

Information and Privacy Commissioner,  
Ontario, Canada



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

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## RECONSIDERATION ORDER PO-3911-R

Appeal PA17-105

Ministry of Community Safety and Correctional Services

December 14, 2018

**Summary:** The appellant requested a reconsideration of Order PO-3897. In particular, the appellant seeks a reconsideration of the adjudicator's finding that the information at issue qualified for exemption under section 49(b) of the *Freedom of Information and Protection of Privacy Act* (the *Act*). In this Reconsideration Order, the adjudicator finds that the appellant did not establish that grounds exist under section 18.01(c) of the IPC's *Code of Procedure* for reconsidering Order PO-3897, and denies the reconsideration request.

**Considered:** The IPC's *Code of Procedure*, section 18.01(c).

### OVERVIEW:

[1] This reconsideration order arises as a result of an appeal of an access decision made by the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*). The request was for access to the complete Ontario Provincial Police report, complete officer's field notes, and all witness statements relating to a motor vehicle accident in which the appellant suffered injuries, including memory loss.

[2] The ministry identified responsive records and granted partial access to them, relying on the discretionary exemption at section 49(b) (personal privacy) of the *Act* to deny access to the portions it withheld. Mediation did not fully resolve the appeal.

[3] The appeal then moved to the adjudication stage of the appeals process, where

an adjudicator conducts an inquiry. I conducted an inquiry and on October 30, 2018, I issued Order PO-3897. In that order, I found that the withheld information in the General Occurrence Report and the Interview Reports at issue qualified for exemption under section 49(b) of the *Act* and that the records could not be disclosed in an anonymized or severed form without revealing exempt information.

[4] On November 13, 2018, I received a reconsideration request from the appellant, seeking a reconsideration of my finding that the records could not be disclosed in an anonymized or severed form without revealing exempt information.

[5] For the reasons that follow, in this reconsideration order, I find that the appellant did not establish the ground for reconsideration under section 18.01(c) of the IPC's *Code of Procedure* (the *Code*), and I deny the reconsideration request.

## **DISCUSSION:**

### **Are there grounds under section 18.01(c) of this office's *Code of Procedure* to reconsider Order PO-3897?**

[6] This office's reconsideration process is set out in section 18.01 of the *Code of Procedure* (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
- (c) a clerical error, accidental error 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**

[7] The appellant takes the position that my order contains an accidental error that would qualify as a ground for reconsideration under section 18.01(c) of this office's *Code of Procedure*. In his request for reconsideration, the appellant seeks to modify his request and invites me to reconsider my determinations in Order PO-3897 in accordance with his modified request.

[8] He sets out his modified request as follows:

I want the ministry to provide to me a redacted copy of the Police Report, Officer Field Notes, and Witness Statements that only contains observation opinions and views made by affected parties about what they observed me, the applicant, doing/happening to me prior to, during, and after the MVA. So to be clear, I only want access to the recorded observations made by affected parties as they pertain directly to me and what they observed me doing/happening to me.

[9] He further asserts that in making my determinations in Order PO-3897, I did not properly consider the application of paragraph (e) of the definition of "personal information" in section 2(1) of the *Act* to the information at issue. He submits that:

Under *FIPPA* section 2(1)(e) any recorded observations made by the driver and other affected parties, about what they observed me doing or happening to me is defined as not being personal information and as such should be released to me.

[10] He adds that in his view, sections 21(2)(f) and 21(3)(b) do not have any applicability to the information that is part of his modified access request because "under section 2(1)(e), the information is not deemed to be Personal Information".

[11] The appellant adds that with the modification of his request:

... section 2(1)(e) [of the *Act*] renders the dispute of the requested information as absurd. Due to the memory loss suffered from injuries sustained as a result of the MVA, being provided the observations about me by the affected parties would not be able to render any of the affected parties as identifiable and in line with the noted previous orders mentioned in [paragraph 55] of the [order]. And as the Modified Information Request stipulates, the information I want from the Police Report, Officer Field Notes, and Witness Statements is only the observations made by affected parties of what they seen me doing/happening to me prior to/during/after the MVA. So to clarify more, [paragraph 60] of the [order] is rendered absurd because the information and observations that is desired does not pertain to anyone but me.

[12] He concludes by submitting:

Under [paragraph] 72 of the [order], I believe an Accidental Error occurred because a full appreciation of the facts was not applied to all the information contained in the records. As clarified in the Modified Information Request, the facts are that I only desire to have access to the

recorded observations made about me prior to/during/after the MVA by the affected parties. I do not want anything else contained in the Police Report, Officer's Field Notes, and Witness Statements that is not an observation of what I was doing prior to/during/after the MVA and as per Section 2(1)(e) of *FIPPA* the information that is desired is not deemed to be Personal Information of anybody else and as such should be granted to the requestor.

## **Analysis and findings**

[13] To begin, I observe that the reconsideration process set out in this office's *Code* 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 Association of Architects*.<sup>1</sup> 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.*]<sup>2</sup>

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.

[14] Adjudicator Higgins' approach has been adopted and applied in subsequent orders of this office.<sup>3</sup> In Order PO-3062-R, for example, Adjudicator Daphne Loukidelis was asked to reconsider her finding that the discretionary exemption in section 18 of the *Act* did not apply to information in 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:

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<sup>1</sup> [1989] 2 SCR 848 (S.C.C.).

<sup>2</sup> 1996 CanLII 11795 (ON SC), 28 O.R. (3d) 67 (Div. Ct.).

<sup>3</sup> See, for example, Orders MO-3478-R, PO-3062-R and PO-3558-R.

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...

[15] Dealing first with the appellant's suggested modified request, I find that it is too late for him to now modify his request after the appeal has been heard and an order issued.

[16] With respect to the grounds for reconsideration asserted by the appellant, I note that the appellant made extensive representations during the inquiry into his appeal regarding the issues of personal information and severance. I find the arguments raised by the appellant in his reconsideration request are similar in nature and are a clear attempt to re-argue the appeal. Most, if not all, of the arguments the appellant makes on this reconsideration request are ones that he made to me in the adjudication of the appeal and were addressed in Order PO-3897.

[17] In conclusion, having reviewed the appellant's reconsideration request, and his representations provided during the inquiry of this appeal, I find that there is no clerical error, accidental error or omission, or other similar error in Order PO-3897. Therefore, I find that the appellant's reconsideration request does not establish any of the grounds under section 18.01(c) upon which this office may reconsider a decision.

**ORDER:**

I deny the appellant's reconsideration request.

Original Signed by: \_\_\_\_\_  
Steven Faughnan  
Adjudicator

December 14, 2018 \_\_\_\_\_