Information and Privacy Commissioner,
Ontario, Canada

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

RECONSIDERATION ORDER MO-3872-R

Appeal MA18-195

Order MO-3822

York Regional Police Services Board

December 16, 2019

Summary: The York Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to a specific occurrence involving the requester and her minor son. The police granted partial access to the requested records. The requester appealed, claiming that the police's search for records was inadequate and that the police improperly refused to correct her personal information and that of her son under section 36(2) of the *Act*. In Order MO-3822, the adjudicator upheld the police's search for records, and their decision to deny the correction request.

The appellant requested reconsideration of the adjudicator's finding on the correction issue, on the basis that there were fundamental defects in the adjudication process, other jurisdictional defects and other errors in the decision. In this Reconsideration Order, the adjudicator finds that the appellant's arguments amount to a re-arguing of the appeal and that there is no basis for reconsidering Order MO-3822. She dismisses the reconsideration request.

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

Orders Considered: Orders PO-3062-R and MO-2227.

OVERVIEW:

[1] This reconsideration order disposes of a request for reconsideration made by the

appellant in Order MO-3822. The appellant, the mother of a young child, took her child for medical evaluation and treatment when she became concerned about his leg following his return from an access visit with his father. She reported the matter to the Children's Aid Society (CAS), and the York Regional Police Service investigated the incident.

[2] The appellant then submitted an access request to the York Regional Police Service Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for "all records, video statement (copy), audio (copy), anything to do with" the relevant occurrence number.

[3] The police located responsive records, which included the occurrence report and hospital records obtained by the investigating officer, and granted partial access to them.[1]

[4] The appellant then wrote the police a letter identifying a number of concerns with the contents of the records, particularly the investigating officer's description of the nature of the injury to her son's leg.

[5] With the appellant's letter to the police, she enclosed a letter from her son's orthopaedic surgeon to her lawyer; the orthopaedic surgeon's letter mentions that although initial x-ray findings were normal, the follow up x-ray several weeks later confirmed that the child had suffered a fracture of his tibia. The appellant's concern is that in her view, the police's records do not mention a fracture.

[6] The appellant appealed the police's decision to this office on the basis that the records require correction.[2] The police had not initially treated the appellant's letter as a correction request, but during mediation at this office, the police issued a decision denying the correction request on the following basis:

> ...I wish to confirm that the investigating officer … has advised you and this office that she will not be changing the general occurrence report regarding information contained in the letter from [the orthopaedic surgeon] to your lawyer concerning your son. The information that a [named] sergeant included in the police report was the summary of her conversation with the physician regarding your son's injury. The letter in question [the doctor's letter referred to above] was not directed to York Regional Police and was only provided [to] the sergeant by you after the investigation had been completed.

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[1] The redactions the police made to the records before disclosing them were not at issue in the appeal.
[2] The appellant also raised the issue of whether the police had conducted a reasonable search for records. The finding in Order MO-3822 about the police's search are not at issue in this reconsideration request.

> The sergeant has advised this office that she will scan the [doctor's] letter as an attachment to the general occurrence report and put on a supplementary report indicating she has done so, but will not amend her report.

[7] The police also provided the appellant with a copy of the administrative narrative indicating that the doctor's letter had been attached to the general occurrence report. The appellant did not accept this as a resolution of this matter, and continued to believe that the police's records should be corrected. The appeal was moved to the adjudication stage. After conducting an inquiry, in Order MO-3822, I upheld the police's decision to deny the appellant's correction request.

[8] The appellant now requests a reconsideration of Order MO-3822:

> I am requesting that this adjudication, the decision therein, be reviewed and investigated for just cause under Section 18 of the IPC Code of Procedure. There are fundamental defects in the adjudication process, other jurisdictional defects in the adjudication process, and other errors in the decision that this discourse will address.

[9] For the following reasons, I deny the appellant's reconsideration request.

Reconsideration criteria and procedure

[10] This office's reconsideration criteria and procedure are 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:
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> > (a) a fundamental defect in the adjudication process;
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> > (b) some other jurisdictional defect in the decision; or
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> > (c) a clerical error, accidental error or omission or other similar error in the decision.
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> 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.
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> 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.

