

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4093-R

Appeal MA18-00828

Order MO-4040

Toronto Police Services Board

August 16, 2021

Summary: The affected party and the police both submitted a request for reconsideration of Order MO-4040, seeking a reconsideration of the adjudicator's order to disclose additional information to the appellant. In this Reconsideration Order, the adjudicator finds that the affected party and the police have not established that grounds exist under section 18.01 of the IPC's *Code of Procedure* for reconsidering Order MO-4040, and she denies the reconsideration requests.

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

Orders Considered: Orders PO-2538-R and PO-3062-R.

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

OVERVIEW:

[1] This reconsideration order arises from Order MO-4040, which was issued regarding an appeal of an access decision made by the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) in response to a request for:

All available documentation related to [a specified incident number],
including

-attachments to the complaint (as filed initially)

-date, time, name of person taking the “incriminating” picture of the gun poster

-final report of [two named police officers] who performed the inspection on location on 31.08.2018

[2] The police issued a decision granting partial access to the records. Access to the withheld information was denied under sections 38(b) and 14(1) (personal privacy) of the *Act*. Some information was also withheld on the basis that it was non-responsive to the request.

[3] The requester, now the appellant, appealed the police’s decision to the Information and Privacy Commissioner of Ontario (IPC). I conducted an inquiry and issued Order MO-4040, which partially upheld the police’s decision. I ordered the police to disclose additional information about the affected party to the appellant, because I found that the information about the affected party in records 1-4 is not “personal information” as defined by section 2(1) of the *Act*. Given that finding, the information could not be withheld under the personal privacy exemption. However, I upheld the police’s decision to withhold information in record 5, which I found did contain the affected party’s personal information.

[4] After Order MO-4040 was issued, the affected party and the police contacted the IPC to ask about the process for requesting a reconsideration of the order. They were both provided with information about the IPC’s reconsideration process under section 18 of the IPC’s *Code of Procedure* (the *Code*).

[5] After receipt of this information, the affected party requested a reconsideration of Order MO-4040. Representations were invited from the affected party, and they were asked to specify under which ground in section 18.01 of the *Code* they were requesting a reconsideration. However, the affected party declined to submit representations in addition to the letter they sent seeking reconsideration. Subsequently, the police also requested a reconsideration of Order MO-4040 and provided representations in support of the request.

[6] For the reasons that follow, I deny the reconsideration requests, because the affected party and the police have not established grounds in section 18.01 of the IPC’s *Code* for reconsidering Order MO-4040.

DISCUSSION:

Are there grounds under section 18.01 of the IPC’s *Code of Procedure* to reconsider Order MO-4040?

[7] 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.

The affected party's reconsideration request

[8] As I noted in Order MO-4040, the affected party's representations were not set out in the decision because they were withheld as confidential. Generally, however, the affected party argued that they did not want their information released to the appellant, because it would be an unjustified invasion of their personal privacy, and because they said that they could be subjected to pecuniary or other harm, if their information were disclosed.

[9] In their letter seeking a reconsideration of Order MO-4040, the affected party reiterates and elaborates on concerns about their safety described in the representations they provided to me before I issued Order MO-4040. However, although I have considered this information, I will not outline it in this reconsideration decision due to confidentiality reasons.

The police's reconsideration request

[10] The police's reconsideration letter reiterates the position taken in Order MO-4040. The police submit that it is clear the appellant in MO-4040 intended to "instill fear in those who come into contact with him" by displaying an image of a firearm in his window. The police submit that the balance between the right of access and the protection of privacy must weigh in favour of the protection of privacy, especially when considering the safety and security of an individual, even in a business-type relationship.

[11] The police outline some of the affected party's concerns about their safety, which I will not reiterate because they are confidential. The police submit that they fully support the affected party's request for reconsideration of Order MO-4040, and they submit that the release of the affected party's information is in direct contravention of the spirit of the *Act*.

Analysis and findings

[12] The reconsideration process set out in the IPC's *Code* is not intended to provide parties with an opportunity to re-argue an appeal. In Reconsideration Order PO-2538-R, 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*.¹ 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,

¹ [1989] 2 SCR 848 (*Chandler*).

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.*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 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.

[13] This approach has been adopted and applied in subsequent orders of the IPC.³ 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 *Act* did not apply to information in 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:

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...

[14] As established by section 18.02 of the *Code*, 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. The reconsideration requests from both parties reiterate the same arguments they made in Order MO-4040. While the affected party's reconsideration request elaborates on their representations in Order MO-4040, I find this to be an attempt to substantiate arguments made during my inquiry into the appeal. In my view, the arguments of the affected party and the police in this case represent an attempt to re-argue the appeal, which does not provide a basis for granting a reconsideration.

[15] As noted above, both parties were asked to specify under which ground in section 18.01 of the *Code* they were requesting a reconsideration of Order MO-4040. However, neither party has specified under which ground or grounds in section 18.01 of the *Code* they are requesting a reconsideration.

[16] The parties have not argued that there is a fundamental defect in the adjudication process, or some other jurisdictional defect in the decision. Based on my review of the representations of the parties, I find that there is no basis for reconsideration under sections 18.01(a) or (b) of the *Code*. The parties have also not argued that there is a clerical error, accidental error or other similar error in the decision that would fit under section 18.01(c), and I find that there is no basis for reconsideration under this section.

[17] Accordingly, I find that both the affected party and the police have not established any of the grounds for reconsideration under section 18.01 of the *Code*, and I decline to reconsider Order MO-4040.

² 1996 CanLII 11795 (ON SC).

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

ORDER:

1. I deny the requests for reconsideration of Order MO-4040.
2. I lift the interim stay of Order MO-4040 and order the police to disclose the relevant portions of records 1-4 in accordance with that decision to the appellant by **September 21, 2021**, but not before **September 16, 2021**.
3. In order to verify compliance with order provision 2, I reserve the right to require the police to provide the IPC with a copy of the records it discloses to the appellant.

Original Signed By: _____
Anna Truong
Adjudicator

_____ August 16, 2021