

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-4144-R

Appeal MA19-00136

Order MO-4108

City of Vaughan

January 5, 2022

**Summary:** This order addresses the City of Vaughan's (the city's) request to reconsider Order MO-4108, which dealt with whether the records at issue were exempt from disclosure under either the discretionary exemption in section 8(1) (law enforcement) (claimed by the affected party) or the mandatory exemption in section 14(1) (personal privacy) (claimed by the city), as well as whether the affected party could raise a discretionary exemption. The records at issue consist of floor plans (ground floor, second floor and basement), roof plans, elevation plans, chimney details, a window schedule and a retaining wall and terrace plan of a specified residential property. In Order MO-4108, the adjudicator did not allow the affected party to raise the application of a discretionary exemption, namely section 8(1). She further found that because the records did not contain the personal information of an identifiable individual, the personal privacy exemption in section 14(1) could not apply. The city was ordered to disclose the records to the appellant, in their entirety.

In this reconsideration order, the adjudicator finds that the city has failed to establish that any of the grounds for reconsideration are present as required by section 18.01 of the Information and Privacy Commissioner/Ontario (the IPC's) *Code of Procedure*, and she therefore denies the reconsideration request.

**Statutes Considered:** IPC Code of Procedure, sections 18.01, 18.02, 18.01(c), 18.04(a) and 20.01 (the *Code*); *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O., Ch. M.56.

**Orders Considered:** MO-4057-R and PO-2538-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 order addresses a request that I reconsider Order MO-4108. The reconsideration request is made by the city, who first received an access request under the *Municipal Freedom of Information and Protection of Privacy Act*<sup>1</sup> (the *Act*) for records related to a specific property, including building permits for the property, floor plans, a roof plan, architectural elevations, a basement plan, site plans and technical drawings.

[2] In response, the city issued a decision granting the requester partial access to the records. The city withheld other records, claiming the application of the mandatory exemption in section 14(1) (personal privacy), as well as the discretionary exemptions in sections 8(1)(a) (law enforcement matter), 8(2)(a) (law enforcement report) and 12 (solicitor-client privilege).

[3] During the mediation of the appeal, the appellant raised concerns about the city's access decision, the reasonableness of the city's search for responsive records and the city's processing of the request. In response, the city conducted additional searches and reviewed its access decision. The city subsequently located additional records and issued two revised decisions disclosing more records to the appellant. As a result of this further disclosure, the application of sections 8(2)(a) and 12 were no longer at issue.

[4] The city also confirmed with the mediator that it had not processed the portion of the request seeking the plans and technical drawings and agreed to do so. The city subsequently located those records and notified three third parties to obtain their views regarding disclosure of them. The city then issued a supplementary decision denying access in full, claiming the application of the mandatory exemption in section 14(1) (personal privacy) of the *Act*.

[5] During the inquiry of the appeal, I sought and received representations from the city, an affected party and the appellant. The affected party raised for the first time, the possible application of the discretionary exemption in section 8(1) (law enforcement). In Order MO-4108, I did not allow the affected party to raise the discretionary exemption in section 8(1). I also found that the records did not contain the personal information of an identifiable individual and therefore the exemption in section 14(1) could not apply. I ordered the city to disclose the records to the appellant, in their entirety.

[6] I subsequently received a request from the city for a reconsideration of Order MO-4108. I notified the appellant and the affected party of the request, although I did not find it necessary to seek their views.

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<sup>1</sup> R.S.O. 1990, c. M.56.

[7] In this reconsideration order, I find that the city has failed to establish that any of the grounds for reconsideration in section 18.01 of the Code apply and I therefore deny the reconsideration request.

## **DISCUSSION:**

[8] The sole issue is whether the request for reconsideration establishes any grounds for reconsideration in section 18.01 of the *Code*.

[9] A reconsideration request is not an appeal nor, as will be explained below, an opportunity to make additional arguments. As a threshold matter, I must first determine whether there are sufficient grounds to reconsider Order MO-4108.

