

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-4203-R

Appeal PA17-476

Office of the Independent Police Review Director

Order PO-4092

October 28, 2021

Summary: The appellant requested a reconsideration of Order PO-4092, which addressed the appellant's correction request regarding a decision by the Office of the Independent Police Review Director (OIPRD). In this order, the adjudicator finds that the appellant has not established the grounds for reconsidering Order PO-4092 under section 18.01 of the *Code of Procedure*, and denies the reconsideration request.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 47(2); *IPC Code of Procedure*, section 18.01.

Orders Considered: Orders PO-2538-R, PO-3062-R and PO-4092.

Case Considered: *Chandler v. Alberta Association of Architects*, [1989] 2 SCR 848 (SCC).

OVERVIEW

[1] This reconsideration order relates to Order PO-4092, issued November 27, 2020. Order PO-4092 upheld a decision of the Office of the Independent Police Review Director (OIPRD) to deny a correction request made under section 47(2) of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

The appellant's correction request

[2] The appellant made a complaint to the OIPRD about officers of the Sarnia Police Service. The OIPRD decided not to proceed with an investigation. In its decision, the OIPRD wrote that the appellant's complaint had been "screened out" pursuant to a provision in the *Police Services Act* that allows a complaint to be closed if it is not in the public interest to send the matter to investigation.¹

[3] After he received the OIPRD's decision, the appellant made a request under section 47(2) of the *Act* to the OIPRD for correction of his personal information, and to statements in the decision that the appellant claimed were inexact, incomplete and ambiguous. The appellant challenged the adequacy of the OIPRD's reasons and the OIPRD's summary of events leading up to his complaint. His request for correction contained an itemized list of corrections he wanted made to the decision, including deletions, substitutions and additions.

[4] The OIPRD refused the request for correction.

Findings in Order PO-4092

[5] The appellant appealed to the Office of the Information and Privacy Commissioner of Ontario (the IPC) and Appeal PA17-476 was opened. After efforts to resolve the appeal in mediation were unsuccessful, the appeal entered the adjudication stage. I decided to conduct an inquiry, which concluded with my issuing Order PO-4092.

[6] During my inquiry, I gave both the OIPRD and the appellant the opportunity to submit representations in response to Notices of Inquiry setting out the background and issues for determination. The OIPRD submitted representations. The appellant did not.

[7] The appellant received numerous extensions to submit representations in support of his appeal. On November 27, 2020, after the extended due date had passed without representations from the appellant, Order PO-4092 was issued. In it, I found that the three-part test for correction under section 47(2) of the *Act* had not been met. I found that the first part of the test had been met because the record contains the appellant's personal information. However, I found that the second and third parts of the test were not met because:

- the appellant had not provided sufficient evidence to support his position that the information he sought to be corrected was inexact, incomplete or unambiguous (part two); and that,

¹ Section 60(4) of the *Police Services Act*.

- the request for correction sought to substitute language or a description of events in the record to craft a version of it that the appellant believed to be more favourable to him or one more in keeping with his own views (part three).²

[8] I also wrote that the IPC is not the appropriate forum for the resolution of disputes regarding the adequacy of the OIPRD's reasons. I denied the appellant's correction request and dismissed the appeal.

[9] The appellant requested a reconsideration of Order PO-4092. In his reconsideration request, the appellant claims, among other things, that he was denied natural justice and procedural fairness when he says I ignored a last-minute extension request for the submission of his representations.

[10] For the reasons that follow, I find that the appellant has not established any grounds under section 18.01 of the *Code of Procedure* (the *Code*) for reconsidering Order PO-4092. 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 PO-4092?

[11] 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.

² The IPC has established that in order for an institution to grant a request for correction, three requirements must be met: (i) the information at issue must be personal and private information; (ii) the information must be inexact, incomplete or ambiguous; and (iii) the correction cannot be a substitution of opinion. (See Orders 186 and P-382).

[12] 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, 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*.³ 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, 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.*].⁴

On the contrary, I conclude that these grounds for reconsideration amount to no more than a disagreement with my decision, and an attempt to relitigate 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 IPC orders.⁵ 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, stating 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 substantiating arguments made (or not) during the inquiry into the appeal...

The appellant's reconsideration request

[14] Shortly after Order PO-4092 was issued on November 27, 2020, the appellant emailed the IPC requesting that the order be reconsidered. He wrote that the decision was "unacceptable and was made in an unprofessional, disgraceful and unfair manner."

³ [1989] 2 SCR 848 (SCC).

