

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-3947-R

Appeal PA19-00153

Order PO-3930

University Health Network

April 26, 2019

Summary: The appellant requested a reconsideration of Order PO-3930, which upheld the University Health Network's decision not to grant the appellant access to three records and concluded that the UHN had conducted a reasonable search for records that were responsive to his request. The appellant provided reconsideration submissions that did not address or establish any grounds for reconsideration and as a result, his reconsideration request is denied.

OVERVIEW:

[1] This reconsideration order arises as a result of an appeal of an access decision made by the University Health Network (UHN) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for records related to communications with Health Canada and statistical information about a specific drug.

[2] The UHN identified three records as responsive to the request and withheld all three pursuant to the exclusion in section 65(8.1)(c) (research) of the *Act*. The requester appealed the UHN's decision and raised the issue of reasonable search during the mediation of the appeal. Mediation did not resolve the appeal.

[3] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator may conduct a written inquiry under the *Act*. An inquiry was commenced and on February 25, 2019, I issued Order PO-3930. In that order, I upheld the UHN's decision that section 65(8.1)(c) applied to one of the three records at issue. I also

concluded the following:

- that the appellant may not have a right of access under the *Act* to the two other records at issue because they may contain the personal health information of individuals other than the appellant within the meaning of the *Personal Health Information Protection Act*;
- that in any event, those records would also be excluded from the *Act* pursuant to section 65(8.1)(c);
- that no useful purpose would be served by ordering the UHN to search for additional records the appellant asserted exist because they would also be excluded from the *Act* pursuant to section 65(8.1)(c); and
- that the UHN conducted a reasonable search for responsive records.

[4] The appellant requested a reconsideration of Order PO-3930. In this reconsideration order, I find that the appellant did not establish that any of the grounds for reconsideration under section 18.01 of this office's *Code of Procedure* (the *Code*) apply and I deny his reconsideration request.

DISCUSSION:

[5] This office's reconsideration process is set out in section 18.01 of 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

[6] The appellant's initial reconsideration request states that he is requesting reconsideration of Order PO-3930 "on several grounds, including in light of new evidence." He asserts that he should be able to submit new evidence because access to information requests he made to Health Canada were delayed and because he showed

"patience through three adjudicators awaiting an order" on this appeal. He makes a number of further arguments, which I will outline now.

[7] First, the appellant says that after I issued Order PO-3930, he obtained information that should have been considered in this appeal through an access to information request to Health Canada. In support of this assertion, he attaches a copy of an "Adverse Drug Reaction Report." He says that the report was the result of information that was communicated to a drug company by a UHN doctor. He says that the drug company then sent the report to Health Canada.

[8] Next, the appellant describes and attaches news articles and a copy of a research study that were published after I issued Order PO-3930. He says that the new study and the news article raise "questions about UHN's quality of care" in the matters that were the subject of his appeal.

[9] He also attaches a letter from the UHN to one of the authors of the research study he provided. He says that this evidence demonstrates that the UHN is treating the same type of information differently, depending on who makes the request. The appellant says that the authors of the study have more information about these issues and he suggests that I contact them to obtain their views.

[10] The appellant then sets out a number of issues that he says form the basis of his request for reconsideration of Order PO-3930. In summary, they are as follows:

- the contents of the records at issue do not constitute "hospital research" or fall within the definition of section 65(8.1)(c);
- there is no published study arising from the records at issue;
- the reports he attached, and other types of applications and accounting information, should have been identified as part of the UHN's search for records; and
- some of the information in the records at issue should have been severed and disclosed.

[11] The appellant also submitted an additional representation in support of his request for reconsideration. Attached to this submission is a news release from Health Canada relating to changes to its regulations. The news release indicates that the changes will provide the public with access to clinical information on drugs and medical devices. The appellant also refers me to a federal court decision involving the Attorney General of Canada.

[12] The appellant says that the result of the regulation changes and the court decision is that "clinical trial data should be open and accessible." I understand his argument to be that in light of these new developments, the records at issue in Order

PO-3930 (which he refers to as the UHN doctor's "alleged but completed clinical research") should be released.

Findings and Analysis

[13] For the reasons that follow, I find that the appellant's reconsideration request does not establish any of the grounds set out in section 18.01 of the *Code* that would permit me to reconsider my decision.

[14] First, I note that the appellant does not refer to any of the criteria in section 18.01 of the *Code* in his reconsideration request or the supplemental representation he submitted. Section 18.05(c) of the *Code* is clear that a reconsideration request should include the reasons why the request fits within ground for reconsideration listed in section 18.01.

[15] Although the appellant indicates that he is requesting reconsideration "on several grounds," none of the points he raises fit within the criteria set out in section 18.01 of the *Code*. In my view, the majority of the points the appellant raises are variations of the same arguments he made during the adjudication of this appeal. I addressed those arguments in Order PO-3930. Previous orders of this office have been clear that the reconsideration process set out in this office's *Code* is not intended to provide parties with a forum to re-argue their case.¹

[16] Previous orders of this office have also stated that the reconsideration process is not a mechanism to offer substantiating arguments that were made (or not made) during the inquiry into an appeal intended to address a party's disagreement with a decision or legal conclusion.² In my view, the appellant's reconsideration request, and the evidence he provides in support of that request, is primarily an attempt to bolster arguments I previously addressed with new evidence he says was previously unavailable.

[17] The appellant asserts that because that evidence was not available until recently, it should be considered now. However, I reiterate that section 18.02 of the *Code* clearly states that 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.

[18] The appellant offers no further explanation as to why I should accept the new evidence other than a general statement about the "the timing" and a remark that more than one adjudicator was assigned to this appeal. He does not elaborate on how or why either of those points is relevant to the reconsideration criteria set out in the *Code* and I see no connection.

¹ Orders PO-2538-R, PO-3062-R, and PO-3911-R.

² Orders PO-3062-R and PO-3558-R at paras. 21-24.

[19] Having reviewed the appellant's submissions in support of his reconsideration request, I find that he has not established that any of the three grounds for reconsideration set out in section 18.01 of the *Code* are met. He has not identified a fundamental defect in the adjudication process, a jurisdictional defect in Order PO-3930, or any clerical errors or omissions such that it would be necessary for me to reconsider my decision.

[20] To the extent that the appellant's submissions contain new information or evidence about the issues in the appeal, section 18.02 of the *Code* is clear that this office 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.

[21] As there are no grounds for reconsideration of Order PO-3930, I decline the appellant's reconsideration request.

ORDER:

I decline the appellant's reconsideration request.

Original signed by _____
Meganne Cameron
Adjudicator

_____ April 26, 2019