Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3960

Appeal MA11-23-4

Toronto Police Services Board

October 2, 2020

Summary: In this order, the adjudicator finds that the records at issue do not fall within the scope of the request in this appeal and were also the subject of the previous proceedings of this office. The doctrine of issue estoppel is found to apply and the appeal is dismissed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 52(1); *The Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

Orders and Investigation Reports Considered: Orders MO-1907, MO-1908-I, MO-1968-R, MO-2841-I, MO-2953-R, MO-3107-F, MO-3467, MO-3651-R.

Cases Considered: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44; *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19; *British Columbia (Minister of Forests) v. Bugbusters Pest Management Inc.*, 1998 CanLII 6467 (BC CA).

BACKGROUND:

[1] The Toronto Police Services Board (the police) received the following access request from the appellant on December 1, 2010 (the 2010 request), under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*):

> I am requesting access to and copies of all personal records through [*MFIPPA*] as an UPDATE from my request received 17 October 2003

> [specified request] of copies of all written and electronic records, including all log books, flipbooks, notebooks, files, telephone messages, inter and intra office emails and Outlook Express records, or any similar proprietary internal or external communication system used by [the police] in whatever format, of Officer #[specified badge number] or "[named police officer]". This will include all internal or external records, of any and all sorts and formats of communication between "[named police officer]" and Officers of the Hamilton Wentworth Police Service, Correctional Service of Canada and the National Parole Board, and all revised and altered "police occurrence" reports relative to me alleged to have been authored by "[named police officer]". My request will also include all personal references and documentation in Internal Investigation File [specified number].

[2] As set out in the body of the access request, the 2010 request was an update of a request the appellant made in 2003 (referred to hereafter as the 2003 request).

[3] The 2010 request and other matters raised by the appellant, including reasonable search, were the subject of my Orders MO-2841-I, MO-3107-F, MO-3467 and my Reconsideration Order MO-3651-R.

[4] The 2003 request was one of thirteen appeals commenced by the appellant for access to specific records relating to an investigation involving himself and his subsequent arrest, as well as the reasonableness of the police's search for responsive records. The appeals were addressed in Order MO-1908-I and Reconsideration Order MO-1968-R, both of which were subject to applications for judicial review. Those Orders were further reconsidered in Reconsideration Order MO-2953-R, and the applications for judicial review were abandoned.

[5] In the course of responding to the appellant's very late request to collect records relating to the 2003 request, in the form ordered disclosed in accordance with Reconsideration Order MO-2953-R, the police located some records.

[6] As discussed in more detail below, although those records fell entirely within the scope of the 2003 request and were the subject of the proceedings relating to it, the police issued a further decision letter dated February 28, 2018. In the letter, the police explained the circumstances of the location of these records as follows:

> In response to the facsimile from your lawyer, [named lawyer] on February 8, 2018, the attached 2013 Freedom of Information decision letter and responsive records are enclosed. Please note, the original decision letter, including the responsive records per the Reconsideration Order MO-2953-R, was signed and ready for your pick-up in 2013.
>
> You have not picked up these records, despite being made aware of this through correspondence from this office and several conversations with you in this regard. As such, the 2013 decision letter will not be updated to

> today's date which means you are not able to appeal the 2013 decision to the Information and Privacy Commissioner/Ontario.
>
> In addition, documents that you may or may not have received during the course of mediation in regards to our file 10-4126/Appeal #MA11-23-3/Order MO-3467 have been identified by the Access and Privacy Section and are also included. Partial access is granted to the enclosed records as held by this Police Service. Access is denied to certain information pursuant to subsections 14(1)(f), 14(3)(b), and 38(b) of the *Act*. …
>
> …
>
> These records are subject of Appeal as this letter shall be considered a new decision letter for File 10-4126 (A) [copy of steno pads, one page email, RBC fax statements]

[7] As invited to do so by the police, the appellant appealed the decision.

[8] At mediation, the appellant requested access to the withheld portions of the records and took the position that additional responsive records exist. In particular, the appellant advised the mediator that the police failed to identify orders, judicial authorizations as well as production orders provided to an identified bank, an identified credit card provider and the Canada Revenue Agency. The mediator added the reasonableness of the police's search for responsive records as an issue in the appeal.

[9] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process.

[10] I commenced my inquiry under the *Act* by sending a Notice of Inquiry to the police. The police provided responding representations. Through inadvertence, I did not include the reasonableness of the police's search for responsive records as an issue for the police to address in the initial Notice of Inquiry. Accordingly, I sent a Supplementary Notice of Inquiry requesting their representations on this issue. The police provided representations on the search issue. I then sent a Notice of Inquiry to the appellant along with a copy of the police's representations. The appellant provided responding representations.

