

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-3658-R

Appeal MA16-590

Order MO-3545

The Corporation of the Municipality of Mississippi Mills

September 13, 2018

Summary: This is a reconsideration of an aspect of Order MO-3545. In this reconsideration order, the adjudicator finds that the ground for reconsideration under section 18.01(a) of the *Code* is established. The order provision in Order MO-3545 is varied to allow the Corporation of the Municipality of Mississippi Mills to withhold the appraisal value of a property that the adjudicator had ordered disclosed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 11(c) and 11(d); *IPC Code of Procedure*, section 18.01(a).

Orders Considered: Order MO-3545.

OVERVIEW:

[1] The Corporation of the Municipality of Mississippi Mills (the municipality) asked that I reconsider my determination in Order MO-3545 to order the disclosure of the appraisal value of a property to the appellant.

[2] Order MO-3545 arose from a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*) for access to appraisal information for five identified properties as well as information pertaining to a specific project. The municipality relied on sections 11(a), 11(c) and 11(d) (economic and other

interests) to deny access to the requested appraisal information.

[3] In Order MO-3545, I ordered the municipality to disclose the appellant the appraisal value of one property but upheld its decision to withhold the other appraisal values.

[4] After Order MO-3545 was issued, the municipality sought a reconsideration of my determination that the municipality disclose to the appellant the appraisal value of the one property. The basis for its reconsideration request is set out below.

[5] I shared the municipality's reconsideration request with the appellant, but he did not provide responding submissions.

[6] In this reconsideration order, I find that the municipality has established the grounds for reconsideration in section 18.01(a) of the IPC *Code of Procedure (Code)* and I vary Order MO-3545 to allow the municipality to withhold the appraisal value of the property that I ordered the municipality to disclose to the appellant.

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider a portion of Order MO-3545?

[7] This office's reconsideration process is set out in section 18 of the *Code* which applies to appeals under the *Act*. Sections 18.01 and 18.02 state:

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.

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 municipality's submissions

[8] In its initial correspondence requesting a reconsideration of Order MO-3545, the municipality wrote:

... As part of your Order, you require the municipality to provide the appraisal for property number 3. As part of your reasoning for your decision, you state at the top of page 10 of your decision that the municipality did not take issue with the appellant's allegation that a

specified property had been sold. Unfortunately, we omitted to address that specific allegation, but we can advise that in fact the property has not been sold. Given that the property has not been sold and that seems to form the basis of your order, I am writing to request that you reconsider your decision to require the municipality to provide the valuation for property number 3.

[9] In the submissions received from the municipality in support of its reconsideration request, the municipality enclosed a copy of the Municipal Tax Rolls confirming that the property is still owned by the municipality as well as an MPAC (Municipal Property Assessment Corporation) statement showing the municipality as the owner. The municipality submits that "... the statement [in Order MO-3545] that the property has been sold clearly is an error ...".

Analysis and finding

[10] After my analysis of the facts at issue in the appeal and the applicable jurisprudence, at paragraph 34 of Order MO-3545, I wrote:

There are four properties at issue in this appeal, which are comprised of a total of five lots. I have considered the content of the email exchange provided by the appellant in support of his position and while it does set out asking prices, it does not indicate that those are appraisal amounts. Furthermore, although the appellant asserts that only 60% of a specified lot may be sold, the email exchange does not support that assertion and he provides no additional evidence in support of that assertion. That said, even if only a percentage of that lot were sold, the basis of the appraised amount would reveal the appraisal value. The municipality did not take issue with the appellant's allegation that a specified property has been sold. I find that because this property has been sold, disclosing the appraisal amount for this property could not reasonably be expected to result in the section 11(c) or 11(d) harms alleged. Accordingly, I will order this information, which I have highlighted in green on a copy of page of the appraisal report at issue, be disclosed to the appellant. There is no evidence before me to indicate that the three remaining properties may not be sold at a later date. Based on the materials before me I am satisfied that disclosing the appraisal values of the three remaining properties could reasonably be expected to prejudice the economic interests of the municipality or could reasonably be expected to be injurious to its financial interests. As a result, I find that the information pertaining to these three remaining properties qualifies for exemption under sections 11(c) and/or (d) of the *Act*.

[11] At the time that I was making my determinations in Order MO-3545, it was not clear to me that the property had not been sold because the municipality did not

address that specific allegation of the appellant.

[12] Generally, a party cannot rely on its failure to adduce sufficient evidence during the inquiry as a basis for a reconsideration request. A reconsideration is not a forum to re-argue an appeal or provide new evidence on an issue. In this case, however, I am satisfied that the municipality's failure to adduce evidence on this point was inadvertent and resulted in part from some confusion on its part about the significance of the fact the property had not been sold.

[13] In fact, my understanding that the property was sold was key to my finding on the non-application of sections 11(c) and/or (d) of the *Act*, and I have now been provided with clear evidence that it has in fact not been sold. In these circumstances, I am satisfied that I should reconsider my finding on this point in Order MO-3545.

[14] In my view, failing to understand that the property was still owned by the municipality resulted in a fundamental defect in the adjudication process that resulted in Order MO-3545. Accordingly, I find that the municipality has established the ground for reconsidering my decision identified in section 18.01(a) of the *Code*. As such, I reconsider the relevant portion of Order MO-3545 and grant the municipality's request. As the property has not been sold, I find that the information pertaining to that property qualifies for exemption under sections 11(c) and/or (d) of the *Act*. I therefore vary Order MO-3545 to allow the municipality to withhold the appraisal value of the property at issue in this reconsideration order and I uphold the municipality's discretion in doing so.

ORDER:

1. I grant the municipality's reconsideration request.
2. I uphold the municipality's decision to withhold the appraisal value of the property at issue in this reconsideration order pursuant to sections 11(c) and/or (d) of the *Act*.

Original Signed by: _____
Steven Faughnan
Adjudicator

_____ September 13, 2018