

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4066-R

Appeal MA19-00062

Rideau Valley Conservation Authority

Order MO-3979

June 14, 2021

Summary: The affected party, Tay Valley Township, requested reconsideration of Order MO-3979 on the basis that there was an accidental error in relation to a portion of one record ordered to be disclosed. In this order, the adjudicator finds that an accidental error occurred and that there are therefore sufficient grounds to reconsider Order MO-3979 in accordance with the IPC's *Code of Procedure*. After reconsidering the order, the adjudicator finds that the discretionary exemption for solicitor-client privilege applies to a portion of one record and upholds the authority's exercise of discretion in relation to that portion.

Statutes Considered: *Code of Procedure*, section 18.01(c).

OVERVIEW:

[1] In Order MO-3979, I ordered the Rideau Valley Conservation Authority (the authority) to disclose the entirety of page two of Record 22¹, rejecting the claim that the discretionary exemption for solicitor-client privilege at section 12 applied. The affected party in this appeal, Tay Valley Township (the township), requested reconsideration of that part of my decision, asserting that there had been an accidental error and a portion of page two ought to be exempt under section 12 for the reasons

¹ In this Order, I refer to the record numbers identified in Order MO-3979.

argued by it and the authority in their representations in the inquiry.

[2] Pending resolution of the reconsideration request, the township requested a stay of Order MO-3979 as it relates to Record 22. The appellant did not object to this request and after considering the matter, I granted the stay pursuant to section 18.06 of the IPC *Code of Procedure* (the *Code*) until this reconsideration request is determined.

[3] The reconsideration request was filed three days late, but prior to the deadline for the authority to disclose the records. The township requested that I exercise my discretion under section 20.01 of the *Code* to extend the timeline for filing the reconsideration request. As explained in more detail below, I have agreed to receive and consider the reconsideration request.

[4] I invited the appellant to respond to the non-confidential portions of the township's request, which he did. The appellant did not address the timeliness of the request, but argues that there are no valid grounds under section 18.01 of the *Code* for me to reconsider the decision.

[5] I also invited representations from the authority, which adopts the submissions made by the township.

[6] In this order, I grant the request for reconsideration on the basis that a valid ground for reconsideration exists under section 18.01 of the *Code*. After reconsidering Order MO-3979, I revise it regarding Record 22.

RECORDS:

[7] The record at issue is Record 22 identified in Order MO-3979. It consists of two pages: the first page contains an email; and, the second page contains hand-written notes.

ISSUES:

- A. Is the request for reconsideration timely?
- B. Does the request for reconsideration meet any grounds for reconsideration in section 18.01 of the *Code*?
- C. Should Order MO-3979 be reconsidered?

DISCUSSION:

A. Is the request for reconsideration timely?

[8] In Order MO-3979, I ordered as follows:

I order the RVCA to disclose [various records including part of Record 22] to the requester by **January 11, 2021** but not before **January 5, 2021**.

[9] According to the *Code*, a request for reconsideration must be received by the IPC before the first date specified in the order at issue (Section 18.04(a)). In Order MO-3979, the first date specified is January 5, 2021. The township filed the request on January 8, 2021, three days late.

[10] In its request, the township explains the reasons why it was late, including that there was a delay because when Order MO-3979 was issued, copies of the highlighted records specifying the information to be disclosed were provided to the authority, the institution in this appeal, and not the township.

[11] Although the request was late, it was filed prior to the deadline in Order MO-3979 for the authority to disclose the records to the appellant (January 11, 2021). The township submits that because the request was made prior to that deadline, the appellant is not prejudiced by the delay.

[12] The township also argues that based on the information at issue, if it is not permitted to request reconsideration it would suffer a greater prejudice than the appellant because it would result in disclosure of solicitor-client privileged information. On these bases, the township requests that I exercise my discretion under section 20.01 of the *Code* to extend the timeline for filing the reconsideration request.

[13] The appellant was invited to respond to the reconsideration request and while he provided a full response to the merits of the reconsideration request, he has taken no position with respect to timeliness.

[14] It is my view that in order to secure the just and expeditious determination of the issues in this appeal, it is advisable to waive the ordinary time limit to file the reconsideration request. I reached this conclusion after considering that the township otherwise acted promptly, is seeking reconsideration of only a small portion of the records and sought only a narrow stay, and the suitability of the reconsideration procedure to address the concerns raised by the appellant. Accordingly, I will consider the township's reconsideration request.

B. Does the request for reconsideration meet any grounds for reconsideration in section 18.01 of the *Code*?

[15] I must first determine whether there are sufficient grounds to reconsider Order MO-3979. The *Code* requires that one of the grounds set out in section 18.01 be

present before an order may be reconsidered:

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.

