

Information and Privacy Commissioner,  
Ontario, Canada



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

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## RECONSIDERATION ORDER MO-4035-R

Appeal MA16-323

Interim Order MO-3814-I and Final Order MO-3896-F

Region of Peel

March 31, 2021

**Summary:** The appellant requested a reconsideration of Interim Order MO-3814-I and Final Order MO-3896-F. The adjudicator found in Interim Order MO-3814-I that the region's search for the appellant's Ontario Works file along with surveillance footage and security reports created the day he slipped and fell was reasonable. In the final order, the adjudicator found the region's further search for records that may identify the security officer on duty when the appellant says he slipped and fell at the region's facility was 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 Interim Order MO-3814-I and Final Order MO-3896-F.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17; the IPC's *Code of Procedure*, sections 18.01(a), (b) and (c).

### OVERVIEW:

[1] This reconsideration order addresses the appellant's request that I reconsider Interim Order MO-3814-I and Final Order MO-3896-F.

[2] The appellant filed a verbal request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) with the Regional Municipality of York (York Region) for "any and all information held by Ontario Works with [his] name in any means stored (e.g. computers, paper, microfiche, etc.)."<sup>1</sup> York Region transferred part of the appellant's

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<sup>1</sup> The request form is dated March 1, 2016. Presumably, this is the date York Region transcribed the appellant's verbal request.

request to the Region of Peel (the region or Peel Region). In response to the transferred part of the request, Peel Region issued several decision letters to the appellant granting him partial access to responsive records.

[3] The appellant appealed the region's access and fee decisions to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was appointed to explore settlement with the parties. The appellant took the position that the region's search for responsive records should have identified surveillance videos and security reports for a specified time period. The appellant also sought access to the name of the security officer on duty on a specified date.

[4] In Interim Order MO-3814-I, I upheld the region's decision to withhold portions of the records under the personal privacy exemption in section 38(b). I also found that the region's search for surveillance videos and security reports was reasonable and dismissed that part of the appeal.

[5] However, I set aside the region's fee and ordered it to issue a new fee decision. I found that the region's search for records to identify the name of the security guard on duty when the appellant says he slipped and fell was not reasonable, because the region had not expanded its search to the record holdings of the third party security company used by the region. In Interim Order MO-3814-I, I stated:

... given the contractual relationship between the vendor and the region, along with the fact that the services provided to the region take place at the region's facility, I conclude that the region by implication has the right to possess or otherwise control any records created as a result of the vendor providing security services to it.

[6] In response to Interim Order MO-3814-I, the region filed an affidavit describing the region's efforts to locate records that would identify the security officer in question. The region indicated that it searched its internal record holdings and directed the third party security company to conduct a search for responsive records that would identify the name of the security guard in question. However, no records were identified as a result of these further searches.

[7] In Final Order MO-3896-F, I found that the region's further search remedied the deficiencies with its previous search outlined in Interim Order MO-3814-I, and dismissed the appeal.

[8] The appellant filed a reconsideration request of Interim MO-3814-I and Final Order MO-3896-F. The basis for his reconsideration is that he continues to believe that additional responsive records should exist. However, in support of this position, the appellant revisits evidence he already presented during the inquiry.

[9] In addition, the appellant has not established that grounds exist under section 18.01 of the IPC's *Code of Procedure for Appeals under FIPPA/MFIPPA (the Code)* for reconsidering Interim Order MO-3814-I and Final Order MO-3896-F. Accordingly, the appellant's reconsideration request is denied.

## **DISCUSSION:**

### **Does the appellant's request meet any of the grounds for reconsideration in sections 18.01 of the Code?**

[10] Section 18.01 of 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
- c. a clerical error, accidental error or other similar error in the decision.

[11] The reconsideration process is not intended to provide parties with a forum to re-argue their cases. In Order PO-2538-R, Senior 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*.<sup>2</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.*

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] Senior Adjudicator Higgins' approach has been adopted and applied in subsequent orders of the IPC. 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...

[13] I agree with these statements. A reconsideration request is not a forum to re-argue a case.

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<sup>2</sup> [1989] 2 S.C.R. 848.

## **The appellant's submissions**

[14] In his reconsideration submissions, the appellant does not identify the specific ground in section 18.01 he is relying upon. Instead, the appellant argues that the region failed to conduct a reasonable search to locate additional records.

