

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-3876-R

Appeal PA16-261

Ministry of the Environment, Conservation and Parks

September 6, 2018

Summary: The appellant requested a reconsideration of Order PO-3866. The order arose from the appellant's appeal of the ministry's decision to disclose certain records to a requester. The appellant claimed the records contain their personal information and should therefore be exempt under section 21(1) (personal privacy) of the *Act*. The appellant also claimed the ministry was required to notify them under section 28(1)(b) of the *Act* of other records the ministry intended to disclose. In Order PO-3866, the adjudicator upheld the ministry's decision and dismissed the appeal. Specifically, the adjudicator found the ministry fulfilled its notice obligations under section 28(1)(b) and the records at issue do not contain the appellant's personal information. In this Reconsideration Order, the adjudicator finds the appellant did not establish that grounds exist under section 18.01 of the IPC's *Code of Procedure* for reconsidering Order PO-3866. The adjudicator denies the appellant's reconsideration request.

Statutes Considered: The IPC's *Code of Procedure*, sections 18.01 and 18.02.

Orders and Investigation Reports Considered: Orders PO-2538-R, PO-3062-R, PO-3866.

Cases Considered: *Chandler v. Alberta Assn. of Architects*, [1989] 2 SCR 848.

OVERVIEW:

[1] Appeal PA16-261 stems from the related Appeal PA15-75. The appellant (who I will identify as the individual) submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of the Environment and Climate Change (now the Ministry of the Environment, Conservation and Parks) (the ministry) for records relating to the polychlorinated biphenyls (or PCBs) in the West

Lincoln/Smithville area. The ministry located records responsive to that request and issued an access decision to the relevant parties. The ministry decided to grant the individual partial access to the responsive records. An affected party (who I will identify as the company), whose interests may be affected by the disclosure of the records, appealed the ministry's decision and Appeal PA15-75 was opened.

[2] During the mediation process of Appeal PA15-75, the company made an access request to the ministry for some of the records responsive to the original request. The ministry notified the individual under section 28 of the *Act* as an affected third party. The individual submitted representations.

[3] After considering the individual's representations, the ministry issued an access decision granting the company partial access to these records. The ministry advised the parties it withheld portions of some of the records claiming the application of the personal privacy exemption in section 21(1) of the *Act*.

[4] The individual appealed the ministry's decision to this office and Appeal PA16-261 was opened. The individual claimed that none of the records the ministry notified them of should be disclosed to the company because they contain their personal information.

[5] During mediation, the company confirmed its interest in pursuing access to all the records the ministry decided to disclose to it. The individual took the position that none of the records responsive to the request should be disclosed because they are subject to the section 21(1) exemption. In addition, the individual claimed the ministry ought to have notified them of certain records prior to issuing a decision pursuant to section 28(1) of the *Act*.

[6] Mediation did not resolve the issues in Appeal PA16-261 and the appeal moved to the adjudication stage of the appeal. I conducted an inquiry into the issues to be resolved.

[7] On July 20, 2018, I issued Order PO-3866, upholding the ministry's decision and dismissing the appeal. I found the ministry was not obligated to notify the individual pursuant to the notice requirements in section 28(1) of the *Act* regarding the records of which the ministry did not notify the individual. Specifically, I stated,

I reviewed the records the individual did not receive notice of, specifically Records 2-3, 10-16, 18-29, 36-42, 43-46, 47, 48-52, 56-72, 73-75, 76-79, 80-84, 97, 98-102, 127, 160, 197-198, 199-200, 201 and 202. In particular, I reviewed all of the information in those records the ministry proposes to disclose to the company. None of the information the ministry proposes to disclose to the company contains personal information relating to the individual. As the ministry states, these records consist of officer's notes, internal ministry correspondence, official reports, maps, official plans, decision documents, meeting notes, site plans and internal comments. The majority of these records are internal ministry

communications, official reports or maps that do not contain any personal information relating to the individual. Upon review of the information at issue in the above-noted records, I find the ministry was not required to notify the individual under section 28(1)(b) because none of it contains personal information relating to them.

I note the individual submits the ministry was required to notify them about Record 97. However, I reviewed Record 97 and the only information relating to the individual is their name. The ministry severed the individual's name from the record and none of the remainder of the record contains information relating to the individual. Given the ministry's severance, I find it was not required to notify the individual of Record 97.

In addition, I find the ministry was not required to notify the individual of Record 160. While the individual may have attached this record to an email they sent, the record itself does not contain the individual's personal information. Furthermore, it does not appear the individual created this record; rather, it is an official plan relating to the Town of West Lincoln. I find the ministry was not required to notify the individual of Record 160 under section 28(1)(b).¹

[8] In addition, I found the information the ministry decided to disclose does not contain the *personal information* of the appellant within the meaning of section 2(1) of the *Act*. Specifically, I made the following findings:

I reviewed the records and the representations submitted by the ministry and the individual. Upon this review, I find the information at issue does not contain the personal information of the individual. I confirm the ministry has severed the individual's name and contact information from the records at issue. For the information at issue to qualify as personal information, it must be reasonable to expect the individual may be identified if the information is disclosed. In my view and as the individual submits, the statements and concerns raised in the records relate to the PCBs in the West Lincoln/Smithville area, the environmental impact of a wind project and the ministry's responses. I am not satisfied the disclosure information at issue, including the individual's questions and statements, may reasonably be expected to reveal their identity.

Record 9 is a letter sent from the ministry to an individual. The ministry severed the name and contact information of the recipient. Upon review of the information that remains at issue in Record 9, I find there is nothing that may reasonably be expected to identify a specific individual. Therefore, I find the information at issue in Record 9 does not contain personal information within the meaning of section 2(1) of the *Act*.

