

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-4078-R

Appeal MA20-00130

Chatham-Kent Police Service

Order MO-4030

June 29, 2021

**Summary:** The appellant submitted a request for reconsideration of Order MO-4030, which addressed the sole issue of the reasonableness of the Chatham-Kent Police Services' (the police) search for seven 911 calls that the appellant said he made on a specific date. In his reconsideration request, the appellant continues to seek access to "all 911 calls" he made from 2000 onwards. In this Reconsideration Order, the adjudicator finds that the appellant has not established that grounds exist under section 18.01 of the IPC's *Code of Procedure* for reconsidering Order MO-4030 and denies the reconsideration request.

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

**Cases Considered:** *Chandler v. Alberta Association of Architects*, [1989] 2 SCR 848 (S.C.C.).

### OVERVIEW:

[1] This reconsideration decision addresses the appellant's request for a reconsideration of Order MO-4030. Order MO-4030 dealt with the sole issue of the reasonableness of the Chatham-Kent Police Service's (the police) search for records responsive to the appellant's request under the *Municipal Freedom of Information and Privacy Act* (the *Act*) for access to "all information including 911 calls" about him from 2000 to the date of the request (in February 2020).

[2] After they received the appellant's request, the police conducted a search and

located responsive records. They issued a decision (the February 2020 decision), granting partial access to five responsive records (occurrence reports). In the February 2020 decision, the police wrote that, in response to the appellant's earlier requests in 2019 for access to "all documents and occurrences pertaining to him," including officers' notes and 911 calls, they had already granted partial access to 48 other occurrence reports (from 2005-2018) and officers' notes in an April 2019 decision, and explained that certain 911 calls had been purged from their records. The February 2020 decision is the only decision before me in this appeal.

[3] According to the February 2020 decision, the five additional occurrence reports relate to incidents that took place after those disclosed with the April 2019 decision. The police also explained that calls about those five incidents were not made to 911, but to the police's non-emergency number.

[4] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC). The parties participated in mediation. During mediation, the appellant did not dispute the exemptions the police claimed to withhold certain information from the responsive records. Those exemptions were therefore removed as issues in the appeal.

[5] However, during mediation the appellant said that he had called 911 seven times on a specific date – May 3, 2016 – and that the police had not disclosed records relating to those calls. The police conducted a further search, but did not locate any records of 911 calls for the date provided by the appellant. The appellant maintained his position that 911 recordings or transcripts should exist for that date.

[6] With no further mediation possible, the appeal moved to the adjudication stage of the appeal process on the sole issue of the reasonableness of the police's search for records of the seven 911 calls the appellant said he made on May 3, 2016.

[7] I conducted a written inquiry during which the appellant and the police made representations that were shared between them. At the conclusion of my inquiry, I issued Order MO-4030, in which I found that that the police's search for records related to 911 calls on the date specified by the appellant was reasonable and dismissed the appeal. My finding was based on the police's affidavit evidence describing their searches, and on the appellant's evidence, which consisted of a 2014 police occurrence report for an incident reported on May 3, 2014, and the appellant's phone records showing that seven 911 calls were made from his phone number on May 3, 2014, not 2016.

[8] The appellant contacted the IPC to request a reconsideration of the order. He was asked to put his request in writing, with reasons. By letter dated April 1, 2021, the appellant requested a reconsideration of the order and provided the reasons for his request.

[9] In this order, I find that the appellant has not established any grounds under section 18.01 of the *Code of Procedure* (the *Code*) for reconsidering the order. The

request for reconsideration is therefore denied.

## **DISCUSSION:**

### **Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-4030?**

[10] The IPC's reconsideration criteria and procedure are set out in section 18 of the *Code*. Section 18 reads in part that:

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.

[11] I am *functus* unless the party requesting the reconsideration – in this case, the appellant – establishes one of the grounds in section 18.01 of the *Code*. *Functus officio* is a common law principle which means that, once a decision-maker has determined a matter, he or she has no jurisdiction to consider it further. The provisions in section 18.01 of the *Code*, however, summarize the common law position acknowledging that a decision-maker has the ability to re-open a matter to reconsider it in certain circumstances.<sup>1</sup>

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

[12] The appellant submits that his request was for access to "all 911 calls" from 2000 onwards. This, he says, includes the calls made in 2014, and proof of which he used to support his position during the inquiry that the calls were made in 2016. The appellant says that his "request was not specific for May 2016" and that, "[w]hether there were no calls from May 2016, there was proof of calls for 2014" which ought to be ordered disclosed.

[13] The appellant submits that I should reconsider my decision "and have the May 3,

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<sup>1</sup> Order PO-2839-R.

