

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-4057-R

Appeal MA18-426

Order MO-3964

Municipal Property Assessment Corporation

May 26, 2021

**Summary:** The appellant submitted a request for reconsideration of Order MO-3964 on the basis that the order was incorrect because it had “considered the wrong records” and not ordered disclosure of the records actually sought. In this Reconsideration Order, the adjudicator finds that the appellant’s reconsideration request seeks to re-argue the appeal and that he has not established any of the grounds for reconsideration in section 18.01 of the IPC *Code of Procedure*. The reconsideration request is denied.

**Considered:** The IPC’s *Code of Procedure*, sections 18.01 and 18.02.

**Orders Considered:** Orders MO-3964, PO-2538-R and PO-3062-R.

**Cases Considered:** *Chandler v. Alberta Assn. of Architects*, (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4<sup>th</sup>) 577 (S.C.C.).

### OVERVIEW:

[1] This reconsideration order addresses the appellant’s request for a reconsideration of Order MO-3964, which determined access to records identified as responsive to a request submitted to the Municipal Property Assessment Corporation (MPAC) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for “consolidation records” about the appellant’s property.

[2] The appellant purchased the property in 2016 and, shortly thereafter, came to question matters around the ownership of it, including how the two assessment roll numbers for a property he purchased in 2016 were “consolidated.” He submitted a request under the *Act* to MPAC for:

Consolidation records of [first specified address] and [second specified address adjacent to it], [named city]. I want to Examine Original Documentation and receive a copy.

[3] After locating the records it deemed responsive to the request, MPAC granted the appellant partial access to the records, relying on the personal privacy exemption in section 14(1) of the *Act* to withhold some information. Upon appeal by the appellant to the Information and Privacy Commissioner of Ontario (the IPC), I conducted an inquiry into the issues. I concluded that I should not review the issue of access to four of the five records (1a, 2, 3 and 4), because the records are already in the appellant's possession. I also found that the discretionary personal privacy exemption in section 38(b) applied to the personal information of another individual in the one record remaining at issue, record 1, and dismissed the appeal.

[4] The appellant subsequently contacted the IPC to convey his dissatisfaction with Order MO-3964 and, upon consideration of section 18 of the IPC *Code of Procedure* (the *Code*), requested a reconsideration of my decision. The appellant provided several sets of submissions in support of his request for a new decision. I advised MPAC of the appellant's reconsideration request, but concluded that I did not require MPAC to provide any submissions in response.

[5] For the reasons that follow, I deny the reconsideration request, because the appellant has not established grounds in section 18.01 of the *Code* for reconsidering Order MO-3964.

## **DISCUSSION:**

### **Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-3964?**

[6] The IPC'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.

[7] I am *functus* unless the party requesting the reconsideration – the appellant in this matter – establishes one of the grounds in section 18.01 of the *Code*. *Functus officio* is a common law principle, which means that once a matter has been determined by a decision-maker, he or she generally has no jurisdiction to further consider the issue.

However, the *Code* provisions in section 18.01 are a summary of the common law position acknowledging the ability of a decision-maker to re-open a matter to reconsider it in certain circumstances.<sup>1</sup>

### **The appellant's reconsideration request**

[8] In seeking to have me re-open Order MO-3964 and reconsider my decision, the appellant wrote to me on a number of occasions. The appellant's communications were lengthy, and although I have considered all of his submissions in detail, I provide only the following summary of his arguments in this order.<sup>2</sup>

[9] In his initial, and subsequent, communications, the appellant states that I considered the wrong records or information in making my decision. He says, specifically, in his first letter that "The information that the adjudicator found was not the information I requested." He continues,

I was not asking about consolidation or severance, I was asking "whose names were attached to our property other than mine," this is the information I was requesting!

The records I was requesting are not available to me, they are not at the LRO.<sup>3</sup> There should be no exemptions in this case, however, I do understand what transpired. I should have access to correct the property owner's name, mine. We [paid] property taxes on this property 2016 and 2017. Thank you for the review, but you were looking at the wrong question.

