

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4036-R

Appeal MA17-59

Interim Order MO-3816-I

Regional Municipality of York

March 31, 2021

Summary: The appellant requested a reconsideration of Interim Order MO-3816-I. In that order, the adjudicator upheld the region's search for the appellant's complete Ontario Works file, but ordered the region to issue a decision for specific records created after it processed his access request. 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 IPC's *Code of Procedure* for reconsidering Interim Order MO-3816-I.

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-3816-I.

[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.)." The request form is dated March 1, 2016. Presumably, this is the date the region transcribed the appellant's verbal request.

[3] The region issued a decision letter granting the appellant full access to 32 records located onsite at its premises. The region granted partial access to one record claiming that disclosure of the withheld information would constitute an unjustified invasion of personal privacy under section 38(b). The region advised that it had additional files located

at its offsite storage facility and the estimated fee to recover these records would be \$52.39. The region also advised the appellant that it does not have custody or control of the records held by the Region of Peel and transferred this portion of the request to the Region of Peel.¹

[4] The appellant appealed the region's decision in this appeal to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was appointed to explore settlement with the parties. During mediation, the appellant questioned the reasonableness of the region's search for responsive records and indicated that he believed that additional records should exist, including records relating to his attendance at the region's office to pick up records. The appellant also advised that he wanted the names of the receptionist and security guard on duty on the day in question.

[5] The region issued a supplemental decision letter to the appellant waiving its fee to locate offsite records and providing full access to 45 additional records. However, the region took the position that the appellant's request for records relating to his attendance at its office was outside the scope of the original request. The region told the appellant that he would have to file a new request under the *Act* for records created after the date of his original request. The issue of whether or not these records fell within the scope of the request was added as an issue to the appeal.

[6] In Interim Order MO-3816-I, I found that the region's search for the appellant's Ontario Works file was reasonable and dismissed this part of the appeal. I also found that the appellant's request for records relating to his attendance at the region's office fell outside the scope of his original verbal request. However, given the unique circumstances of the appeal², I found that the region should have made a decision in response to the appellant's request for specific records and ordered the region to issue an access decision.

[7] The region subsequently issued a decision letter to the appellant granting him partial access³ to video footage taken the day he attended its offices to pick up records. The region also wrote to the appellant and provided him the names of the receptionist and security guard on duty that day. I subsequently wrote to the region and the appellant to indicate that I closed appeal file MA17-59, without issuing a final order, given the region's access decision.⁴

[8] The appellant filed a reconsideration request of Interim Order MO-3816-I. 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

¹ The appellant subsequently made a request to the Region of Peel for these records and appealed the decision he received from the region. The issues in that appeal were addressed in Interim Order MO-3814-I and Reconsideration Order MO-4035-R.

² See paragraphs 25 to 32 of Interim Order MO-3816-I.

³ The region claimed that disclosure of the withheld portions of the video footage would constitute an unjustified invasion of personal privacy under section 14(1) of the *Act*.

⁴ The access decision issued by the region after Interim Order MO-3816-I was also appealed by the appellant to the IPC and this appeal (MA19-00687) is presently at the adjudication stage of the appeals process.

reconsidering Interim Order MO-3816-I. 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] Sections 18.01 of the *Code* states:

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*.⁵ 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 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:

⁵ [1989] 2 S.C.R. 848.

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.

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 should have located drug and transportation receipts he provided his caseworker. The appellant does not accept the region's evidence given during the inquiry that any receipts provided by him would have been placed in his casefile and that he has been provided with full access to his file. The appellant says that if the receipts are not in his file, the region should have taken additional steps to locate the requested receipts by making inquiries of the caseworker.⁶ In the alternative, the appellant argues that the region should have made inquiries of the receptionist who witnessed him providing the receipts to his caseworker. The appellant also argues that the region should have reviewed its video surveillance recordings, which would have captured footage of him providing receipts to his caseworker, but now too much time has passed and any footage is no longer available.

[16] The appellant complains that the region has a pattern of not responding to his requests in a timely way with the result that records, such as video footage of him providing receipts to his caseworker, are no longer available by the time he receives a response. The appellant says that the region has told him that it its policy is to delete video surveillance footage after a specified period of time, but when he asks for a copy of the policy, he is directed to the region's website which does not contain a copy of the region's policy.

[17] In addition, the appellant submits that the region has failed to locate records relating to a threat he was told he made to a security guard. The appellant says that he has repeatedly asked for information regarding the alleged threat but has not been provided records that document when the alleged threat was made, what constituted the threat, and who documented it.

[18] The appellant also asserts that he has requested and has not been provided with documentation relating to his Ontario Disability Support Program (ODSP) claim and services the region did, or did not, arrange for him. The appellant also submits that records relating to the region's denial of a specific benefit and a drug card should exist.