[11] After the exchange of representations, I sought clarification from the police and the appellant regarding whether, in their view, the records had been the subject of prior proceedings at the IPC. They both provided representations in response to my request for clarification.

[12] The appellant also made a number of unsolicited submissions throughout the inquiry process.

[13] I have considered all of these in making my findings below.

[14] In this order, I find that the records located by the police do not fall within the

scope of the 2010 request and instead are within the scope of the 2003 request. Moreover, I find that these records were actually the subject of the previous proceedings of this office relating to the 2003 request. Accordingly, the doctrine of issue estoppel applies and the appeal before me is dismissed.

RECORDS:

[15] At issue in this appeal are records identified in the police's index of records as Steno Notes, Interview Notes, Court Notes, Bank Summaries and an email.

DISCUSSION:

A brief history of the appellant's 2003 request

[16] As set out above, the 2003 request was one of thirteen appeals commenced by the appellant for access to specific records relating to an investigation involving the appellant and his subsequent arrest, as well as the reasonableness of the police's search for responsive records. The appeals were addressed in Order MO-1908-I and Reconsideration Order MO-1968-R, both of which were subject to applications for judicial review. Those Orders were further reconsidered in Reconsideration Order MO-2953-R, and the applications for judicial review were abandoned.

A history of the previous appeals relating to the appellant's 2010 request

[17] On January 31, 2013, I issued Interim Order MO-2841-I in relation to the appellant's 2010 request. As set out in my Interim Order, primarily because the police chose to provide an "additional clarification" letter rather than representations and/or an affidavit in response to a Notice of Inquiry, I found that the police did not conduct a reasonable search for responsive records. Accordingly, I ordered them to conduct further focussed searches and to provide a reasonable amount of detail to this office regarding the results of those searches, including those conducted by the police officer named in the request whom I described as an affected party in my interim order. I determined that other outstanding issues would be addressed after the police provided the results of their search and a federal government agency was notified of the appellant's access request.

[18] The police conducted a further search in response to my interim order, but did not identify any additional records responsive to the request. The police also provided documentation from their analyst and the police officer in support of their position that they conducted a reasonable search for responsive records in accordance with the terms of my order.

[19] On September 30, 2014, I issued Final Order MO-3107-F. In that Order, I addressed the issue of access to an email that the police sought to withhold under section 38(a), in conjunction with section 9(1)(d) as well as 38(b), and the offence issue that the appellant raised as set out in the Revised Mediator's report relating to Appeal File MA11-23-2. I also ordered the police to conduct a further search for responsive records and

issue a decision letter setting out the results of their search. Appeal File MA11-23-2 was then closed.

[20] The police disclosed the balance of the withheld information in the email and issued a decision letter regarding their further search efforts.

[21] The appellant appealed this decision and MA11-23-3 was opened to address the appeal. On July 7, 2017, I issued Order MO-3467 upholding the reasonableness of the police's search and dismissing the appeal. Accordingly, Appeal File MA11-23-3 was closed.

[22] By letter dated July 17, 2017, the appellant sought a reconsideration of Orders MO-2841-I and MO-3467. He did not request a reconsideration of Order MO-3107-F.

[23] In Reconsideration Order MO-3651-R, I found that the appellant had not established the grounds for reconsideration in section 18.01 of the IPC *Code of Procedure* (the *Code*) and I denied the request to reconsider Orders MO-2841-I and/or MO-3467.

The appellant's position at the intake stage of the process relating to the appeal before me

[24] From the outset, the appellant took the position that the records the police located did not relate to the 2010 request. The appellant insisted that assigning this appeal as a continuance of the previous appeals relating to his 2010 request was in error.