[10] The *Code* establishes how the IPC considers requests for reconsideration. The *Code* provisions are reflective of the common law pertaining to when an administrative tribunal is no longer able to re-open a proceeding after a final decision.<sup>2</sup> Order MO-4108 is a final decision.

[11] The relevant *Code* provisions are:

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.

[12] The reconsideration process set out in the Code is not intended to provide parties with a forum to re-argue their cases.<sup>3</sup>

### **The city's representations**

[13] The city submits that it is seeking reconsideration of Order MO-4108 on two grounds under sections 18.01(b) and (c) of the Code. In particular the city submits the

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<sup>2</sup> This is referred to as *functus officio*. See Order PO-2538-R.

<sup>3</sup> Order PO-2538-R, citing *Chandler v. Alberta Assn. of Architects* (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4th) 577 (S.C.C.) ("*Chandler*") and Orders PO-3062-R, PO-3558-R, MO-3975-R, MO-4004-R and MO-4057-R, as examples.

following grounds:

- The IPC did not have the jurisdiction to order the release of the records at issue. The records were not contained in the information request that was appealed to the IPC, but were instead contained in a separate request for information that was not appealed, and
- The city wishes to seek clarification of the IPC's "position" on the application of the factor in section 14(3)(f) of the *Act*, which was omitted from Order MO-4108.

***No jurisdiction***

[14] The city submits that the IPC did not have the jurisdiction to order it to disclose the records at issue to the appellant. The city argues that the appellant made two access requests to the city. The first access request was file number 2018-081, which included the records that I considered in Order MO-4108. The city submits that this request was *not* appealed to the IPC. The second access request was file number 2018-204. The city claims that the records which I considered in Order MO-4108 were not a part of request 2018-204. The city's decision in request 2018-204 was appealed to the IPC.

[15] The city further submits that it raised this issue during the mediation of the appeal, but this issue was not brought forward to the adjudicator as an outstanding issue in the mediator's report.

[16] The city also argues that "Rule 4.04" of the IPC's Code, requires an appellant to provide the file number assigned by the institution when filing an appeal at the IPC and that, in this case, the appellant failed to do so.

[17] The city goes on to state:

Accordingly, the IPC has ordered the production of documents that were not properly before it. As a result, the IPC's decision to order the production of these documents is ultra vires and ought to be rescinded.

***The presumption in section 14(3)(f) of the personal privacy exemption in section 14(1)***

[18] The city submits that I did not fully consider its arguments on the application of section 14(3)(f) and this is another ground for reconsideration of Order MO-4108. The city submits that it made the following statements in its representations during the inquiry of this appeal:

- The city believes that disclosure of the records could allow the appellant to make inferences to the affected party's financial status and position,

- The city believes that these drawings indirectly describe the affected party's assets as the overall details in the plans can imply financial value of the structure,
- In Order PO-2048, the Assistant Commissioner found that, to the extent that the records at issue identified individual property owners in the context of the submission of detailed plans and drawings describing proposed changes to their property, the presumption in section 21(3)(f) (the provincial equivalent of section 14(3)(f)) applied to that specific information, and
- In Order MO-3321, the adjudicator adopted the approach taken in Order PO-2048 and applied it to the personal information identified in the records at issue, which is contained in records relating to the construction of a residential dwelling. In the adjudicator's view, this information describes the individuals' finances and assets.

[19] The city argues that it based its decision on two previous orders, MO-3321 and PO-2048 (which heavily informed the decision of MO-3321). In both of those appeals, the adjudicators found that personal information contained in construction plans fell under 14(3)(f) (or 21(3)(f)), which was then determined to substantiate a presumed invasion of the affected party's (homeowner's) privacy. In these decisions, the IPC ordered the disclosure of the documents, but required the name and other personal information of the documents to be withheld. The city further submits that in Order MO-4108, I took a different position than my colleagues on this same issue, and that an explanation is absent from the final decision.