[19] Finally, the appellant submits that he has experienced poor customer service from the region. He alleges that the region has prevented him from filing appeals of the region's

⁶ The appellant indicates that the region told him on one occasion that the caseworker no longer works for the region, but on another occasion told him that the caseworker was transferred to another department.

decision denying him benefits, as the region told him he must submit a written appeal form. The appellant also says that he has tried to file a complaint about his caseworker, but the region will not process his complaint. The appellant states that he has “been asking for this information for all of these years and I am just being ignored.”

Decision and analysis

[20] 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.

[21] The appellant takes the position that further records should have been located in response to his request. However, as stated in Interim Order MO-3816-I the *Act* does not require the region to prove with absolute certainty that further records do not exist. However, the region must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.

[22] I concluded in Interim Order MO-3816-I that the region had provided sufficient evidence of such reasonable efforts and stated:

I have reviewed the submissions of the parties and am satisfied that the region conducted a reasonable search for a complete copy of the appellant’s Ontario Works file. In my view, the region’s retrieval of the physical file at its onsite and offsite locations and its location of the case notes and payment history of [Social Assistance Management System⁷] demonstrates it made a reasonable effort to identify and locate responsive records. In addition, I am satisfied that the individuals responsible for coordinating or conducting the searches were experienced in the relevant subject matter of the request and expended a reasonable effort to locate responsive records. I also note that the region conducted an additional search during the inquiry stage and did not locate any additional records.

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁸ In this case, the appellant argues that copies of receipts for reimbursement along with records of the region’s denial of benefits and a drug card should be in his file.⁹ The appellant also argues that records relating to his OSDP claim should be located in his file. However, I find that there is insufficient evidence to establish a reasonable basis for the appellant’s belief that such records exist.

⁷ The representations the region provided during the inquiry explained that the appellant’s complaints he filed about his caseworker was entered into the Social Assistance Management System (SAMS), which is a province-wide case management system. See paragraph 35 of Interim Order MO-3816-I.

⁸ Order MO-2246.

⁹ The representations the region provided during the inquiry submitted that no records relating to a *denial* of benefits or a drug card were located as the appellant’s Ontario Work benefits were granted, not denied. In addition, the region provided a letter, dated May 30, 2016 it provided to the appellant that indicates that two replacement drug cards were mailed to him. The region’s letter also confirmed the appellant’s eligibility to receive Ontario Works and references his pending ODSP application. The region also provided a copy of a Social Benefits Tribunal decision in which the appellant conceded that he did not submit transportation receipts for reimbursement. See paragraphs 35 and 36 of Interim Order MO-3816-I.

In fact, the region's evidence that there was no denial of Ontario Works benefits and that the appellant was subsequently approved for ODSP benefits suggests that the requested records may be in the custody or control of [The Ministry of Community and Social Services]. In any event, the *Act* does not require the region to prove with absolute certainty that further records do not exist. Rather, the region was required to provide sufficient evidence to show that it made a reasonable effort to identify and locate responsive records, and I am satisfied that it did.

[23] In his submissions made in support of the reconsideration request, the appellant asserts that the region's search failed to locate records that document a threat he was alleged to have made to a security guard. However, during the inquiry into Appeal MA17-59, the appellant said that he was alleged to have made this threat when he attended the region's office to pick up records. Accordingly, based on appellant's evidence, records responsive to the alleged threat would have been created after the date of the request, which was March 1, 2016.

[24] Though I ordered the region to issue an access decision to the appellant in Interim Order MO-3816-I, the scope of that decision was confined to the appellant's request for video footage along with the name of the security guard and receptionist on duty the day he attended the region's office to pick up records. In Interim Order MO-3816-I, I directed the appellant to file a new request for any other records created after March 1, 2016 and stated:

...should the appellant wish to seek access to any other records held by the region relating to himself or his Ontario Works file created after March 1, 2016, he must file a new request by contacting the region directly. I am not prepared to order the region to issue an access decision for these records. It appears that during mediation, the appellant indicated that he also wanted access to any records created after March 1, 2016 placed in his Ontario Works file. However, the appellant did not address this issue in his submissions filed during the inquiry stage of the appeal. Nor am I satisfied from the material before me that the appellant raised it in a manner that the region should have responded.

[25] Having regard to the above, I find that the appellant's evidence in support of his reconsideration request repeats submissions he already made during the inquiry into the appeal leading to Interim Order MO-3816-I. I am satisfied my findings in Interim MO-3816-I addressed the appellant's concerns about the region's search for responsive records raised in the inquiry of Appeal MA17-59.

[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-3816-I and the adjudication process leading up to it, 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