[25] In a letter dated March 12, 2018, the appellant wrote the following to the IPC Registrar:

> Contrary to the position taken by the Acting Coordinator, these records are not attached to Appeal MA11-23-3 or File 10-4126, which was a request for an Update of Files 03-2311 and 03-2312 (records of Officer [named individual] and the Office of the Chief of Police)
>
> In any event, with records of the police copies of the [named bank] and [named credit card] accounts in hand as a result of the Decision letter, I am appealing based on the absence of a "reasonable search".
>
> As outlined in my letter of 13 June 2005 to [named IPC employee], the missing police records included with these records are the applications (ITO) and judicial authorizations for this means of police surveillance by tracking credit card purchases, bank accounts and financial transactions.
>
> Additionally, the Police have not disclosed the official memorandum books of Officer [named police officer] associated with the Steno Pads relative to his surveillance as reviewed by his senior officers.
>
> Therefore, there are or should be records in the police files attached to the disclosed records that document these ITO's and Judicial authorization

> obtained for this surveillance methodology, similar to the judicial authorizations used to track cell phone records ("Stingray") of the public.
>
> In the event that after a reasonable search these judicial authorizations cannot be located and disclosed, then I wish to file a Complaint to be investigated by the IPC for the contraventions by the Toronto Police of the *MFIPPA* and other Privacy legislation by accessing these financial records in the absence of judicial oversight.

[26] In a further letter to me dated March 30, 2018, the appellant again took issue with the records being associated with the 2010 request. After setting out the police's decision letter relating to the records he wrote that "… none of the records disclosed relate to Case File 10-4126, nor to any of the MA11-23 series of Orders which you have issued."

The parties' correspondence at the inquiry stage

[27] In their initial response to the first notice of inquiry[1], the police addressed the records in the following way:

> Subsequent to the issuance of Order MO-3467 the police issued a decision letter to the appellant disclosing additional records to him, in part.

[28] After I sent the police a Supplementary Notice of Inquiry that included the search issue, the police revised their position. They wrote:

> In our response to the Notice of Inquiry (sent October 24th 2018), a notation was made that the appellant was provided with "additional records" per Order MO-3467. This statement needs to be corrected as the appellant was provided with "Steno Notes" (partial access) of records already provided to [sic] previously. These records were not records that were newly discovered and processed. This can be confirmed by the fact that there are two very different page number stamps on each page. There does not exist any "new" stamps that coincided with the original file.

[29] After the initial exchange of representations, I sought clarification through an Adjudication Review Officer from both the police and the appellant regarding the content of that paragraph. In particular, I asked whether the located records were the subject of previous appeals or orders or were ever the subject of adjudication.

[30] The police's Freedom of Information Coordinator wrote the following in response:

> In the February 14, 2019 letter, I wrote that the information sent on October 24th, 2018, had an error. In writing that "a notation was made to the appellant was provided with "additional records" per Order MO-3467.

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[1] Which failed to include the issue of reasonable search.

> The explanation to this statement is that the appellant did not receive any "new" documents. He was provided records to which he had already been provided.

[31] When asked if these records were previously the subject of other appeals, and if so, which ones, the coordinator advised that they were not able to provide a more specific answer in a timely way.

[32] The appellant responded to my request for clarification with the following explanation in a letter dated March 12, 2020:

> None of the records retrieved on 18 February 2018 relates to the records associated with those records requested in File 10-4126 or Appeals in the MA11-23-XX series, or has anything to do with Mr. Faughnan's prior work on the MA11-23 files. No new records at all have been disclosed in that file.
>
> …
>
> None of any records related to the period 2003-2010 alleged to have been "provided previously" were in the package received through the efforts of a retained law firm on 18 February 2018 which gave rise to prompt and diligent Appeals, some of which were ruled impermissible owing to the intentional and artificial obstructive delays deliberately caused by [named IPC Adjudicator] and the Toronto Police, consciously engaging in an abuse of process by personally running out the clock months if not years beyond the 30 day statutory limits determined by the date on the Decision letter.
>
> PAGE NUMBER STAMPS
>
> The Police state that they conclude the records have already been adjudicated because "this can be confirmed by the fact that there are two very different page number stamps on each page".
>
> Despite the obvious fact that there are not "two different stamps on each page" - and on many pages there are no number stamps at all, or any reference to the specific Sections of the *MFIPPA* Act used by the Head of institution of the Toronto Police to redact information that would have been adequate and necessary for adjudication processes -- any secondary numbers appearing on the record are related to the enumeration of the records collated for use in the two Judicial Reviews (Ontario Superior Court of Justice court files 422/05 and 433/05) initiated in 2005 by the Toronto Police and the Attorney General.
>
> None of these records in File 10-4126"A" relates to any of the records requested for the period between 2003 and 2010. In these judicial reviews of the materials between 2000 and 2003 (inclusive of the embedded 1997 materials), [named IPC Adjudicator] and the Information and Privacy Commissioner are named as respondents. [Named IPC counsel] was the