[11] 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,

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*.[3] With respect to the reconsideration request before him, he concluded:

> [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.*[4]
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> 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.

[12] Adjudicator Higgins' approach has been adopted and applied in subsequent orders of this office.[5] 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 *Freedom of Information and Protection of Privacy Act* did not apply to the information in the 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:

> 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…

Findings in Order MO-3822

[13] In Order MO-3822, I noted that for a correction to be warranted under section 36(2), the information must be inexact, incomplete or ambiguous, and the correction cannot be a substitution of opinion.[6] I also noted that section 36(2)(a) gives the institution the discretion to accept or reject a correction request. Even if the information

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[3] (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4th) 577 (S.C.C.).
[4] 1996 CanLII 11795 (ON SC), 28 O.R. (3d) 67 (Div. Ct.).
[5] See, for example, Orders PO-3062-R and PO-3558-R.
[6] Orders P-186 and P-382.

is "inexact, incomplete or ambiguous," this office may uphold the institution's exercise of discretion if it is reasonable in the circumstances.

[14] I stated the following at paragraph 62:

> With respect to the appellant's key concern, the investigating officer's recording of the nature of the injury to the appellant's son's leg, it would appear from the letter the doctor wrote to the appellant's lawyer that there were a number of hospital visits and that the nature of the injury, i.e. a fracture, only became clear after the investigating officer's conversations with the doctor. Therefore, it is highly likely that the doctor did not mention a fracture to the officer. Even if he had, I agree with the police that the purpose of their investigation was to determine whether the injury was suspicious in nature. The doctor's letter to the lawyer is consistent with what he told the investigating officer in that regard. Moreover, and most importantly, the occurrence report was not written by the doctor. It was written by the investigating officer, who recorded her understanding of what the doctor told her. I agree with the adjudicator in Order MO-1438 where she states that the central issue is not whether the records are consistent with matters at issue at the time they were created, but rather, whether the statements reflect the views or observations of the officer as they existed at the time the record was created. I find, therefore, that the officer's notes of the nature of the leg injury are not "inexact, incomplete or ambiguous."

[15] I upheld the police's decision not to make corrections to the officer's recording of the nature of the injury to the appellant's son's leg.

The appellant's reconsideration request

[16] The appellant provided lengthy representations in support of her reconsideration request. I have reviewed them but will not set them out in detail here. The appellant makes the following requests and arguments:

- She requests that an independent individual review her evidence and that the adjudication process be conducted without prejudice. She refers to the adjudication process as "highly suspect."

- She states that she is not submitting new evidence and that her position and evidence have already been provided to the IPC.

- She states that the police officer had the medical records necessary to compose an accurate and complete occurrence report. The appellant states that the occurrence report is riddled with incorrect medical information and conclusions. She states that the medical documents are not open to interpretation by a non-medically trained police officer.

- She asks that all medical records and information that are legal documents be accurately and completely accounted for within the police occurrence report.
- She takes issue with my finding in Order MO-3822 that "it is highly likely that the doctor did not mention a fracture to the officer", and that "the nature of the injury, i.e. a fracture, only became clear after the investigating officer's conversation with the doctor."
- She states that the Children's Aid Society has incorrect information as a result of the inaccuracies in the police reporting.

[17] I will address first the appellant's implication that there is a reasonable apprehension of bias on my part in respect of the adjudication of her appeal. Any reasonable apprehension of bias would be a ground for reconsideration of Order MO-3822.

[18] 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.

[19] 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:
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>> 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:
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>> …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.
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>> …

> *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.]

[20] The appellant states as follows:

> I require an independent individual who will review the evidence in earnest and will not make assumptions, ignore evidence or bring in probabilities, assumptions, justification based on how the [police] investigator collected her data or what information they had in their possession.

[21] The remainder of the appellant's submissions are statements to the effect that my decision is wrong. It is clear that the appellant disagrees with my analysis and findings in the order. However, the fact that the appellant disagrees with my findings in Order MO-3822 is not evidence of a reasonable apprehension of bias on my part. I find, therefore, that the appellant has fallen well short of demonstrating a reasonable apprehension of bias.