[10] As noted in Order MO-3964, the appellant remains convinced that there have been changes to the ownership or status of his property without notification to him. In several later letters sent to me regarding this reconsideration request, the appellant reiterates his claim that he was not looking for consolidation records, and says that instead,

I am looking for the name or names that were referred to by 3 MPAC Employees. I could send you the recordings if you would like to hear them yourself.

Please give the name or names of those individuals attached to my property.

[11] Later in these submissions the appellant refers to conversations with "MPAC representatives" on February 21 and March 12, 2018 and an "Officer from the Whistle Blowing Program" on April 30, 2018, "all who stated that My Property was registered to another individual." He states that he knows the identity of the other individuals that are

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<sup>1</sup> Order PO-2879-R.

<sup>2</sup> I received correspondence dated November 5, 9, 17, and December 15, 2020, totaling over 100 pages. The appellant also jointly addressed his representations in another appeal with a different institution to me and the adjudicator conducting that separate inquiry, dated February and March 17, 2021. His statements in those representations generally repeat what he said in the submissions made respecting his reconsideration request of Order MO-3964. The appellant told IPC staff he wanted me to look at his other appeal, and was advised in response that since the other appeal is before another adjudicator regarding the access decision of a different institution, I would not be looking at it.

<sup>3</sup> Land Registry Office.

involved in the property transactions set out in the records that were at issue, but claims that "Knowing who they are does not protect my interest. For, I have no recourse to protect my own finances. This is not an "absurd result" for I do not have the names in MPAC's possession."

[12] The appellant claims that "you [the adjudicator] already had the information in your possession but are refusing to release it."

[13] The appellant provided excerpts from the *Act* with many provisions annotated according to how he views the situation he finds himself in, and he emphasizes with bolding or underlining other provisions without any accompanying explanation. He draws to my attention, for example, section 17(2) relating to the assistance an institution is obligated to provide to a requester if a request requires clarification<sup>4</sup> and section 41(4) regarding the Commissioner's authority to order production of records during an inquiry.

[14] The appellant also provides a paragraph-by-paragraph review of Order MO-3964, conveying his perspective on what is stated there.

[15] In later correspondence, the appellant provides a copy of the deed for his property and information received from the LRO in 2016 regarding the 2000 creation of one PIN<sup>5</sup> for what was formerly two properties. He repeats the claim that the records to which MPAC granted him access in response to his request did not contain the information that he was seeking. He argues that MPAC is not taking responsibility for mistakes they made that have resulted, he says, in someone else gaining control of his property. He expresses a persistent concern about an alleged "power of sale" over his property.

[16] In this same correspondence, he says, about the "original consolidation," that he does not believe the record disclosed to him is the original, because the original would have signatures.

[17] In the appellant's final set of submissions,<sup>6</sup> he submits that Order MO-3964 should be reconsidered under sections 18.01(a), (b) and (c) of the *Code*. First, he submits that there was a fundamental defect in the adjudication process under section 18.01(a), because he provided evidence of "a wrong doing" and he alleges that I failed to examine the evidence or, if I did, I failed to inform him of my efforts. The appellant also asserts that I failed to search for the information he wants: "the original documentation of consolidation" and "the name or names that are attached to this property."

[18] Regarding section 18.01(b), the appellant submits that there is "some other jurisdictional defect in the decision." He argues that although the MPAC FOI Coordinator

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<sup>4</sup> Section 17 states, in part: 17 (1) A person seeking access to a record shall, (a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act; (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and... (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

<sup>5</sup> Property Identification Number. As noted in Order MO-3964, a PIN assigned by the LRO is different than a roll number assigned by MPAC.

<sup>6</sup> The final representations on this reconsideration request are dated December 15, 2020. I do not include in that category the appellant's additional comments about this reconsideration request in the submissions he provided in his other appeal with the IPC.

told him "Property does not fall under this Act [*MFIPPA*]" . Laws outside of this Act have been broken," and he asserts that I did not take these violations into consideration in Order MO-3964.