> person with the carriage of the file before the Superior Courts. The stamps on the pages are for Superior Court purposes, and part of the Court records of the Judicial Review(s) processes and they are not Toronto Police stamps.
>
> In any event, it is moot. Issues in the MA11-23 Series (regarding TPS records dating between 2003-2010) have nothing to do with any of this. None of the records contained in the so-called File 10-4126-"A" relate to any responsive documents related to the period between 2003 and 2010, the subject of Appeals MA11-23-X and designated to be reviewed on Mr. Faughnan's watch.
>
> Especially, all of the records relate the period 2000-2003 (with the included Toronto Police 1997 records in the Files of 03-2310, 03-2311 and 03-2312), and have nothing to do with File 10-4126A (or the years 2003-2010) not a single record of which has been submitted for adjudication or disclosed. Despite the police assertions that they have all the memorandum books of [named police officer].
>
> As is clearly evident, on even the most casual of a one-minute review of the records, all are dated prior to that period 2003-2010, and, if at all, the records of File 10-4126 A would have been under the jurisdiction of [named IPC Mediator], [named IPC Adjudicator], [named IPC Adjudicator], [named IPC Adjudicator], or [named IPC Adjudicator].
>
> These records are all related to TPS 03-23xxx files and have never been disclosed or adjudicated.
>
> The page stamps are from the Judicial Review proceedings [Named IPC counsel], and the records of the Court, not from the Adjudication process.

[33] The appellant included an index page from a judicial review proceeding listing records in support of his position that the records were the subject of the judicial review of Order MO-1908-I and Reconsideration Order MO-1968-R.

Analysis and findings

[34] While taking the position that the records have never been the subject of a previous adjudication, the appellant nevertheless strenuously argues that they have nothing to do with the 2010 request, wholly relate to proceedings arising from the 2003 request and have page stamps from the record of the judicial review proceeding.

[35] I have reviewed the records. They do not fall within the time-frame of the 2010 request and I accept the appellant's evidence that they relate to the 2003 requests. Based on my review of the records and the circumstances, I am satisfied that they were the subject of proceedings related to the 2003 requests. The 2003 requests, which also included search issues, were addressed in Order MO-1908-I and Reconsideration Order MO-1968-R, both of which were subject to applications for judicial review. Those Orders were further reconsidered in Reconsideration Order MO-2953-R, and the applications for

judicial review were abandoned. In support of my conclusion, I note that the records all bear the type of numbering discussed by the appellant albeit quite faintly on some pages, indicating that they were contained in a record of proceedings for judicial review before the Divisional Court of Ontario that arose from Order MO-1908-I and Reconsideration Order MO-1968-R.

[36] As a result, although the police indicated that the records were subject to a right of appeal, they are subject to issue estoppel because the 2003 requests, including the 2003 request set in the 2010 request, were subject to Order MO-1908-I and Reconsideration Orders MO-1968-R and MO-2953-R.

[37] Previous orders of this office[2] have established that an inquiry need not be conducted in all cases, because the decision to conduct an inquiry is discretionary in accordance with section 41(1) of the *Act*.

[38] Section 41(1) of the *Act* states,

> The Commissioner may conduct an inquiry to review the head's decision if,
>
> > (a) the Commissioner has not authorized a mediator to conduct an investigation under section 40; or
> >
> > (b) the Commissioner has authorized a mediator to conduct an investigation under section 40 but no settlement has been effected.

[39] This is especially relevant if a subsequent appeal arises when there have been prior decisions of the IPC involving the same parties and records thereby also raising the possible application of the doctrine of issue estoppel.

Issue estoppel

[40] The leading case that considers the doctrine of issue estoppel in the context of prior tribunal decisions is the Supreme Court of Canada's (the Supreme Court's) decision, *Danyluk v. Ainsworth Technologies Inc.*[3]. In that decision, the Supreme Court stated,

> The law rightly seeks a finality to litigation. To advance that objective, it requires litigants to put their best foot forward to establish the truth of their allegations when first called upon to do so. A litigant, to use the vernacular, is only entitled to one bite at the cherry…. An issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner. A person should only be vexed once in the same cause. Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided.

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[2] Orders P-1392 and MO-1907.
[3] 2001 SCC 44 (*Danyluk*).

