

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## RECONSIDERATION ORDER MO-3733-R

Appeal MA18-108

Order MO-3690

Toronto Police Services Board

February 21, 2019

**Summary:** The appellant requested a reconsideration of Order MO-3690. He disputes the scope of issues narrowed through mediation and remaining at adjudication. He also raises substantive questions about the video footage he was seeking access to from the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). In this Reconsideration Order, the adjudicator finds that the appellant has not established that grounds exist under section 18.01 of the IPC's *Code of Procedure* for reconsidering Order MO-3690, and denies the reconsideration request.

**Orders Considered:** Orders PO-1755, PO-2538-R, PO-3062-R, PO-3126, PO-3558-R, MO-2778, and MO-3478-R.

**Cases Considered:** *Chandler v. Alberta Assn. of Architects*, (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4<sup>th</sup>) 577 (S.C.C.).

### OVERVIEW:

[1] The appellant in Order MO-3690 requests a reconsideration of that order. In Order MO-3690, I upheld the reasonableness of the search conducted by the Toronto Police Services Board (the police) for records responsive to the appellant's request made under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*, or the *Act*).

[2] After Order MO-3690 was issued, the appellant communicated with the Office of

the Information and Privacy Commissioner of Ontario (the IPC, or this office). He was provided with information about this office's reconsideration process under section 18.01 of the IPC's *Code of Procedure* (or, the *Code*).

[3] The appellant then made a request for reconsideration and provided representations with that request. He alleges a failure to deal with the issue of access to the responsive records on appeal, and raises questions in relation to the content of the records and a section 14(3) presumption relied upon by the police in their access decision.

[4] For the reasons that follow, I find that the appellant has not established any grounds for reconsideration under section 18.01 of the *Code*, and his reconsideration request is denied.

## **DISCUSSION:**

[5] This office's reconsideration process is set out in section 18.01 of the *Code of Procedure* 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.

[6] The appellant's reconsideration request is based on his dispute with the scope of the appeal, a presumption relied upon by the police in their access decision, and details regarding the completeness of the video footage provided to him in response to his access request. I will explain why none of these concerns meet the criteria for reconsideration.

### **Scope of the appeal**

[7] Before moving to adjudication, the appellant's appeal went through the

mediation process of this office. That involved opportunities for parties to communicate directly with a mediator about the appellant's request. A partially redacted mediation log on file shows that this occurred.<sup>1</sup>

[8] At the close of mediation, the mediator issues a report (the Mediator's Report), and provides a copy to the parties. With a Mediator's Report, the parties are sent a letter by the mediator, which states, in part:

The mediation stage of this appeal has now been completed. Enclosed please find a copy of the Mediator's Report setting out any issues that have been resolved and the issues that remain in dispute.

The purpose of the Report is to provide the parties to an appeal with a record of the result of mediation and to provide the Adjudicator with information regarding records and issues that remain to be adjudicated.

Please review the Report and if there are any errors or omissions, please contact me no later than [ten days from the date of the letter]. I will consider your comments and determine whether the Report should be revised. You need not contact me unless there are errors or omissions.

[9] These steps were taken in the processing of the appellant's appeal.

[10] The Mediator's Report identified the sole issue remaining as that of reasonable search.

[11] There is no evidence before me that the appellant attempted to have the Mediator's Report corrected to include any issue other than reasonable search.

[12] This office has previously considered the role of mediation in the appeal process. It has taken the approach that, generally, the results of mediation define the scope of the issues left to adjudicate.<sup>2</sup> Parties are provided a Mediator's Report that defines the remaining issues and, "[i]n the absence of clearly articulated disagreement from a party regarding the results of mediation, the appeal will proceed to inquiry on that basis."<sup>3</sup> The rationale for this was explained in Order PO-1755:

In my view, it is too late to make such a claim [that the results of mediation should not be respected] at this stage in the process [adjudication]. . . . In so finding, I am not saying that a party may not

---

<sup>1</sup> I am not privy to any communications between the mediator and the parties to which mediation privilege applies.