⁴ 1996 CanLII 11795 (ON SC), 28 OR (3d) 67 (Div. Ct.).

⁵ See, for example, Orders MO-3478-R, PO-3062-R, and PO-3558-R.

[15] In a second email sent later that same day, the appellant wrote that:

In addition to my email below, IPC should not allow its adjudicator to use misrepresented or non-existent facts to try to rationalize a decision to dismiss an appeal. The adjudicator's decision to dismiss my appeal was based on untrue and misleading representations about me and fabrications.

IPC should give me a fair opportunity to rebut or point out her untrue claims, misleading statements about my case and misrepresentation of the facts.

[16] On December 1, 2020, the appellant emailed again, writing that he has "many more grounds to support [his] reconsideration request," and asking about the process for reconsideration. The same day, the appellant's request was acknowledged and he was sent a copy of Section 18 of the *Code*, which sets out the process and requirements for a reconsideration request. A due date of December 22, 2020 was set for the appellant to submit representations in support of the reconsideration request.

[17] On December 21, 2020, the appellant requested an extension of time to submit his representations. As described in detail in my reasons below, he requested and received numerous extensions thereafter, until a "final" due date of August 27, 2021 was set. When the appellant made another extension request on August 27, 2021, he was told that no further extensions (for representations in support of his reconsideration request) would be considered and that, in the absence of formal representations, I would consider his emails of November 27 and 29, 2020 to be his representations. The appellant did not object, writing that he would endeavour to submit representations before this reconsideration order was completed.

[18] The appellant has not, to date, submitted representations in support of his reconsideration request.⁶ In his November 27 and 29, 2020 emails, the appellant did not refer specifically to any of the grounds for reconsideration identified in section 18.01. Given the statements in his emails – that his November 25, 2020 adjournment request had been ignored and that he should be given a "fair opportunity" to rebut untrue claims – I will consider whether the appellant has established that there was a fundamental defect in the adjudication process for the purposes of section 18.01(a).

[19] The appellant's reconsideration request does not raise any suggestion that the second or third grounds for reconsideration in section 18.01(b) (jurisdictional defect) or 18.01(c) (clerical error) apply.

⁶ As with the original appeal, the appellant requested and was granted numerous extensions of time to submit representations in support of his reconsideration request but did not do so.

Analysis and findings

Section 18.01(a) – fundamental defect in the adjudication process

[20] Although he does not expressly cite section 18.01(a), the appellant appears to claim that there was a fundamental defect in the adjudication process. He says his rights to procedural fairness and natural justice were denied because I “simply ignored” his November 25, 2020 extension request and “quickly made this decision to dismiss [his] appeal immediately after” I received it.

[21] Paragraph (a) of section 18.01 of the *Code* states that the IPC may reconsider an order where it is established that there is a fundamental defect in the adjudication process. Prior IPC orders have recognized that a fundamental defect in the adjudication process may include a failure to notify an affected party,⁷ a failure to invite representations on the issue of invasion of privacy,⁸ or a failure to allow for sur-reply representations where new issues or evidence are provided in reply.⁹ These orders demonstrate that a breach of the rules of natural justice respecting procedural fairness qualifies as a fundamental defect in the adjudication process as described in section 18.01(a) of the *Code*.

Numerous extensions requested and granted before Order PO-4092 issued

[22] As noted in Order PO-4092, the appellant was given multiple opportunities to submit representations in support of his appeal.

[23] I first set a due date of February 25, 2019. As noted above, this date was set out in a Notice of Inquiry inviting the appellant to submit representations and to which a copy of the OIPRD’s representations was attached.

[24] The letter that accompanied the Notice of Inquiry informed the appellant that:

Should your representations not be received by the date specified in this letter, the decision-making process will proceed, and an order may be issued in the absence of these representations. [emphasis in original]

[25] On February 26, 2019, the appellant asked that the appeal be placed “on hold” to May 27, 2019. When the May 27, 2019 date passed, the appellant requested another three-month extension to September 25, 2019.

⁷ Orders M-774, R-980023, PO-2879-R and PO-3062-R.

⁸ Orders M-775 and R-980023.

⁹ Orders PO-2602-R and PO-2590.

[26] On September 25, 2019, seven months after the original due date, I informed the appellant that the appeal would need to proceed or be closed. The appellant did not respond.

[27] On October 30, 2019, I granted another extension to November 19, 2020. This was followed by a letter, sent to the appellant by email, dated December 18, 2019, in which I wrote:

If you wish to make representations in this appeal, you may do so by **January 31, 2020**. If I have not received your representations by that date, I will move the file to the order stage of the appeal process and prepare a decision based on the representations I have at that time.