[19] Finally, respecting section 18.01(c), the appellant submits that "MPAC made a clerical error, where they have in [their] possession a name or names attached to my property, which should have been forwarded to the LRO" in a timely manner. The appellant submits that I failed to look at what he was requesting and questions whether "this [was] in error, or an omission, by [my] office?" He submits that the information he seeks access to "has been withheld from the owner, me, due to either a clerical error from MPAC, or hidden information from MPAC and the City."<sup>7</sup>

[20] Aspects of the appellant's correspondence describe his concerns with outside bodies, processes or individuals. The appellant provided copies of documents and other information he claims to have provided to the "Surveyor's College of Ontario"<sup>8</sup> in 2018 referring to the consolidation and the alleged "attachment" of someone else's name to his property. I also received copies of his correspondence to the Prime Minister and other officials' offices.

### **Analysis and findings**

[21] For me to reconsider Order MO-3964, the appellant's request must fit within one of the three grounds for reconsideration in section 18.01 of the IPC *Code of Procedure*. The reconsideration process set out in section 18 of the *Code* is not intended to provide parties who disagree with a decision an opportunity to re-argue their case.

[22] In Reconsideration Order PO-2538-R, former 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>9</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 International Trucks Ltd.*<sup>10</sup>

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.

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<sup>7</sup> The reference to "City" here refers to the city in which the appellant's property is located. The appellant also sought information about his property matters from that city, but the issues with that request are not before me here, nor were they in MA18-426, which resulted in Order MO-3964.

<sup>8</sup> This could be a reference to the Association of Ontario Land Surveyors.

<sup>9</sup> [1989] 2 SCR 848 (*Chandler*).

<sup>10</sup> 1996 CanLII 11795 (ON SC).

[23] This approach has been adopted and applied in subsequent IPC orders,<sup>11</sup> including Order PO-3062-R, where I affirmed that the reconsideration process established by the IPC is not intended to provide a forum for re-arguing or substantiating arguments made (or not) during the inquiry into the appeal. I have applied these principles in my review of the reconsideration request before me.

[24] Section 18.01(a) of the *Code* specifies that the IPC may reconsider an order where it is established that there is a fundamental defect in the adjudication process. Past orders have found that various breaches of the rules of natural justice respecting procedural fairness will qualify as a fundamental defect in the adjudication process for the purpose of section 18.01(a) of the *Code*.<sup>12</sup> Examples of such breaches would include failure to notify an affected party<sup>13</sup> or to invite sur-reply representations where new issues or evidence are provided in reply.<sup>14</sup>

[25] Regarding section 18.01(a), the appellant asserts that a fundamental defect in Order MO-3964 resulted from my alleged failure to properly examine the evidence he submitted during the inquiry regarding alleged wrongdoing related to his property and MPAC's purported failure to right this wrong. He also alleges, variously, that I overlooked, failed to search for, or simply withheld the information he claims to have sought through his access request: "the original documentation of consolidation" and "the name or names that are attached to this property." The appellant's related concern, which he argues establishes the ground for reconsideration in section 18.01(b), is that I failed to consider that laws other than the *Act* may have been violated by what he believes has happened with his property. And, finally, the error the appellant claims has occurred under section 18.01(c) is one he alleges MPAC made in not forwarding necessary information about the names he believes are "attached" to his property to the Land Registry Office as it should have done. He also suggests I was mistaken in my consideration of the evidence before me as to what information he was seeking.

[26] Having considered the appellant's detailed submissions in support of his request for a reconsideration of Order MO-3964, I find them to consist mainly of arguments already provided during my inquiry into the appeal. As stated, past orders have made it clear that mere disagreement with a decision is not a ground for reconsideration under section 18.01 of the *Code*.<sup>15</sup> In my view, the appellant's arguments amount to no more than disagreement with my decision and re-statements of positions taken during my inquiry into the appeal. Further, to the extent that his submissions may contain any new evidence, I rely on section 18.02 of the *Code*. As established by section 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.

[27] Regarding the appellant's concern that a fundamental defect under section 18.01(a) resulted from my alleged failure to consider what information he was actually seeking, I refer to paragraph 22 of Order MO-3964. There, I noted the appellant's acknowledgment that he had already received the records, as well as his concern that he

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<sup>11</sup> See, for example, Orders PO-3062-R, PO-3558-R and PO-4004-R.

<sup>12</sup> Order PO-4134-R.

<sup>13</sup> Orders M-774, R-980023, PO-2879-R, and PO-3062-R.

