Information and Privacy Commissioner,
Ontario, Canada

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

# RECONSIDERATION ORDER MO-3642-R

Appeal MA16-103

Order MO-3584-R

Halton Regional Police Services Board

July 31, 2018

**Summary:** The appellant made a second request for 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 Reconsideration Order MO-3584-R the adjudicator found that the appellant had not established any basis upon which she should reconsider Order MO-3558, and denied the reconsideration request.

The appellant submitted another request for reconsideration request, this time alleging bias on the part of the adjudicator. In this order, the adjudicator denies the appellant's second 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, PO-3062-R and MO-2227.

**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 and Reconsideration Order MO-3584-R. Order MO-3558 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. 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 requested a reconsideration of Order MO-3558. I denied the request in Reconsideration Order MO-3584-R.

[4] The appellant submitted a second reconsideration request, raising a number of issues including an allegation of bias on the part of this office. In this order, I find that the appellant has not established any basis upon which I should reconsider either Order MO-3558 or Reconsideration Order MO-3584-R, 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. I upheld the police's application of the discretionary personal privacy exemption, and partially upheld its application of the law enforcement exemption (section 8(1)(l) read with section 38(a)). Full reasons for my findings are set out in that order.

#### *Reconsideration Order MO-3584-R*

[6] The appellant submitted a reconsideration request, in large part repeating and expanding upon arguments that she had made in the adjudication of the appeal. She submitted that Order MO-3558 served to protect the privacy of individuals who were complicit in crimes. She provided detail about how she and her family were treated unfairly by the police and the CAS.

[7] I denied the appellant's reconsideration request in Reconsideration Order MO-

3584-R, finding that the appellant's arguments were an attempt to re-argue the appeal.

[8] The appellant has now submitted a new reconsideration request. For the reasons that follow, I also deny this reconsideration request.

### *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:
>
> (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 second reconsideration request*

[10] I have carefully reviewed the appellant's second reconsideration request (which she has called "Appeal of Reconsideration Order"). In her request, the appellant again refers in some detail to the issues arising in the CAS matter and asserts that the CAS and the police are guilty of offences under the *Criminal Code*. She asks that the police be held to account for this. She again refers to a conspiracy. She takes issue with the accuracy of the records the police disclosed to her (she refers to them as fabricated) and repeats her request for the officers' notes. She disagrees with my finding that the personal information of third parties is exempt from disclosure.

[11] Furthermore, the appellant states:

> The Bias of the IPC:
>
> I was always at an unfair advantage in these proceedings as:
>
> The IPC argued no evidence of criminal wrongdoing should be released to me, or an outside police force, as it violates the privacy of the alleged

> criminals who, the IPC has always referred to as "3rd parties" in order to protect them.
>
> The IPC continuously insinuated that I had mental health issues or parenting issues that justified the involvement of the Halton Police and/or CAS in my life. The IPC did not see me as [a] university educated, law abiding, citizen, with no bad habits or addictions etc who was an excellent mother and grandmother.
>
> The IPC was not able to comprehend that this level of evil could befall an individual who did absolutely NOTHING wrong - other than to speak out, on occasion, about corruption in the child protection system.
>
> The IPC insinuated I had valid mental health concerns, even though no doctor or mental health professional had any concerns about my mental health, when I was apprehended, brought to the hospital or released, and that the Halton Police & CAS must have had valid child protection concerns, even though their entire case was disproven …

### ***Analysis and findings***

[12] As I observed in Reconsideration Order MO-3584-R, 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, Senior 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.

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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.).

[13] In my view, most of the appellant's arguments in this case are an attempt to re-argue the appeal. 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. 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. As with her first reconsideration request, 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 in Order MO-3558, and to the extent that the appellant has provided any new information, it would not have altered my conclusions on those or any other issues.

[14] The appellant has, however, raised a new issue, being bias on the part of this office.

[15] In administrative law, there is a presumption, in the absence of evidence to the contrary, that an administrative decision-maker will act fairly and impartially. The onus of demonstrating bias lies on the person who alleges it, and mere suspicion is not enough.

[16] However, actual bias need not be proven. The test is whether there exists a "reasonable apprehension of bias". In Order MO-2227, Senior Adjudicator John Higgins, in addressing an allegation of bias against this office, explained the test as follows:

> A recent statement of the law by the Supreme Court of Canada concerning allegations of bias against an adjudicator is found in *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259. In that decision, the court stated:
>
> > In Canadian law, one standard has now emerged as the criterion for disqualification. The criterion, as expressed by de Grandpre J. in *Committee for Justice and Liberty v. National Energy Board*, supra, at p. 394, is the reasonable apprehension of bias:
> >
> > > …the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly.
> >
> > > …

> *The grounds for this apprehension must, however, be substantial,* and I … refuse to accept the suggestion that the test be related to the "very sensitive or scrupulous conscience". [Emphasis added.]

[17] The appellant argues that the IPC "continuously insinuated that I had mental health issues or parenting issues" and "insinuated that I had mental health concerns". The appellant did not elaborate on this allegation nor did she explain how a reference to such issues or concerns would be indicative of a reasonable apprehension of bias. In any event, I am unable to find that I implied any mental health or parenting concerns in my adjudication of the appeal and first reconsideration request.

[18] The remainder of the appellant's submissions on bias appear to be statements of disagreement with my decision. The fact that the appellant disagrees with my findings in Order MO-3558 and Reconsideration Order MO-3584-R is not evidence of a reasonable apprehension of bias.

[19] I find, therefore, that the appellant has not demonstrated a reasonable apprehension of bias.

[20] Having reviewed the appellant's reconsideration request, the adjudication process, and the orders issued in this appeal, 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 or Reconsideration Order MO-3584-R; and that there is no clerical error, accidental error or omission or other similar error in those orders. 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: July 31, 2018
Gillian Shaw
Senior Adjudicator