[20] The city further argues that I based my decision largely on Order 23. Given that Order 23 is almost 30 years old, the city believes that these two Orders (MO-3321 and PO-2048) provide more recent, relevant examples of the issues in this current appeal, as they specifically address the same exemption it applied.

[21] The city also states that it should be noted that the original purpose of this request was to obtain records related to specific permits in order to establish compliance with the *Building Code*. At the centre of this dispute is an encroachment issue, which is external to the house. The city argues that the appellant has received all of the information required to fulfill his informational need, if it is in fact about whether the neighbour is encroaching on another property. The city's position is that the appellant can determine compliance without needing the specific interior plans of his neighbour's house. In this way, the city firmly believes that release of the personal information contained in these plans would create a significant invasion of the affected party's privacy because the interior drawings go beyond the purpose of the original request.

[22] The city requests that I reconsider and rescind Order MO-4108 and that, in the alternative, I order that any personal information contained in the records, including the

name of the individual for whom the drawings were prepared (the affected party) be withheld. The city also requests that I provide some additional information as to my position on the application of section 14(3)(f) to the records at issue.

### **Analysis and findings**

[23] For me to reconsider the Order there must be a basis to do so that fits within one of the three grounds for reconsideration in section 18.01 of the *Code*.

[24] In Order PO-2538-R, the adjudicator reviewed the case law regarding an administrative tribunal's power to re-open a matter, including the Supreme Court of Canada's decision in *Chandler*.<sup>4</sup> With respect to the reconsideration request before him, the adjudicator in PO-2538-R 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*.<sup>[5]</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 [parties requesting reconsideration]. ... 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.

[25] As observed by the adjudicator in MO-4057-R, this approach has been adopted and applied in subsequent IPC orders,<sup>6</sup> including Order PO-3062-R, where the same adjudicator affirmed that the reconsideration process established by the IPC is not intended to provide a forum for re-arguing or substantiating arguments made (or not) during the inquiry into the appeal.

[26] I have taken these principles into account when reviewing the city's reconsideration request.

[27] The city's claim is that sections 18.01(b) and (c) of the *Code* apply. Section 18.01(b) states that the IPC may reconsider an order or other decision where it is established that there is some other jurisdictional defect in the decision. Section 18.01(c) states that the IPC may consider an order or other decision where it is established that there is a clerical error, accidental error or omission or other similar

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<sup>4</sup> Cited above.

<sup>5</sup> Referring to *Grier v. Metro Toronto Trucks Ltd.* (1996), 28 O.R. (3d) 67 (Div. Ct.).

<sup>6</sup> See for example, Orders PO-3062-R, PO-3558-R and PO-4004-R.

error in the decision.

***No jurisdiction***

[28] Concerning the city's position that I did not have the jurisdiction to order the release of the records because the records did not form part of the access request (2018-204) giving rise to appeal MA19-00136, I do not agree for the following reasons, in which I set out the chronology of the access request leading to appeal MA19-00136.

[29] Page 2 of the appellant's access request to the city dated December 12, 2018 refers to records listed as (a) through (k) and include floor plans, architectural elevations, engineering floor plans, roof plans, technical drawings, basements plans and site plans. According to the access request, some of these records had been the subject matter of a previous access request (2018-081) but were now part of the new access request, as set out in the appellant's cover letter in which he stated:

Under cover of the hard copy of this letter, we enclose a fresh Access Request Form . . .

. . . [W]e trust that the fresh form enclosed with this letter will be sufficient to communicate our request for records related to any City Department with respect to the above-identified property.

[30] The city's access decision in response to the access request of December 12, 2018 is dated January 21, 2019 and was assigned file number 2018-204. Its index of records refers to emails with attachments such as plans and technical drawings. The city's position is that the records which were the subject matter of request 2018-081 did not form part of the new request (2018-204). The city did not address this or refer to it in the access decision referred to as 2018-204.

[31] The city alleges that the appellant did not refer to the city's file number when filing his appeal with the IPC. In fact, in reviewing the appeal the appellant made to the IPC, the appeal form specifically refers to the fact that the decision being appealed was file number 2018-204.