[15] The appellant argues that the region's response to his request focussed too narrowly on Ontario Works records and that other record-holdings should have been searched. In his submissions, the appellant provided examples of the type of records he believes that the region's search for responsive records should have located. The appellant said that the region failed to provide him copies of receipts he provided his case worker, documentation evidencing his worker's efforts to get him on the Ontario Disability Support Program (ODSP), the names of individuals who attended a specified meeting and a courier slip evidencing that materials the region said it sent to him were successfully delivered. Some of these items appear to overlap with issues the appellant raised concerning searches by York Region for receipts, meeting records and a specified courier slip. These issues were addressed in Interim Order MO-3816-I.<sup>3</sup>

[16] Finally, the appellant submits that he does not believe the region's evidence that it conducted a reasonable search for the security guard's report or the names of the security guard. The appellant asserts that he asked for video footage taken the day he fell "years ago" when, he says, the likelihood of records being located was high but now, years later, the region claims that the video footage cannot be located. The appellant also argues that the manner in which the region handled his request, including its failed attempt to recoup a large fee from him demonstrates that the region has placed barriers restricting him from accessing information in the region's record holdings about himself.

## ***Decision and analysis***

[17] For the reasons set out below, I find that the appellant's submissions failed to establish a ground for reconsideration under section 18.01 of the *Code* and I deny his reconsideration request.

[18] The appellant argues that the region restricted the scope of his request to Ontario Works records. However, although the region initially took the position that these records were outside the scope of the request, it agreed during mediation of the appeal to expand the scope of the request to include records relating to the appellant's slip and fall. In addition, during mediation the appellant confirmed that he was no longer seeking access to ODSP records or any personal information contained in a specified tenancy agreement.

[19] The appellant also agreed during mediation to narrow the scope of emails requested to ones related to two individuals who had communications with him from July 1, 2015 to August 31, 2015. The region's search in response to this scope resulted in four additional records being disclosed to him. In response, the appellant indicated he was not satisfied with the region's search for emails responsive to the narrowed scope of his

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<sup>3</sup> In Interim Order MO-3816-I, I found that York Region's search in response of the appellant's request for a copy of his complete file was reasonable despite the appellant's submission that the region failed to locate the following records: copies of the receipts he provided his caseworker, records of meetings that took place and a courier slip.

request, and he stated that he still wanted access to all email communications from any Ontario Works employee about himself from 2014 to the date of request, including previously stored emails.

[20] In Interim Order MO-3814-I, the appellant provided submissions questioning the reasonableness of the region's estimated fee related to his expanded request for emails. After considering the submissions of the parties, I did not uphold the region's \$6,030.50 fee and ordered it to issue a new fee decision for the email records requested by the appellant.

[21] In his reconsideration request, the appellant takes the position that additional email records should exist. However, there is no dispute that further email records may exist. In fact, in response to Interim Order MO-3814-I, the region issued a new fee estimate to the appellant identifying further email records. The appellant appealed the region's fee estimate to the IPC and a new appeal file was opened.<sup>4</sup> That appeal was closed during mediation after the region agreed to waive its fee. Any issues relating to the region's final access decision regarding the email records identified in relation to the expanded request, including the appellant raising the issue of reasonable search regarding his belief that additional email records should exist, is not before me.

[22] In Interim Order MO-3814-I, I also determined that the issue relating to the courier slips requested by the appellant had been resolved at mediation because it was accepted that the region could not be expected to have the signature collected by the courier in its possession. I also noted that the region confirmed during the mediation stage that it had re-sent the materials to the appellant.<sup>5</sup>

[23] Finally, in Final Order MO-3896-F<sup>6</sup>, I acknowledged the appellant's frustration about the level of service he received from the region and stated:

Throughout this appeal, the appellant has expressed frustration about the level of service he received from the region, including the lack of assistance he says he received during the processing of his request. The appellant is adamant that the security guard he spoke to on the day he slipped and fell created records which should have been located by the region. The appellant appears to take the position that if no such records were created, they should have been and that the region should be held accountable.

However, the issue before me is whether the region conducted a reasonable search for the purpose of section 17, not whether the region should have created records in response to the appellant's alleged fall.

[24] Having regard to the above, I find that the appellant's evidence in support of his reconsideration request consists of the repetition of the submissions he made during the inquiry into the appeal leading to Interim Order MO-3814-I and Final Order MO-3896-F or that it seeks to revive issues resolved at mediation in the appeal.

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<sup>4</sup> The appellant's appeal of that new fee decision resulted in the opening of Appeal MA19-00688.

<sup>5</sup> See paragraph 13 in Order MO-3814-I.

<sup>6</sup> See paragraphs 15 and 16 of Order MO-3896-F.

[25] The appellant takes the position that further records should have been located in response to his request. However, the *Act* does not require the institution to prove with absolute certainty that further records do not exist. Instead, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.<sup>7</sup> I concluded in Final Order MO-3896-F that the region had provided sufficient evidence of such reasonable efforts.

[26] 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 Interim Order MO-3814-I and Final Order MO-3896-F and the adjudication process leading up to the orders, I find that none of these grounds are established.

[27] 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 \_\_\_\_\_  
Jennifer James  
Adjudicator

\_\_\_\_\_ March 31, 2021

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<sup>7</sup> Orders P-624 and PO-2559.