<sup>2</sup> See, for example, Orders PO-1755, PO-3126 and MO-2778.

<sup>3</sup> Order PO-1755.

change his or her mind and back away from an agreement made in mediation, but that a decision must be made in a timely fashion and within the procedures which have been established by this office and which have been clearly communicated to the parties. To find otherwise would not only delay the inquiry process in that I would be required to essentially start the inquiry over again in order to introduce the new issues, but it would compromise the integrity of the appeals process itself by allowing a party to unilaterally frustrate the timely and orderly resolution of the appeal.<sup>4</sup>

[13] Therefore, since the Mediator's Report indicated that the sole issue remaining was reasonable search and the appellant did not correct this, I find that raising access-related arguments during the inquiry, and now through a request for reconsideration, is an attempt to re-open an issue that was resolved at mediation. This does not fit any of the criteria under section 18.01 of the *Code* to reconsider Order MO-3690.

### **The role of section 14(3) in the police's access decision**

[14] In his reconsideration request, the appellant also raised a question about the basis for the police applying the presumption against disclosure found at section 14(3)(b) (investigation into possible violation of law) in finding that the personal privacy exemption at section 38(b) applied to the information they withheld. The concern the appellant raises relates to his right of access to the responsive records, not to the reasonableness of the police's search for records. Since the unchallenged Mediator's Report removed access from the scope of the appeal, I will not address this concern other than to say it fell outside of the scope of the appeal and is not a ground for reconsideration under the *Code*.

### **Completeness of the video footage**

[15] In support of his appeal, the appellant made submissions about what he considered to be missing footage in the video provided to him, and asserting that the police had improperly withheld footage. His submissions in his reconsideration request essentially repeat those arguments. However, as noted in Order MO-3690, to the extent that these arguments relate to the issue of access, I did not consider them because access issues were not before me. As arguments relating to access were not relevant to the issue before me, they also cannot be a basis to reconsider my decision.

[16] To the extent that the appellant's reconsideration submissions also address missing footage as a search issue, I note that the reconsideration process is not a forum to re-argue a case. In Order PO-2538-R, the adjudicator reviewed the case law

---

<sup>4</sup> Order PO-1755.

regarding an administrative tribunal's power of reconsideration, including the Supreme Court of Canada's decision in *Chandler v. Alberta Association of Architects*.<sup>5</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>6</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.

[17] This approach has been adopted and applied in subsequent orders of this office.<sup>7</sup> For example, in Order PO-3062-R, the adjudicator was asked to reconsider her finding that the discretionary exemption did not apply to information in records at issue. 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...

[18] Having reviewed the appellant's representations in support of a reconsideration of Order MO-3690, I find that they essentially repeat the submissions already made during the inquiry, and that they amount to disagreement with my decision. As such, they do not meet the requirements for reconsideration set out in section 18.01 of the *Code*. To the extent that the appellant raises any new arguments, those too are not a basis for reconsideration. I dealt with the issue before me, which was reasonable search, and the appellant's submissions on this reconsideration request do not persuade me that I ought to have considered access issues. I also find that the time (or other resource) necessary to file another request under the *Act* is not a ground for

---

<sup>5</sup> [1989] 2 SCR 848 (S.C.C.).

<sup>6</sup> 1996 CanLII 11795 (ON SC), 28 O.R. (3d) 67 (Div. Ct.).

<sup>7</sup> See, for example, Orders MO-3478-R, PO-3062-R and PO-3558-R.

reconsideration of Order MO-3690.

[19] In conclusion, having reviewed the appellant's reconsideration request, and his representations provided during the inquiry of this appeal, I find that he has not demonstrated that there was a fundamental defect in the adjudication process; another jurisdictional defect in the decision; or any clerical error, accidental error or omission, or other similar error in Order MO-3690. Therefore, I find that the appellant's reconsideration request does not establish any of the grounds under section 18.01 of the *Code* upon which this office may reconsider a decision.

**ORDER:**

The request for reconsideration is denied.

Original signed by: \_\_\_\_\_  
Marian Sami  
Adjudicator

February 21, 2019 \_\_\_\_\_