<sup>14</sup> Orders PO-2602-R and PO-2590.

<sup>15</sup> Orders PO-2538-R and PO-3062-R.

had "yet to receive the 'records in issue', the "original consolidation forms and name of who had control of my property." In my reasons, I addressed his concern in Order MO-3964 (at paragraphs 23 and 26):

The appellant's representations ... suggest a concern that the records identified by MPAC are not responsive to his request, because they do not answer his questions. ...

The appellant says that he is looking for the "original consolidation forms," "name of who had control of my property" and, alternatively, "who severed my properties?" Records 1 and 1a are responsive to the appellant's request for "consolidation forms" as they cover the time period of this particular consolidation process, which was triggered automatically with the transfer of the property to the appellant. As shown on records 1 and 1a, the property, at the time of the transfer, had two assessment roll numbers. Disclosed portions of those records indicate that the triggering event for the consolidation was the sale transaction by which the appellant became the owner. This is the same sales transaction set out in the parcel register document (record 2) and the 2016 property transfer (record 4), and MPAC has also identified as responsive the 2011 property transfer (record 3). I am satisfied that these five records are responsive to the appellant's questions about "who" consolidated the appellant's properties, the control of the appellant's property and about the (non-) severance of it. There is nothing before me to suggest that there would be other, additional, MPAC records responsive to the request. [footnotes omitted]

[28] Accordingly, I find that the concerns identified by the appellant with my characterization or analysis of the evidence before me do not establish a fundamental defect in the adjudication process under section 18.01(a) of the *Code*.

[29] I acknowledge the appellant's apparent belief that events have transpired related to his property, including his concern that others may have interfered with his ownership through a process carried out without notification to him. However, my authority is under the *Act*, and Order MO-3964 was only ever about determining the issues around the appellant's access to the records MPAC identified as responsive to his request. As a ground of reconsideration, section 18.01(b) of the *Code* relates to whether an adjudicator has the jurisdiction to make the order in question. It relates to the IPC's jurisdiction under the *Act*, and does not extend to the "jurisdiction" of an institution, such as MPAC.<sup>16</sup> In this context, I find that the appellant has not established the ground for reconsideration in section 18.01(b) of the *Code*.

[30] Finally, I have considered the appellant's submissions about Order MO-3964 and the errors he alleges were made: a "clerical error" allegedly made by MPAC in not forwarding the name or names attached to his property to the LRO in a timely manner; and an error I allegedly made in not properly appreciating the scope of his request. To begin, section 18.01(c) of the *Code*, which relates to the power of this office to reconsider a decision it has made under the *Act*, is clearly not applicable to MPAC, including in the carrying out of its statutory responsibilities. As for the alleged error on my part respecting

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<sup>16</sup> Orders MO-3916-R and MO-4134-R.

the scope of the request, and as with section 18.01(a), I reject the appellant's arguments about my alleged misapprehension of the scope of his request as establishing a clerical error, accidental error or other similar error in the decision under section 18.01(c). In *Grier v. Metro International Trucks Ltd.*, the Ontario Divisional Court, relying on *Chandler*, held that to establish an accidental error under section 18.10(c), it must be shown that the determination of an issue "was fatally tainted by ... reliance on a crucial fact" which both parties agree is incorrect."<sup>17</sup> I find that the appellant's submissions fail to establish that Order MO-3964 contained such an error fitting under section 18.01(c) of the *Code*.

[31] Having reviewed the appellant's submissions in their entirety, it is clear that he disagrees with my findings in Order MO-3964. However, as I have explained above, I find that he has not established that there was a fundamental defect in the adjudication process, some other jurisdictional defect in the decision, or a clerical error, accidental error or omission or other similar error in the decision, under section 18.01 of the *Code*.

[32] As the appellant has not established any of the grounds upon which I may reconsider Order MO-3964, I deny his reconsideration request.

**ORDER:**

I deny the appellant's reconsideration request.

Original Signed by: \_\_\_\_\_  
Daphne Loukidelis  
Adjudicator

\_\_\_\_\_ May 26, 2021

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<sup>17</sup> (1996), 28 O.R. (3d) 67 (Ontario Divisional Court).