

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-4168-R

Appeal PA18-00653

Lakeridge Health

Order PO-4153

July 26, 2021

Summary: The appellant requested a reconsideration of Order PO-4153. Specifically, the appellant asked the adjudicator to reconsider her finding regarding the hospital's search for responsive records. The appellant submitted a reconsideration request arguing the adjudicator made an accidental error regarding the correspondence between herself and the hospital. The adjudicator finds the appellant's submissions fail to establish grounds for reconsideration under section 18.01 of the IPC's *Code of Procedure* and she denies the request.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended; *IPC Code of Procedure* Section 18.01(c).

Orders and Investigation Reports Considered: Orders PO-2538-R, PO-3062-R and PO-4153.

OVERVIEW:

[1] This reconsideration order relates to Order PO-4153, which was issued in Appeal PA18-00653, involving the appellant and Lakeridge Health (the hospital). The appellant submitted a six-part access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the hospital for records relating to patient experience survey-related services. Relevant to this reconsideration decision, part five of the appellant's request was for the hospital's "final plan" to establish the patient experience survey program through the survey-related services provider (the affected party).

[2] The hospital located records responsive to the request and issued an access decision regarding the responsive records. However, the hospital advised the appellant it did not have records responsive to the appellant's request for a "final plan" to establish the patient experience survey program.

[3] The appellant appealed the hospital's decision. Relevant to this reconsideration decision, the appellant claimed there should be records responsive to part five of her request. In Order PO-4153, I upheld the hospital's search for records responsive to part five of the appellant's request as reasonable.

[4] The appellant subsequently submitted a request for reconsideration of Order PO-4153. Specifically, the appellant asks that I reconsider paragraphs 66 and 74 of the order pursuant to section 18.01(c) of the IPC's *Code of Procedure* (the *Code*). The appellant set out the reasons for her reconsideration request in a letter sent to this office.

[5] In this order, I find the appellant has failed to establish that the ground for reconsideration in section 18.01(c) of the *Code* applies and I deny her reconsideration request.

DISCUSSION:

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order PO-4153?

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

18.01The 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.

[7] The reconsideration process set out in the *Code* is not intended to provide parties with a forum to re-argue their cases. In Order PO-2538-R, the adjudicator reviewed the case law regarding an administrative tribunal's power of reconsidering, including the Supreme Court of Canada's decision in *Chandler v. Alberta Association of Architects*.¹ With respect to the reconsideration request before him, the adjudicator concluded,

[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.*].²

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 [institution] and the

¹ [1989] 2 SCR 848 (SCC).

² 1996 CanLII 11795 (ONSC), 28 OR (3d) 67 (Div. Ct.).

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.

[8] This approach has been adopted and applied in subsequent IPC decisions.³ For example, in Order PO-3062-R, the adjudicator was asked to reconsider her finding that the discretionary exemption in section 18 of the *Act* did not apply to the information in the records at issue in that appeal. The adjudicator determined 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,

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...

Findings in Order PO-4153

[9] The appellant’s reconsideration request focuses on one discrete portion of Order PO-4153. Specifically, the appellant asks me to reconsider my finding regarding the hospital’s search for records responsive to part five of her request. Part five of the appellant’s request read as follows:

The hospital’s final plan to establish the patient experience survey program through the affected party [the survey-related services provider].

The hospital did not locate any records responsive to this part of the appellant’s request. The appellant appealed the hospital’s decision, claiming that records responsive to this part of her request should exist. Therefore, the issue of whether the hospital conducted a reasonable search in response to this part of the appellant’s request was added as an issue.

[10] At paragraphs 66 through 73 of Order PO-4153, I reviewed and summarized the hospital and appellant’s submissions during the inquiry. At paragraph 74, I made the following finding:

Based on my review of the parties’ representations, I am satisfied the hospital made a reasonable effort to locate records responsive to the appellant’s request in fulfilment of their obligations under the Act. I am satisfied experienced individuals knowledgeable in the subject matter of the request expended a reasonable effort to locate the records responsive to the appellant’s request. I find the hospital searched for records in a variety of departments and did not interpret the appellant’s request too narrowly. I am satisfied the hospital attempted to clarify the request with the appellant regarding the meaning of the term “final plan” and, in the absence of helpful clarification, conducted a search in an attempt to respond to her request.

³ See, for example, Orders MO-3478-R, PO-3062-R and PO-3558-R.

The appellant's reconsideration request

[11] The appellant submits I made an error by misquoting a letter she sent to the hospital clarifying the meaning of *final plan* in part five of her request. Specifically, the appellant states that, at paragraph 66 of Order PO-4153, I erred by quoting from her appeal letter dated October 31, 2018 rather than the correct letter dated August 8, 2018 in response to the hospital's request for clarification after receiving the appellant's request.