> Finality is thus a compelling consideration and judicial decisions should generally be conclusive of the issues decided unless and until reversed on appeal. However, estoppel is a doctrine of public policy that is designed to advance the interests of justice.[4]

[41] The Supreme Court also confirmed the doctrine of issue estoppel applies to administrative tribunals.[5]

[42] *Danyluk* sets out a two-step analysis for the application of issue estoppel. First, the decision maker must determine whether three conditions to the operation of issue estoppel have been satisfied. These conditions are:

1. that the same question has been decided,

2. that the judicial decision which is said to create the estoppel was final; and,

3. that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

[43] Once these three conditions are met, the decision maker must determine "whether, as a matter of discretion, issue estoppel *ought* to be applied" (emphasis in original).[6] The Supreme Court confirmed that these rules should not be applied "mechanically". Rather, "the underlying purpose is to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case."[7]

[44] The IPC has considered the doctrine of issue estoppel in a number of decisions. In Order MO-1907, the adjudicator excluded records from the scope of an appeal on the basis that the same records were the subject of a previous appeal involving the same institution and appellant. In her decision, the adjudicator stated:

> … This appeal and Appeal No. MA-010272-2 involve the same institution (the Board) and the same appellant. Orders MO-1574-F and [MO-]1595-R, issued in the context of Appeal No. MA-010272-2, decided the issue of the appellant's entitlement to have access to a number of records, approximately 80 of which are also before me. Whether as a matter of issue estoppel, or the application of section 41(1) [the municipal equivalent to section 52(1)], I find that the policy of judicial finality would be undermined if I were to review the issue of access to these 80 records once again. These records are therefore excluded from the scope of the appeal.

[45] As set out above, in *Danyluk*, the Supreme Court confirmed the importance of finality in litigation and stated, "an issue, once decided, should not generally be re-

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[4] *Ibid*. at paras 18 to19.
[5] *Ibid*. at para 21.
[6] *Ibid*. at para 33.
[7] *Ibid*.

litigated to the benefit of the losing party and the harassment of the winner."[8] In considering whether issue estoppel applies, the Supreme Court directs a decision maker to "balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case."[9] Based on my review of the records, the materials provided and the circumstances of this case, I find that the doctrine of issue estoppel applies to this appeal.

[46] The first requirement for a finding of issue estoppel is that the same question has been decided. I found above that the 2003 request and access to the records was the subject of prior adjudication, along with 12 other requests and related reasonable search issues. I therefore find that the same question has been decided.

[47] I also find the decision which is said to create the estoppel was final. The records were subject to an initial order, two reconsideration orders and an abandoned judicial review. Therefore, I find that the records were subject to a final decision and that the second condition for issue estoppel is satisfied.

[48] Finally, I find the third requirement for the application of issue estoppel is satisfied. The appellant and the institution in all the appeals are the same.

[49] Therefore, I find the doctrine of issue estoppel applies in the circumstances of this appeal.

Discretion in the application of issue estoppel

[50] Even though I have found that issue estoppel applies, I may exercise my discretion to hear the appeal. In *Danyluk*, the Supreme Court referred to *British Columbia (Minister of Forests) v. Bugbusters Pest Management Inc.*, in which the Court of Appeal of British Columbia stated,

> … Issue estoppel is an equitable doctrine, and as can be seen from the cases, is closely related to abuse of process. The doctrine of issue estoppel is designed as an implement of justice, and a protection against injustice. It inevitably calls upon the exercise of a judicial discretion to achieve fairness according to the circumstances of each case.[10]

[51] Of particular relevance to this appeal, the Supreme Court further stated in *Danyluk* that "the discretion is necessarily broader in relation to the prior decisions of administrative tribunals because of the enormous range and diversity of the structures, mandates and procedures of administrative decision makers."[11]

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[8] *Danyluk*, *supra* note 3 at para 18.
[9] *Ibid*. at para 33.
[10] *British Columbia (Minister of Forests) v. Bugbusters Pest Management Inc.*, 1998 CanLII 6467 (BC CA) at para 32.
[11] *Danyluk*, *supra* note 3 at para 62.

[52] In *Penner v. Niagara (Regional Police Services Board)*,[12] the Supreme Court considered the discretionary application of issue estoppel. In its decision, the majority stated as follows:

> Relitigation of an issue wastes resources, makes it risky for parties to rely on the results of their prior litigation, unfairly exposes parties to additional costs, raises the spectre of inconsistent adjudicative determinations and, where the initial decision maker is in the administrative law field, may undermine the legislature's intent in setting up the administrative scheme.[13]

[53] However, the Supreme Court stated that even if issue estoppel applies, "the court retains discretion to not apply issue estoppel when its application would work an injustice."[14] The Supreme Court stated,