[22] I now turn to whether the appellant's submissions establish any other ground for reconsideration. I have reviewed all of the appellant's submissions and I find that her arguments amount to a disagreement with Order MO-3822 and a re-arguing of the merits of her appeal. While the appellant may disagree with my findings, she has not established that there is a fundamental defect in the adjudication process; some other jurisdictional defect in the decision; or a clerical error, accidental error or omission or other similar error in the decision. In simply re-arguing her appeal, the appellant has not established any of the grounds upon which I may reconsider Order MO-3822.

[23] However, I have reviewed the appellant's concerns and in any event, I am not satisfied that the appellant has demonstrated that I ought to have ordered the police to correct the occurrence report.

[24] As noted by the appellant in her submissions, after she told the officer that her son's leg was confirmed fractured at his follow-up medical appointment, the officer obtained the doctor's recent records. In this respect, the occurrence report contains a later entry from the officer stating "[The appellant] advised that she went to the Fracture Clinic … and the Dr. advised that the Fibula was in fact broken … [the officer] will obtain the Dr. notes…."

[25] The entries the officer made in the occurrence report thus fall into two main categories: those made before the officer requested and received this later medical documentation, and a longer final entry written after the officer received the later medical documentation (but before the appellant provided the police with the doctor's letter that clearly confirms that a fracture had occurred).

[26] It is clear that during the first period, there was no confirmed fracture and it is

not surprising that the officer did not mention a confirmed fracture in her entries. The medical records from this period do not confirm a fracture. It remains my view that no corrections are required with respect to the officer's earlier entries before the fracture was confirmed. One such entry states, for example: "[the doctor] advised that with just the one x-ray he could not determine a fracture occurred…".

[27] I now turn to the second period and whether the officer should have mentioned a fracture when writing the final longer entry that was prepared after the appellant told the officer that the fracture had been confirmed, and after the officer subsequently received the doctor's recent records. The officer did not have the doctor's letter at this point.

[28] The appellant argues that even without the doctor's letter, the officer had all the necessary medical evidence before her "to compose an accurate and complete occurrence report." I note that the only specific reference to a fracture that the appellant refers to in the medical notes before the officer at that time is from the child's first visit to hospital, which states, "We believe this is most likely in keeping with an occult[7] toddler's fracture. X-rays were taken and re-examined, and while they did not acutely show any deformity, it is possible that this fracture remains occult and could show up on repeat imaging". The more recent doctor's records that were also before the officer do not include x-ray reports. They consist of two outpatient clinic notes that, in my view, would not necessarily confirm to a non-medically trained person that the leg had been fractured.

[29] In any event, the occurrence report must be read in its entirety. It contains the officer's later entry of the appellant's reporting that the doctor had confirmed a fracture at the follow-up appointment, and the doctor's letter confirming the same is attached to the occurrence report. That letter states, "Initial x-ray findings were ostensibly normal with the exception of a slight bow of the fibula. His physical examination however was consistent with a fractured tibia. In fact, it was only with follow up x-ray evidence of callus formation that it was confirmed that [the appellant's son] had suffered an undisplaced fracture of his left tibia."

[30] Overall, I am satisfied that the occurrence report accurately conveys that a suspected fracture to the appellant's son's leg was later confirmed. Moreover, as I noted in Order MO-3822:

> I agree with the police that the purpose of their investigation was to determine whether the injury was suspicious in nature. The doctor's letter to the lawyer is consistent with what he told the investigating officer in that regard.

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[7] i.e., hidden.

[31] Therefore, even if I were to find that the officer's final entry in the occurrence report is "inexact, ambiguous or incorrect" by reason of not mentioning a confirmed fracture, I would uphold the police's discretion in not correcting it as reasonable in the circumstances.

ORDER:

The appellant's reconsideration request is denied.

Original signed by ____________________ December 16, 2019

Gillian Shaw
Senior Adjudicator