2014 911 calls supplied to [him] since they are included in [his] request for the year 2000 to present.”

### ***Analysis and findings***

[14] The reconsideration process in section 18 of the IPC’s *Code of Procedure* is not intended to provide parties who disagree with a decision a forum to re-argue their case. For me to reconsider Order MO-4030, the appellant’s request must fit within one of the three grounds for reconsideration in section 18.01 of the *Code*.

[15] 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 Association of Architects*.<sup>2</sup> Regarding 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.*].<sup>3</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.

[16] Subsequent IPC orders have adopted this approach.<sup>4</sup> In Order PO-3062-R, for example, Adjudicator Daphne Loukidelis was asked to reconsider her finding that the discretionary exemption in section 18 of the *Freedom of Information and Protection of Privacy Act* did not apply to information in records at issue in that appeal. In determining 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*, Adjudicator Loukidelis wrote that:

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

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<sup>2</sup> [1989] 2 SCR 848 (SCC).

<sup>3</sup> 1996 CanLII 11795 (ON SC), 28 OR (3d) 67 (Div. Ct.).

<sup>4</sup> See, for example, Orders PO-3062-R, PO-3558-R and PO-4004-R.

substantiating arguments made (or not) during the inquiry into the appeal...

[17] 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>5</sup> Examples of such breaches would include a failure to notify an affected party,<sup>6</sup> or to invite sur-reply representations where new issues or evidence are provided in reply.<sup>7</sup>

[18] The appellant's reconsideration request reiterates his initial request for access to "all information including 911 calls" about him from 2000 onwards. He asserts that, because his request included the year 2014, he should now have access to records relating to the 911 calls from May 3, 2014, proof of which he used to support his position during the inquiry that those calls were made in 2016.

[19] I find that the appellant's request is an attempt to re-argue his appeal and to expand the adjudication retroactively to revisit the scope of the request that resulted in the appeal and Order MO-4030.

[20] As I have already noted, before the appeal moved to adjudication, the appellant participated in mediation. During mediation the appellant claimed he made the May 3, 2016 911 calls to which he said the police had denied access. It was then that, with the appellant's consent, and after a further search by the police, the appeal moved to adjudication on the sole issue of the reasonableness of the police's search for those May 3, 2016 911 calls. When the mediation ended, the mediator issued a report that identified the reasonableness of the police's search for those calls as the only outstanding issue for adjudication. The appellant did not challenge the accuracy of the contents of the mediator's report, although he had the opportunity to do so.

[21] Once the appeal moved to the adjudication stage of the appeal process, I decided to conduct a written inquiry. As part of my inquiry, I issued a Notice of Inquiry asking for the appellant's representations on the sole issue of the reasonableness of the police's search for records relating to the seven 911 calls that the appellant identified during mediation. In his representations, the appellant maintained that he had called 911 seven times on May 3, 2016, despite a discrepancy between his representations and his supporting materials.

[22] Specifically, with his representations, the appellant submitted his phone records, which showed seven 911 calls from his telephone number on May 3, 2014. The

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<sup>5</sup> Order PO-4134-R.

<sup>6</sup> Orders M-774, R-980023, PO-2879-R and PO-3062-R.

<sup>7</sup> Orders PO-2602-R and PO-2590.

appellant also included with his representations a copy of a 2014 occurrence report for an incident that was reported on May 3, 2014. The police presumably disclosed this occurrence report in response to the appellant's earlier access request. As I have already noted, however, access to those records was not before me in deciding the reasonableness of the police's search in Order MO-4030.

[23] With the discrepancy in dates illuminated, the appellant now seeks to revisit his initial request. He argues that he asked for access to 911 calls from 2000 onwards, so that "Whether there were no calls from May 2016, there was proof of calls for 2014," to which he submits access was denied.

[24] As I have noted above, I find that the appellant's request is an attempt to revisit the appeal and to reargue and expand its scope. The appellant does not explain how his request for reconsideration of Order MO-4030 fits within section 18.01(a) of the *Code*. The appellant also does not argue, nor do I see any basis for finding, that his request for reconsideration establishes either a jurisdictional defect or an error in the decision for the purpose of sections 18.01(b) or (c) of the *Code*.

[25] As there are no grounds for reconsideration of Order MO-4030, in accordance with section 18.01 of the *Code*, I deny the appellant's reconsideration request.

**ORDER:**

I deny the appellant's reconsideration request.

Original signed by: \_\_\_\_\_

Jessica Kowalski  
Adjudicator

June 29, 2021 \_\_\_\_\_