

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-4200-R

Appeal PA20-00474

Order PO-4185

Human Rights Tribunal of Ontario

October 25, 2021

Summary: The appellant requested a reconsideration of Order PO-4185. In particular, the appellant alleges a conflict of interest and seeks a reconsideration of the adjudicator's finding upholding the reasonableness of the Human Rights Tribunal of Ontario's search for responsive records. In this Reconsideration Order, the adjudicator finds that the appellant did not establish that grounds exist under section 18.01 of the IPC's *Code of Procedure* for reconsidering Order PO-4185 and denies the reconsideration request.

Statutes Considered: *IPC Code of Procedure*, sections 18.01 and 18.02.

Cases Considered: *Chandler v. Alberta Assn. of Architects*, 1989 CanLII 41 (SCC).

Orders Considered: Orders PO-2538-R, PO-3062-R and PO-4185.

OVERVIEW:

[1] The Human Rights Tribunal of Ontario (HRTTO) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) for access to:

[...] all documentation held by HRTTO that states or mentions that in [identified HRTTO reported decision], I filed an application against the [named entity] and the [named entity] was listed as a respondent in

[identified HRTO reported decision]. I am requesting all [records] maintained by Ontario Human Rights Tribunal of Ontario with this information. The Ontario Human Rights Tribunal made a decision that was made a record to the public stating that I made an application, specifically an application [identified HRTO reported decision], against the [named entity] and the respondents were the [named entity]. Please provide all information maintained in [identified HRTO reported decision] in regards to the [named entity] that was used to make a record to the public. Please let me know which records to the public list that in [identified HRTO reported decision], I made an application against [named entity] and that the [named entity] were respondents in citation: [identified HRTO reported decision] and also named File number [identified HRTO file number].

[2] The HRTO identified responsive records and issued an access decision. The access decision provided as follows:

1. Information related to [identified HRTO file number]

Records related to [identified HRTO file number] were provided to you on September 20, 2018 along with copies of other requested HRTO applications, and as such, we are not providing an additional copy.

2. Records referencing [named entity]

You have requested all records that mention that in decision [identified HRTO reported decision] (application [identified HRTO file number]) you filed an application against [named entity]. The two HRTO decisions in the table below are responsive to the request, and are attached with this letter:

HRTO reconsideration decision [identified HRTO reported decision]	
Application file number	[identified HRTO file number]
Respondents	1. [named entity] 2. [identified law firm]
Disposition of application	The HRTO dismissed the application
Reference in decision that identifies the [named entity] as the respondent in HRTO decision [identified HRTO reported decision] (application	Paragraph [...]: sets out that you had filed a previous application against the [named entity] that was dismissed in decision [identified HRTO reported

[identified HRTO file number])	decision].
HRTO final decision [identified HRTO reported decision]	
Application file numbers	1. [identified HRTO file number] 2. [identified HRTO file number] 3. [identified HRTO file number]
Disposition of applications	The HRTO dismissed the applications
Reference in decision that identifies the [named entity] as the respondent in HRTO decision [identified HRTO reported decision]	Paragraph [...]: quotes paragraph [...] of [identified HRTO reported decision] (see above).

[3] The requester (now the appellant) appealed the HRTO's access decision.

[4] At mediation, the appellant asserted that there should be additional responsive information with respect to her request for access to records referencing the named entity. Accordingly, the reasonableness of HRTO's request for responsive records became an issue in the appeal. The appellant also advised the mediator that she was seeking a scanned or electronic copy of the responsive records that related to an identified HRTO file number.

[5] In Order PO-4185, I upheld the reasonableness of HRTO's search for responsive records.

[6] After I issued Order PO-4185, the appellant sought a reconsideration of that decision.

[7] In this order, I find that the appellant has not established any grounds for reconsidering the order. The request for reconsideration is denied.

DISCUSSION:

Reconsideration criteria and procedure

[8] This office's reconsideration criteria and procedure are set out in section 18 of the *Code of Procedure*. Section 18 reads in part as follows:

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 omission 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.

[9] The reconsideration process set out in this office's *Code of Procedure* is not intended to provide parties with a forum to re-argue their cases. In 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:

[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 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.

[10] Adjudicator Higgins' approach has been adopted and applied in subsequent orders of this office.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 *Freedom of Information and Protection of Privacy Act* did not apply to the information in the 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

¹ 1989 CanLII 41 (SCC).

² 1996 CanLII 11795 (Div. Ct.).

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

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...

[11] The appellant provided the following in support of her reconsideration request:

... multiple IPC decisions have used the Ontario Human Rights Tribunal decisions about me in IPC decisions. I believe this is a conflict of interest since the decision the IPC made with multiple decisions involve the decision that had the incorrect information of Ontario Human Rights that Ontario Human Rights cannot locate the information in any maintained records yet the Ontario Human Rights used this information that are unable to locate about the [named entity] in its decisions made to the public about me. IPC has used the incorrect information by the [named entity] when making decisions to the public that involve people other than me.

[12] This appears more to be an allegation of error than an allegation that I was in a conflict of interest or was biased. If, however, it is an allegation of a conflict of interest or bias against me, there is a presumption in administrative law, in the absence of evidence to the contrary, that an administrative decision-maker will act fairly and impartially. The onus of demonstrating a conflict of interest or bias lies on the person who alleges it, and mere suspicion is not enough.⁴ The allegations made by the appellant are not sufficient to demonstrate that I was in a conflict of interest or biased.

[13] If it is an allegation of error, in Order PO-4185, I reviewed the representations provided by the parties in support of their positions, including the appellant's, who made similar arguments to the ones she provides in support of her reconsideration request. In that order, I wrote:

[23] As set out above, the *Act* does not require the institution to prove with absolute certainty that further records do not exist. In order to satisfy its obligations under the *Act*, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its custody and control. In all the circumstances, I find that the HRTO properly interpreted the scope of the request and its searches were extensive and wide-ranging. I also find

⁴ See Blake, S., *Administrative Law in Canada*, (3rd. ed.), (Butterworth's, 2001), at page 106, cited in Order MO-1519.

that, based on the searches it conducted, the HRTO has made a reasonable effort to locate records responsive to the request. In that regard, I accept the HRTO's evidence that it issued two decisions with respect to other HRTO applications filed by the appellant that erroneously set out that the respondent named in the identified HRTO reported decision was the named entity. A circumstance that may unfortunately have led to the appellant's belief that additional records should exist.

[24] Accordingly, in all the circumstances, I find that the HRTO has conducted a reasonable search that is in accordance with the requirements of the *Act*.

[14] Simply put, the substance of the arguments the appellant makes on this reconsideration request, including HRTO not locating information in "any maintained records", were addressed in Order PO-4185.

[15] While the appellant may disagree with my findings in Order PO-4185, she has not established that there is 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. I find that the appellant has not established any of the grounds upon which I may reconsider Order PO-4185.

ORDER:

The appellant's request to reconsider Order PO-4185 is denied.

Original signed by _____
Steven Faughnan
Adjudicator

October 25, 2021 _____