> … The discretion requires the courts to take into account the range and diversity of structures, mandates and procedures of administrative decision makers; however, the discretion must not be exercised so as to, in effect, sanction collateral attack, or to undermine the integrity of the administrative scheme…. [A]s this Court said in *Danyluk*, at para. 67: "The objective is to ensure that the operation of issue estoppel promotes the orderly administration of justice but not at the cost of real injustice in the particular case."[15]

[54] Regarding the factors to consider in the discretionary application of issue estoppel, the Supreme Court stated,

> Broadly speaking, the factors identified in the jurisprudence [such as *Danyluk*] illustrate that unfairness may arise in two main ways which overlap and are not mutually exclusive. First, the unfairness of applying issue estoppel may arise from the unfairness of the prior proceedings. Second, even where the prior proceedings were conducted fairly and properly having regarding to their purposes, it may nonetheless be unfair to use the results of that process to preclude the subsequent claim.[16]

[55] Upon consideration of these factors as well as the circumstances of the appeal, the parties' representations and the information at issue, I am satisfied that it would not be unfair to apply the doctrine of issue estoppel in this case.

[56] In *Penner*, the Supreme Court directs the decision-maker to consider factors including "procedural safeguards, the availability of an appeal, and the expertise of the

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[12] 2013 SCC 19 (*Penner*).
[13] *Ibid*. at para 28.
[14] *Ibid*. at para 29.
[15] *Ibid*. at para 31.
[16] *Ibid*. at para 39.

decision maker"[17] in considering the opportunity the parties had to participate in, and the fairness of, the administrative proceeding. The Supreme Court stated these considerations "address the question of whether there was a fair opportunity for the parties to put forward their position, a fair opportunity to adjudicate the issues in the prior proceedings and a means to have the decision reviewed."[18]

[57] I find no evidence that the adjudication of Order MO-1908-I, the reconsideration orders or the abandoned judicial reviews were unfair to any of the parties to the appeal. The parties to the appeal arising from the earlier request had an opportunity to participate in all the previous proceedings. Therefore, I find there is no evidence to establish that the prior proceedings were unfair to the appellant.

[58] The second manner in which the application of issue estoppel may be unfair relates to the fairness of using the results of the prior proceedings to preclude the subsequent proceedings. In this regard, the Supreme Court stated,

> … even if the prior proceeding was conducted fairly and properly having regard to its purpose, injustice may arise from using the results to preclude the subsequent proceedings. This may occur, for example, where there is a significant difference between the purposes, processes or stakes involved in the two proceedings….. In order to establish unfairness in the second sense we have described, such differences must be significant and assessed in light of this Court's recognition that finality is an object that is also important in the administrative law context.[19]

[59] In my view, the processes of this office with respect to the application of its mandate under *MFIPPA* were engaged and as demonstrated in Order MO-1908-I and Reconsideration Orders MO-1968-R and MO-2953-R, the 2003 requests received detailed consideration in accordance with the provisions of the *Act*. In my view, there is no significant difference between the purposes, processes or stakes involved in the two proceedings. I find that no injustice may arise from using the results from the previous Order MO-1908-I and Reconsideration Orders MO-1968-R and MO-2953-R to preclude this appeal.

[60] Therefore, I find that issue estoppel applies to preclude this appeal, and I do not exercise my discretion to hear the appeal.

[61] Additional comments are in order.

[62] To the extent that the concerns the appellant sets out in the materials he provided relate to the determinations in my previous orders, including the adequacy of the search for records responsive to the 2010 request and the conduct of the police with respect to the 2010 request, those matters have been previously decided. I will not allow a collateral

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[17] *Ibid*. at para 41.
[18] *Ibid*. at para 41.
[19] *Ibid*. at para 42.

attack on my Orders MO-2841-I, MO-3107-F, MO-3467 and my Reconsideration Order MO-3651-R in this appeal, and will not revisit them here.

[63] To the extent that the appellant raises any new arguments regarding the possible application of sections 7, 11(a), 11(b) and 11(d) of the *Canadian Charter of Rights and Freedoms*[20], in support of his position that he should be provided with further records or be granted access to the withheld portions of the records at issue before me, because my orders have already addressed the 2010 request, and the issue of access to the records that were the subject of the 2003 request has been previously decided in Order MO-1908-I and Reconsideration Orders MO-1968-R and MO-2953-R, I will also not address them here.

ORDER:

The appeal is dismissed.

Original signed by: October 2, 2020
Steven Faughnan
Adjudicator

[20] *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11. Section 7 reads: Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.