[12] The appellant states her response to the hospital's request for clarification in August 2018 was,

Further to your letter of August 2, 2018, and our brief telephone conversation today, the "final plan" to establish the patient experience survey program through [the affected party] refers to the plan upon which the Patient Experience Department proceeded with the patient experience survey program through [the affected party].

Essentially, my request is as outlined in section 13(2)(i) of the *Freedom of Information and Protection of Privacy Act*, which reads:

(i) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program, whether or not the plan or proposal is subject to approval
...

[13] In the order, at paragraph 66, I state:

The hospital then requested clarification from the appellant regarding the meaning of "final plan" in part 5 of her request. The appellant responded as follows:

The term "final plan" gives sufficient notice to the institution with respect to the information being sought that it can make internal inquiries. It would be absurd to require requestors to provide a thesaurus to identify the name of the document being sought or a description of the form that it would take, such that the institution could defeat the intention of the Act merely by having its staff create different names for its plans

[14] The appellant states the text quoted in the order is from her letter of appeal to the IPC dated October 31, 2018. The appellant states that during the inquiry, the hospital claimed it based its search on "essentially" what was written in the appellant's appeal letter which was not possible, since it conducted the search prior to her filing the appeal. The appellant states it could not have conducted its search based on the text of the appeal letter quoted at paragraph 66 of Order PO-4153, despite having stated in its submissions that it had conducted the search based on "essentially" the same terms.

[15] The appellant submits it appears to be an accidental error in ascribing the text of her appeal letter to her reply to the hospital's request for clarification.

[16] Given these circumstances, the appellant requests that I reconsider my statement in

paragraph 74 that there was “an absence of helpful clarification.”

Analysis and Findings

[17] I find the appellant’s reconsideration request does not establish the grounds set out in section 18.01(c) of the *Code* that would permit me to reconsider my decision. I reviewed the appellant’s reconsideration request and considered whether her arguments fit within the grounds set out in section 18.01(c) and I am not satisfied that they do. In my view, the arguments raised by the appellant in her reconsideration request amount to argument regarding the adequacy of the hospital’s search and its interpretation of her request.

[18] Previous orders of this office make it clear that the reconsideration process set out in the *Code* is not intended to provide parties with a forum to re-argue their case.⁴ In addition, this office has consistently held that the reconsideration process is not a mechanism to offer substantiating arguments that were made (or not made) during the inquiry into an appeal that was intended to address a party’s disagreement with an institution’s decision or legal conclusion.⁵ In my view, the appellant’s reconsideration request fails to raise or support the existence of any error or omission in my decision under section 18.01(c) of the *Code*. Instead, I conclude the appellant seeks to re-argue her position by requesting a reconsideration of Order PO-4153.

[19] Specifically, I find the appellant’s arguments regarding what the hospital could have based its interpretation of part 5 of her request to constitute re-argument. In Order PO-4153, I referred to the appellant’s response to the hospital’s request for clarification and reproduced a portion of correspondence she sent to the hospital. I summarized the hospital’s submissions on its response to part 5 of the appellant’s request, which included the quoted text, in paragraph 66. I continued to summarize the hospital and the appellant’s representations in the following paragraphs and concluded the hospital conducted a reasonable search in paragraph 74.

[20] In her reconsideration request, the appellant focuses on the hospital’s submission that it based its search on “essentially” what was written in the appellant’s appeal letter. The appellant takes issue with the hospital’s claim and argues it is not possible the hospital would have relied on this quoted portion in paragraph 66 when conducting its search. I reviewed the appellant’s submissions and find she is rearguing her position that the hospital failed to conduct a proper search in response to part five of her request.

[21] The appellant appears to believe that the hospital’s submissions were incorrect or misleading and I made my finding based on a mistaken understanding. I assure the appellant this is not the case. I summarized the hospital’s first party representations in paragraphs 66 and 67, which included the appellant’s explanation of the term *final plan*. However, I reviewed and considered both parties’ complete representations and summarized them in paragraphs 68 to 73. I confirm I did not arrive at my conclusion solely because of the portion of her correspondence quoted in paragraph 66, but considered the entirety of the hospital and her correspondence and submissions.

[22] Therefore, I find the appellant’s submissions in support of her reconsideration

⁴ Orders PO-2538-R, PO-3062-R, and PO-3911-R.

⁵ Orders PO-3062-R and PO-3558-R at paras. 21-24.

request fail to identify or support any clerical error or omission under section 18.01(c) of the *Code*. For this reason, I deny the appellant's reconsideration request.

ORDER:

I deny the appellant's reconsideration request.

Original Signed by: _____
Justine Wai
Adjudicator

_____ July 26, 2021