevant information can be addressed in the context of the court proceeding. I have very little information before me about the issues in that proceeding, or what production of documents has taken place in that proceeding. The Ontario Court of Justice, which is dealing with the CAS matter, is familiar with the issues between the parties and is in a better position than I to determine what evidence and disclosure is necessary in the context of that proceeding.

[38] The appellant also refers to the possibility of seeking compensation at some point in the future in order to redress what she views as her illegal incarceration and the Children's Aid Society's illegal apprehension of her child. The appellant has not provided particulars. In my view, the possibility of an unspecified type of claim for compensation is too speculative and remote to be considered a contemplated proceeding for the purposes of section 14(2)(d). I also find that the information at issue is not required for the appellant to commence any such proceeding, if she wishes, since in referring to compensation, the appellant presumably is referring to compensation from the police, the CAS, and/or the hospital where she was apprehended under the *Mental Health Act.* The parties with whom the appellant takes issue are already known to her.

[39] For these reasons, I find that the factor at section 14(2)(d) does not apply.

[40] The list of factors under section 14(2) is not exhaustive, however. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2). I have also considered whether there are any other relevant factors.

> [41] One factor that is relevant, in my view, is that some of the information that the police withheld from the appellant appears to have been obtained from the appellant's own statements to the police. This is a factor weighing in favour of disclosure of that information.
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> [42] Balancing the factors weighing for and against disclosure, and taking into account the interests of the parties, I conclude that the factors weighing against disclosure outweigh the factors weighing in favour of disclosure. With the exception of the information that appears to have originated from the appellant herself, there are no factors weighing in favour of disclosure. All of the information is highly sensitive. I find, therefore, that disclosure of this information would be an unjustified invasion of the third parties' personal privacy. As a result, the exemption at section 38(b) applies to it.
>
> [43] A small amount of the withheld personal information consists of information that, while it is the personal information of third parties, appears to have originated with the appellant. Although this is a factor weighing in favour of disclosure, it is not a strong factor in the circumstances. It is evident from my review of the appellant's representations as a whole that her primary interest is in receiving statements of third parties, not information that she herself provided to police. I found above that all of the personal information in the records is highly sensitive. I am satisfied in the circumstances of this appeal that the highly sensitive nature of this information outweighs the fact that the appellant may be the source of some of the information. I find, therefore, that disclosure of it would constitute an unjustified invasion of the third parties' personal privacy. Therefore, the exemption at section 38(b) applies to it.

[6] My reasons on the application of section 38(a) in conjunction with section 8(1)(l) included the following:

> [58] … I am satisfied that disclosure of the police operational codes or similar information in this case could reasonably be expected to facilitate the commission of an unlawful act or hamper the control of crime. Accordingly, subject to my findings on the police's exercise of discretion, below, I find that the police codes and similar information withheld from the appellant pursuant to section 8(1) qualify for exemption under section 38(a) in conjunction with section 8(1)(l) of the *Act*. Given my finding, I do not need to decide whether this information is also exempt under section 38(a) in conjunction with section 8(1)(e).
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> [59] However, some of the information that the police withheld under sections 8(1)(e) and (l) does not in fact consist of police operational codes

> or information about how police respond to emergency situations, but rather, administrative information to do with the inputting of the occurrence reports. As the police have not raised any other basis for the withholding of this information, I will order them to disclose it to the appellant.

[7] My reasons for upholding the police's exercise of discretion in withholding the exempt information included the following:

> [67] Having reviewed the records and the severances the police made to those records, and having considered the parties' representations, I am satisfied that the police's discretion should be upheld. The police provided a significant amount of information in the records to the appellant, while withholding specific information consisting of third party personal information and police operational codes. I am satisfied that the police took into account relevant considerations, including the appellant's general right to access her own personal information and the third parties' objections, and did not take into account irrelevant considerations or exercise their discretion in bad faith or for an improper purpose. In particular, having reviewed the information that the police withheld, I do not accept the appellant's submission that the police are hiding behind privacy legislation in order to protect their reputation, to obstruct justice or to prevent corrupt public servants from facing justice.

