

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-3933-R

Appeal MA17-3-2

Order MO-3846

Municipality of Chatham-Kent

June 30, 2020

Summary: The appellant requested a reconsideration of Order MO-3846. In Order MO-3846, the adjudicator upheld the municipality's search for responsive records as reasonable. In this Reconsideration Order, the adjudicator denies the reconsideration request as she finds that the appellant has not established that grounds exist under section 18.01 of the *Code* for reconsidering Order MO-3846.

Statutes Considered: *IPC Code of Procedure*, section 18.01.

Orders Considered: *Chandler v. Alberta Assn. of Architects*, [1989] 2 S.C.R. 848.

OVERVIEW:

[1] The reconsideration request relates to Order MO-3846, an order upholding the municipality's search for responsive records to be reasonable.

[2] The Municipality of Chatham-Kent (the municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to its costs for alternative ambulance and fire service delivery models.

[3] In its decision, the municipality granted full access to the total financial and operating costs for proposals A, B, and C. However, it denied access to a Spreadsheet of Costing and Options for Model A, B and C. The appeal from this decision was dealt

with in Order MO-3613.

[4] In Order MO-3613, Adjudicator Smith found that the information at issue in the record was not exempt under sections 6(1)(b) (closed meeting) or 11 (economic and other interests). She ordered the municipality to disclose the information at issue in the record to the appellant. After receiving the record, the appellant contacted this office stating that he believes additional records responsive to the request exist. As such, Appeal MA17-3-2 was opened to address the municipality's search for responsive records.

[5] After conducting an inquiry, I issued Order MO-3846, where I found that the municipality conducted a reasonable search for responsive records.

[6] The appellant then submitted a request for reconsideration of Order MO-3846.¹ The basis for his reconsideration request is that he continues to believe that additional responsive records exist as the records provided thus far by the municipality do not show the backup figures to the grand totals on the spreadsheet, one of the responsive records.²

[7] For clarification purposes, the spreadsheet in question was the record at issue in Order MO-3613. It contains the costs and options for Models A, B, and C. It was presented to council to lay out the financial implications of three alternative ambulance service delivery models that council could consider. A copy of this spreadsheet was provided to the appellant in accordance with the order provision in Order MO-3613.

[8] In this order, I find that the appellant has not established that grounds exist under section 18.01 of the *Code* for reconsidering Order MO-3846, and I deny the reconsideration request.

DISCUSSION:

[9] Sections 18.01 and 18.02 of the IPC's *Code of Procedure* (the *Code*) 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

¹ Two weeks before the reconsideration request, the appellant submitted another reconsideration request for Order MO-3846. His later request stated that the previous one was incorrectly submitted. As such, I have not reviewed nor considered the earlier reconsideration request dated November 14, 2019.

² I did not ask the municipality to provide submissions in response to the appellant's reconsideration request.

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.

[10] The reconsideration process 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 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.*

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.

[11] Adjudicator Higgins' approach has been adopted and applied in subsequent orders of this office. In Order PO-3062-R, for example, Adjudicator Daphne Loukidelis was asked to reconsider her finding that the discretionary exemption in section 18(1) 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...

[12] I adopt this analysis for the purposes of this reconsideration request.

[13] In his reconsideration request, the appellant does not identify the specific ground

³ [1989] 2 S.C.R. 848.

in section 18.01 he is relying upon.

[14] It appears that he simply disagrees with my finding that the municipality conducted a reasonable search for responsive records. He states:

... the appellant states and affirms the institution has **NOT** identified the requested records within the group of records provided, has **NOT** located the requested records [**which not only have to exist in order to have produced the grand total costs in reports A/B/C but such financial requested records have to be relevant, that would add to the grand total numbers displayed in the spreadsheet**], has **NOT** located the reasonably relevant records has **NOT** severed the reasonably relevant material all of which is required under the statute, and has only provided non-relevant information that strongly appears to be a budget of an entire municipal department, nothing to do with the [freedom of information request] matter. [Emphasis as stated in the original.]

[15] The appellant also states:

Appellant appealed the municipality failed to provide information as requested and pursuant to the [freedom of information request]. Municipality continued to provide a truckload of non-relevant information portraying same to be, as is required, reasonably relevant information to the request. When in fact the information was not, therefore, under the rules, information not relevant, not identified and not severed for the requester is disqualified being defined as "reasonable search."

[16] In my view, the appellant's reconsideration request is an attempt to re-argue his case. It is clear that the appellant believes additional records should exist as he not been provided with the backup figures to the grand totals on the spreadsheet. While I appreciate the appellant strongly believes that backup figures exist, it does not mean that the records actually exist. As stated in Order MO-3846, the municipality only has to show that it made reasonable attempts to locate the responsive records. It is also clear that the appellant believes the records provided thus far by the municipality are not relevant to his request, and, therefore, the municipality did not conduct a reasonable search for responsive records. However, the appellant is essentially repeating the arguments that he made during the inquiry. As seen in Order MO-3846, I did not accept these arguments and found that the municipality had conducted a reasonable search for records. As stated above, such disagreements with an adjudicator's finding does not meet the requirements for reconsideration set out in section 18.01 of the *Code*.

[17] Furthermore, the appellant has not claimed there is a fundamental defect in the adjudication process (under section 18.01(a) of the *Code*), some other jurisdictional defect in the decision (under section 18.01(b) of the *Code*) or a clerical error, accidental

error or other similar error in the decision (under section 18.01(c) of the *Code*). Moreover, based on my review of Order MO-3846 and the adjudication process leading up to it, I find that none of these grounds are present.

[18] In conclusion, having reviewed the appellant's reconsideration request and submissions, I find that he has not established that there are any grounds for reconsideration under section 18.01 of the *Code*. Accordingly, I deny his reconsideration request.

ORDER:

The appellant's reconsideration request is denied.

Original Signed by: _____

Lan An
Adjudicator

_____ June 30, 2020