[32] During the mediation of appeal MA19-00136, the appellant advised the IPC mediator assigned to the file that floor plans, architectural elevations and site plans were at issue in the appeal. The mediator conveyed this information to the city. The city responded by referring to these records as "documents from 2018-081" and that certain exemptions applied to them. The city did not articulate its position that these records ought not to form part of file number 2018-204 and appeal MA19-00136.

[33] On April 17, 2019, the city provided third party notice to three third parties regarding a request it received for all architectural drawings related to a building permit for a specified address. The file number referred to was 2018-204 and the appeal number referred to was MA19-00136.

[34] On June 11, 2019, the city issued a supplementary decision letter to the appellant, denying access to "custom home drawings." This decision letter included an index of records. In response to questions the appellant had about the index, the city sent an email dated June 26, 2019 to the appellant's legal counsel with the subject line IPC Appeal MA19-00136/2018-204 stating, in part:

I understand there has been some confusion surrounding the indexes of records from the City regarding the A-K Records that are still at issue in this appeal.

This email is to confirm that the records listed in the most recent index are the records listed in your previous letter as items A-K. These records are the architectural drawings of the custom home at [a specified address].

...

We have received all of the drawings for this property and they are the records listed in the index. They are the records that correspond to items A-K.

[35] The mediator's report was issued on September 19, 2019 and listed the records at issue as the "a-k" records. The city was invited to respond to the IPC if there were any errors or omissions in the report. The city did not respond to the mediator's report.

[36] During the inquiry of the appeal, the city was provided with the opportunity to provide representations and reply representations on the exemption it in section 14(1) it applied to records described as floor plans, a roof plan, elevation plans, a basement plan, site plans and technical drawings. The city's position is that these records are not the subject matter of appeal MA19-00136, yet it did not address this issue during the inquiry of the appeal.

[37] I find that, at all times the city has treated the records at issue as part of access request 2018-204 and appeal MA19-00136. As previously stated, the reconsideration process established by the IPC is not intended to provide a forum for re-arguing or substantiating arguments made (or not) during the inquiry into the appeal. Accordingly, I find that the city has not established this ground (no jurisdiction to deal with the records at issue) for reconsidering Order MO-4108 and I decline to reconsider it on this basis.

***The presumption in section 14(3)(f) of the personal privacy exemption in section 14(1)***

[38] Turning to the possible application of the presumption in section 14(3)(f) to the records, in my view, the arguments made by the city are further arguments about core issues that were before me in the appeal. The city had the opportunity to make



arguments about these issues and they were considered by me in my deliberations. Mere disagreement with a decision is not a ground for reconsideration under section 18.01 of the *Code*.<sup>7</sup> The city has not established that there was some other jurisdictional defect in the decision or a clerical error, accidental error or omission or other similar error in the decision within the meaning of sections 18.01(b) or (c). Having concluded that there are no grounds to reconsider the Order, it is not necessary to examine the merits of the city's arguments. However, I point out to the city that the principles underlying the arguments made with respect to section 14(3)(f) in this reconsideration request are addressed in paragraphs 25, 26, 27, 28, 29, 30 and 31 of the Order, in which I found that the exemption in section 14(1) and hence the presumption in section 14(3)(f) could not apply because the records did not contain the personal information of an identifiable individual. Instead, I found that the records were about a "property."

[39] In conclusion, as the city has not established any of the grounds upon which I may reconsider Order MO-4108, I deny its reconsideration request.

**ORDER:**

I dismiss the city's reconsideration request. I confirm that the city is required to comply with the order provisions in Order MO-4108. As the date for compliance has now passed, I order the city to comply with Order MO-4108 by **February 4, 2022**.

Original Signed by: \_\_\_\_\_  
Cathy Hamilton  
Adjudicator

\_\_\_\_\_ January 5, 2022

<sup>7</sup> Orders PO-2538-R and PO-3062-R.