[emphasis in original]

[28] The covering email informed the appellant that this was a "final" due date. The appellant did not submit representations.

[29] On January 31, 2020, the appellant sent an email to the Adjudication Review Officer (ARO) stating that he was "seriously ill" and needed an extension. He provided a note from a sports medicine clinic dated two days earlier, which stated only that he had been assessed.¹⁰ He wrote that he could submit representations in 15 days. Then, on February 20, 2020, the appellant wrote that he could submit representations by April 30, 2020. Despite choosing these dates, the appellant did not submit representations.

[30] By email from the ARO dated May 15, 2020, I informed the appellant that his appeal had been moved to the order stage of the appeal process and that an order would be issued without further notice to him. I explained, however, that I would consider any representations he submitted before I completed my order, but that I could not estimate when it would be issued. The appellant was encouraged to make any submissions sooner rather than later, because he would not be given advance notice of the order's completion.

[31] On November 25, 2020, I contacted the appellant (through the ARO) to obtain his consent to receive communications from the IPC electronically.¹¹ The appellant responded with his consent and another extension request:

By the way, I am considering to require the respondents to attach a statement of disagreement to the record that they have refused to

¹⁰ The appellant provided no further detail in his request to help me decide how or whether to provide accommodation.

¹¹ By this time, the IPC's officers had physically closed as a result of precautions associated with the COVID-19 pandemic and inquiries were generally being conducted electronically.

correct. So, please continue to put this appeal on hold. In any event, please do not close my appeal file.

[32] In response to this November 25, 2020 extension request, I referred the appellant (by email from the ARO) to the May 15, 2020 email in which the appellant had been informed that, after the final deadline for representations had passed, the appeal was at the order stage and a decision would be issued without advance notice.

[33] By then, the appellant had already requested and received extensions totalling 15 months, and had been informed from the outset, in the covering letter to the Notice of Inquiry and during the inquiry process itself (in numerous email communications), that an order would be issued without his representations if he did not submit any. By the time of the November 25, 2020 extension request, the appellant had 21 months in which to submit representations in support of his appeal. In the circumstances, I am not persuaded that my not granting a further and open-ended extension on November 25, 2020 resulted in a denial of procedural fairness to the appellant or that there was a fundamental defect in the adjudication process according to section 18.01(a) of the *IPC's Code of Procedure*.

[34] As for the reconsideration request, in the 11 months since he made it, the appellant has not made any submissions in support of it, or to demonstrate that he was not given sufficient time to submit representations in support of his appeal before Order PO-4092 was issued. As I have noted above, the appellant had 21 months within which to submit representations before the order was issued. I have no basis on which to conclude that this was not sufficient. In my view, the appellant's actions appear to have been directed at delaying the appeal should he decide to take steps to address it, rather than demonstrating an intention to participate meaningfully in the inquiry process.

[35] The appellant has also not provided me with a basis on which to conclude that circumstances exist that would warrant an open-ended delay in his appeal or to continue to place it on hold indefinitely while he considers his options. In the circumstances before me, I find it unreasonable for a party to an appeal to ask for indefinite extensions or that an appeal be placed on hold for extended periods where there appears to be no reasonable expectation that representations are forthcoming.¹²

[36] In these circumstances, I find that the appellant has not established that there was a fundamental defect in the adjudication process under section 18.01(a) of the *Code*.

[37] Finally, the appellant claims in his reconsideration request that Order PO-4092 contains "untrue claims, misleading statements...and misrepresentation of the facts"

¹² See Order PO-4184-R.

and that he has grounds to support his request for my recusal. The appellant has not submitted any representations to support these allegations and I find them to be without merit. There is insufficient evidence in the reconsideration request itself that would allow for reconsideration under sections 18.01 (a), (b) or (c) of the *Code*, or any basis on which to recuse myself in accordance with section 18.08.¹³

[38] Accordingly, I find that there was no fundamental defect in the adjudication process and no other grounds in section 18.01 for reconsideration of Order PO-4092. I therefore deny the appellant's reconsideration request.

ORDER:

The appellant's reconsideration request is denied.

Original Signed By: _____
Jessica Kowalski
Adjudicator

_____ October 28, 2021

¹³ Section 18.08 of the IPC's *Code of Procedure* states that "[T]he individual who made the decision in question will respond to the request [for reconsideration], unless he or she for any reason is unable to do so, in which case the IPC will assign another individual to respond to the request."