¹ Order PO-3866, paras. 32-34.

For similar reasons, I find that the information at issue in Record 17, which is an email from the ministry to an individual, does not relate to an identifiable individual. The ministry severed the name and contact information of the recipient. Without this information, I find that Record 17 does not contain personal information within the meaning of section 2(1) of the Act.

Records 30-35, 98-102, 115-126 and 161-171 consist of correspondence sent by the individual to the ministry. The ministry severed the individual's name and contact information from these records. Based on my review of the information at issue, I find it does not relate to an identifiable individual. While the individual submits these records contain their "personal concerns", I find the disclosure of the individual's questions or concerns and statements, with their name and contact information severed, could not reasonably be expected to reveal their identity. Therefore, I find the information at issue does not fit within the definition of personal information in section 2(1) of the Act.²

As the information the ministry decided to disclose does not contain *personal information*, the mandatory privacy exemption in section 21(1) of the *Act* cannot apply to it. Therefore, I upheld the ministry's decision to disclose the information to the company.

[9] The individual sought a reconsideration of Order PO-3866 on August 20, 2018, which is within the time limit set out by section 18.04 of the *Code*.

[10] In this order, I find the individual did not establish the grounds for reconsideration in section 18.01 of the IPC's *Code of Procedure* (the *Code*) and I do not reconsider Order PO-3866.

DISCUSSION:

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order PO-3866?

[11] The IPC's reconsideration process is set out in section 18.01 of the *Code* which applies to appeals under the *Act*. Sections 18.01 and 18.02 state,

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

² Order PO-3866, paras. 41-44.

(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.

The appellant's submissions

[12] The individual does not specifically refer to any of the grounds set out in the paragraphs in section 18.01 of the *Code* in their request for reconsideration. The individual reiterates the information at issue in Appeal PA16-261 (i.e. the information the ministry proposed to disclose) contains their personal information, including their personal views, opinions and concerns regarding PCBs in the Smithville/West Lincoln area. The appellant reiterates the records contain their private correspondence with government officials.

[13] In addition, the individual reiterates their submission that they prepared the information at issue in their capacity as a private citizen seeking "health, aid and protection" from their elected officials. The individual also raises concerns that, as a result of Order PO-3866, private citizens will no longer exercise their right to contact government officials without fear of their confidential correspondence being disclosed to corporation. The individual raises concerns regarding the disclosure of their private correspondence to the company.

[14] The individual submits it is not sufficient that their name and contact information is severed from the records to be disclosed to the company. The individual submits that they are identifiable from the information I ordered the ministry to disclose to the company even though their name and contact information will not be disclosed to the company.

[15] Finally, the individual reiterates their objection to the disclosure of their correspondence to the company.

Analysis and Findings

[16] To begin, I note 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, the adjudicator 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*.³ With respect to the reconsideration request before him, the adjudicator concluded,

[T]he parties requesting reconsideration... argue that my interpretation of the facts, and the resulting legal conclusions, are incorrect... In my view,

³ [1989] 2 SCR 848.

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 International Trucks Ltd.*⁴

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.

The analysis in Order PO-2538-R has been adopted and applied in subsequent orders of this office.⁵ In Order PO-3062-R, the adjudicator was asked to reconsider her finding that the discretionary exemption in section 18 of the *Act* did not apply to certain information at issue in that appeal. The adjudicator determined that the institution's reconsideration request did not fit within any of the grounds for reconsideration set out in section 18.01 of the *Code*. The adjudicator stated,

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...

I adopt this analysis for the purposes of this reconsideration request.

[17] In my view, the individual's arguments in their reconsideration request are a clear attempt to re-argue the appeal. Most of the arguments the individual made in their reconsideration request are ones they made to me during my inquiry. In fact, the individual attaches and relies upon the submissions they submitted during the inquiry to support their reconsideration request. To the extent the individual provided new information, this is not a basis for reconsidering my decision. Section 18.02 of the *Code of Procedure* clearly states 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] In any event, the individual did not provide any new information that would lead me to a different conclusion on whether the information at issue in Order PO-3866 contains their *personal information* within the meaning of section 2(1) of the *Act*. The individual's main argument is that they are personally identifiable even if their name and contact information is severed. In Order PO-3866, I found the individual is not identifiable from the questions, concerns or statements made in their correspondence to the ministry. Further, I found the information at issue, would not reveal the identity of a

⁴ 1996 CanLII 11795 (ON SC).

⁵ See, for example, Orders PO-3558-R, PO-3062-R, MO-3478-R and MO-3584-R.

specific individual if it were disclosed. I reviewed and considered the individual's arguments in their request for reconsideration. Based on my review, I find the individual did not provide me with sufficient evidence to demonstrate that they are identifiable from the information I ordered the ministry to disclose. Even if the individual provided these specific arguments initially, they would not have led me to come to a different conclusion.

[19] Having reviewed the individual's reconsideration request and attachments, I find there was no fundamental defect in this office's adjudication process. In addition, I find there is no other jurisdictional defect in Order PO-3866. Finally, I find there is no clerical error, accidental error or omission or other similar error in Order PO-3866. In conclusion, I find the appellant's reconsideration request does not establish any of the grounds upon which this office may reconsider a decision.

ORDER:

1. I deny the appellant's reconsideration request.
2. I lift the interim stay of Order PO-3866 and order the ministry to disclose the records in accordance with its original access decision to the affected party by **October 15, 2018** but not before **October 9, 2018**.

Original Signed by: _____
Justine Wai
Adjudicator

September 6, 2018