[16] The reconsideration process set out in the *Code* is not intended to provide parties with a forum to re-argue their cases.²

Representations

[17] The township makes its reconsideration request on the basis that there was an accidental error, which is one of the grounds for reconsideration under section 18.01 of the *Code* (18.01(c)). In the alternative, the township asserts that my decision does not provide adequate justification for why section 12 did not apply to the portion of information at issue.³

[18] The township submits that my “failure to redact” the portion at issue was the result of an accidental error or omission. In its confidential representations, the township explains with reference to other parts of the Order why the portion at issue should have been treated the same as other similar information in the records (i.e. Record 21). It submits that when one takes into account my ruling in relation to Record 21, the only explanation for my failure to apply section 12 to the portion at issue is an accidental error.

[19] The appellant disagrees that the township has established that any of the grounds in section 18.01 apply and points to paragraph 89 of the Order, which includes the rationale for my decision on Record 22.

Finding

[20] I have reviewed Record 22 and in particular the subject matter of the portion at issue. I now observe that I made an accidental error by failing to accurately identify and characterize some of the information in Record 22. The error arose due to my overlooking some of the content of the record, which is a hand-written note, and was accidental on my part in that it is not consistent with other findings about similar

² Order PO-2538-R, citing *Chandler v. Alberta Assn. of Architects* (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4th) 577 (S.C.C.) and Orders PO-3062-R, PO-3558-R, MO-3975-R and MO-4004-R, as examples.

³ This is not a possible ground for reconsideration under the *Code*.

information (i.e. Record 21).

[21] When I consider the nature of the error, the reason it was made, and that if it is not corrected, the Order will contain an unintentional internal inconsistency, I find that an accidental error within the meaning of section 18.01(c) has occurred.

[22] Having established that one of the grounds for reconsideration is present, I will now consider whether I ought to reconsider the Order.

Issue C. Should Order MO-3979 be reconsidered?

[23] In Order MO-3979, I explained the section 12 exemption for solicitor-client privilege and the parties' positions. I then considered each of the records at issue.

[24] In paragraphs 88 and 89, I stated the following about records 21 and 22 (emphasis added):

Record 21 consists of two emails, one of which has been withheld. The withheld email does not contain communication between the township (or the RVCA) and a solicitor. However, one portion of the email would reveal solicitor-client communication privileged information that qualifies for section 12. I also find that this portion may reasonably be severed from the remainder of the email and I will therefore consider the RVCA's alternative section 8(1) claim regarding the remaining information.

Record 22 consists of an email and hand-written notes. The email (on page 1 of Record 22) qualifies as solicitor-client communication privilege information, revealing direct communications with the township solicitor. However, the hand-written notes (on page 2 of Record 22) do not contain any information that reveals such communications or the content of legal advice sought or obtained. I therefore find that only page 1 of Record 22 qualifies for section 12.

[25] As noted above, the township submits that the information at issue in Record 22 is the same as the type of information that I concluded was exempt under section 12 and could be severed and withheld from Record 21.

[26] Having reviewed the information in both records again, the township is correct. I have therefore reviewed both records again to assess whether section 12 applies to them.

[27] Based on that review, I first confirm my findings in Order MO-3979 in relation to Record 21. I will now consider Record 22.

[28] Record 22 consists of an email (page 1) and hand-written notes (page 2). As I found in Order MO-3979, the email qualifies as solicitor-client communication privileged information in its entirety, revealing direct communications between the township and its solicitor. Turning to the hand-written notes, most of the information does not consist

of direct solicitor-client communication privileged information or the content of any legal advice requested or obtained. However, a small portion of the notes contains solicitor-client communication privileged information that I am unable to describe further without revealing its content.

[29] I therefore find that a portion of the hand-written notes qualifies for the discretionary solicitor-client privilege exemption at section 12.

[30] Section 12 is a discretionary exemption. In Order MO-3979 I upheld the authority's exercise of discretion in relation to the information withheld on the basis of section 12. In this reconsideration, I have reviewed these portions of Order MO-3979 with particular regard to Record 22 and I confirm that the same reasoning applies and I uphold the authority's exercise of discretion.

[31] I will therefore vary my order with respect to Record 22 (page 2) and will order it to be disclosed except for the portion that qualifies for the section 12 solicitor-client privilege exemption, which I will identify on the copy of records provided to the authority with this order.

ORDER:

1. I reconsider Order MO-3979 regarding Record 22 only on the basis of section 18.01(c) of the *Code*.
2. I order the authority to disclose to the appellant page 2 of Record 22 except for the parts that are highlighted in the copy of Record 22 provided to the authority with this order.
3. I reserve the right to require the authority with a copy of the records disclosed to the appellant should it become necessary to verify compliance with this order.

Original signed by: _____

Valerie Jepson
Adjudicator

June 14, 2021 _____