[8] I also upheld the police's search for responsive records as reasonable:

> [81] The appellant's clarified request was for occurrence reports involving her. It is clear from my review of her representations that she believes that there should be records relating to a plan to have her committed to hospital under the *Mental Health Act*, and to remove her son from her home. In my view, if such occurrence reports existed, they would be expected to list the appellant as a suspect or involved person. I find, therefore, that all occurrence reports reasonably related to the appellant's request would be expected to be found in the police's search. In my view, additional occurrence reports where the appellant is mentioned only peripherally would not be responsive records for the purposes of the appellant's request.
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> [82] The appellant stated in her representations that she also seeks officers' notes as well as records for an incident post-dating her request. I agree with the police that the request was for occurrence reports, which does not include officers' notes. I also agree that the incident post-dating her request is not responsive to her request. If the appellant now seeks additional types of records and/or records for a different time period, she should submit a new request to the police.

Reconsideration process

[9] 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:
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> (a) a fundamental defect in the adjudication process;
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> (b) some other jurisdictional defect in the decision; or
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> (c) a clerical error, accidental error or omission or other similar error in the decision.
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> 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.
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> 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

[10] As noted above, the appellant has submitted several pages of argument in support of her reconsideration request. She does not refer to the grounds for reconsideration set out above. In large part, she repeats and expands upon arguments that she made in the appeal. I have read the appellant's materials in their entirety, and summarize the main points below.

[11] The appellant submits that Order MO-3558 serves to protect the privacy of individuals who were complicit in crimes. For example, she states as follows:

> … the decision, which is not in my favour, will only serve to protect the privacy rights of individuals who are complicit in extremely serious crimes and further shield them from facing justice.
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> I recently picked up the Occurrence reports that the [police] were required to release. I do not believe there is anything new or helpful that could possibly assist me in getting an outside police force to investigate or to seek compensation for our ordeal.
>
> I fail to see how it can be in the public interest for individuals in the CAS, a Child Protection Agency, to get away with a heinous conspiracy to illegally apprehend & forcibly confine an innocent single mother in order

> to kidnap, abuse and torture her autistic child and yet, the [police have] created this exact scenario, by refusing to acknowledge their CAS sources even though most of them are well known.
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> [The police are] withholding documentation, such my 911 calls (in their entirety) that prove I was not paranoid or delusional, was the victim of a crime, and my apprehension, which was the sole reason given for my [son's] apprehension, was completely unjustified, planned in advance, and illegal.

[12] The appellant goes into further detail about how she and her family were treated unfairly by the police and the CAS. She argues that the CAS fabricates evidence to have children declared Crown wards so that they can be adopted. She argues that the police assisted the CAS in framing her as an innocent parent and in this vein, she argues that much of the information in the occurrence reports she received from the police is inaccurate. She argues that she is being denied the complete occurrence reports and notebook entries that were used against her by the CAS to convince a judge to remove her child from her.

[13] The appellant submitted a judge's endorsement dated August 2017 indicating "all is going very well" and approving the CAS's request to withdraw its protection application.

Analysis and findings

[14] To begin, I observe 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]
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> 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

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[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.).

> 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.

[15] 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…

[16] In my view, the appellant's arguments in this case are a clear attempt to re-argue the appeal. Most of the arguments the appellant makes on this reconsideration request are ones that she made to me in the adjudication of the appeal. To the extent that the appellant has provided new information, this also is not a basis for reconsidering my decision. 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.

[17] In any event, the appellant has not provided any new information that would lead me to come to a different conclusion on any of the issues. The appellant's main concerns appear to be the information that was withheld under the personal privacy exemption at section 38(b), and the fact that I found that her request did not include police notebook entries. I dealt with the appellant's arguments on these issues fully, and the new information provided by the appellant would not have altered my conclusions on those or any other issues.

[18] The appellant also submits as follows:

> If the Halton CAS and Police had to resort to breaking the law, numerous times, in order to apprehend me, commit me, and apprehend my son from his school, shouldn't that trigger warning bells at the [IPC]?

[19] I specifically mentioned in Order MO-3558 that my conclusions on the application of the *Act* were not to be taken as a commentary on the actions of the police or the CAS:

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[3] See, for example, Orders PO-3558-R, PO-3062-R and Reconsideration Order MO-3478-R.

> [84] I realize that my findings may disappoint the appellant, who it is apparent has experienced a number of difficulties. My findings under the *Act* should not be taken as commentary on any of the other issues between the appellant and various other parties.

[20] 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-3558; and that there is no clerical error, accidental error or omission or other similar error in Order MO-3558. 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: March 29, 2018
Gillian Shaw
Adjudicator