

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4157-R

Appeal MA19-00531

City of Toronto

Order MO-4139

February 3, 2022

Summary: The appellant submitted a request for reconsideration of Order MO-4139, seeking a reconsideration of the adjudicator's finding that the city conducted a reasonable search for responsive records. In this Reconsideration Order, the adjudicator finds that the appellant has not established that grounds exist under section 18.01 of the IPC's *Code of Procedure* for reconsidering Order MO-4139, and she denies the reconsideration request.

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

Orders Considered: Orders MO-4139, 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-4139, which was issued regarding an appeal of an access decision made by the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) in response to a request for:

A copy of the inspection records for [a specified property], that resulted in the RentSafeTO Building Evaluation letter dated December 27, 2017. This request is for:

1. the name and title of the officer who inspected [the specified property] on December 15, 2017 and created the Evaluation Report.
2. the schedule of the officer who attended [at the specified property] on December 15, 2017.
3. all of the notes, records, and photographs made by the officer [regarding the specified property] on December 15, 2017.
4. all of the steps and records used to convert the December 15, 2017 inspection into the December 27, 2017 Evaluation report.
5. what is the significance of the "RAI" on the first page of the Evaluation report?

Time frame: Oct 1, 2017 to Jan 1, 2018.

[2] The city issued a decision granting full access to the records located and identified as responsive by staff of the Municipal Licensing & Standards Division (MLS).

[3] The requester, now the appellant, appealed the city's decision to the Information and Privacy Commissioner of Ontario (IPC), because he believed that further records responsive to his request should exist.

[4] When mediation did not result in a resolution and the appeal moved to adjudication, I conducted an inquiry. Upon completion of the inquiry, I issued Order MO-4139, in which I found that the city conducted a reasonable search for responsive records. After Order MO-4139 was issued, the appellant contacted the IPC and he was provided with information about the reconsideration process under section 18 of the IPC's *Code of Procedure* (the *Code*). After receipt of this information, the appellant requested a reconsideration of Order MO-4139 under section 18.01(c) of the *Code*.

[5] For the reasons that follow, I deny the reconsideration request, because the appellant has not established grounds in section 18.01 of the IPC's *Code* for reconsidering Order MO-4139.

DISCUSSION:

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-4139?

[6] 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 appellant's reconsideration request

[7] The appellant submits that two particular records, which he has been seeking since he submitted his initial request to the city, have not been released to him as a result of Order MO-4139. The appellant submits that this is an "accidental error or omission or other similar error in the decision" that fits under section 18.01(c) of the *Code*.

[8] The appellant's representations do not otherwise address section 18.01(c) of the *Code* or the other grounds in section 18.01. However, the appellant included with his reconsideration request a list of "germane matters to consider." This list largely consists of allegations of misconduct and fraud against the city's MLS staff with respect to their investigation into a specified property. The appellant alleges that the city has failed to produce inspection notes as well as the photographs in their original file format, and says that the Evaluation Report disclosed to him by the city must be fraudulent.

[9] The appellant submitted documents, including the Evaluation Report, photographs, correspondence from the city, and emails, containing his handwritten notes requesting further information from the city and his comments about the conduct of MLS staff. The appellant also submitted an email providing background information about his history with the city and his allegations against MLS staff, as well as two letters. The first letter, addressed to me, outlines his concerns about the adequacy of

the disclosure he recently received from the city as a result of another access request,¹ which is not the subject of Order MO-4139, and reiterates some of his allegations of fraud and misconduct against MLS staff. The second letter is one that he previously sent to an IPC mediator about this other request also outlining the same allegations against MLS staff.

Analysis and findings

[10] The appellant's request for reconsideration of Order MO-4139 is made under section 18.01(c) of the *Code*. He does not argue, and there is no basis on the evidence before me for finding, that there has been a fundamental defect in the adjudication process or other jurisdictional defect in the decision under sections 18.01(a) or 18.01(b).

[11] In Reconsideration Order PO-2538-R, former 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 Assn. of Architects*.² 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 International Trucks Ltd.*³

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.

[12] This approach has been adopted and applied in subsequent IPC orders.⁴ 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:

¹ This second request is the subject of another IPC appeal in which I am also the adjudicator. I will address this further below.

² [1989] 2 SCR 848 (*Chandler*).

³ 1996 CanLII 11795 (ON SC).

⁴ See, for example, Orders MO-3478-R, PO-3062-R and PO-3558-R.

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...

[13] 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.

[14] The appellant is requesting a reconsideration of Order MO-4139, because he alleges there is an error that fits within section 18.01(c) of the *Code*. Section 18.01(c) of the *Code* contemplates "clerical or accidental error, omission or other similar error in the decision." Previous IPC orders have held that an error under section 18.01(c) may include:

- a misidentification of the "head" or the correct ministry;⁵
- a mistake that does not reflect the Adjudicator's intent in the decision;⁶
- information that is subsequently discovered to be incorrect;⁷ and
- an omission to include a reference to and instructions for the institution's right to charge a fee.⁸

[15] The error that the appellant is alleging in his reconsideration request is that two particular records have not yet been disclosed to him by the city. The appellant argues that this is an omission in the decision.

[16] I have reviewed all of the materials submitted by the appellant in support of his reconsideration request. However, I find that the documents he submitted, along with his allegations of misconduct and fraud against MLS staff, are not relevant to my determination of whether he has established grounds for reconsideration of Order MO-4139 under section 18.01(c) of the *Code* or any other ground.

[17] Based on the evidence before me, I find that the appellant's allegation that the city has not disclosed the two identified records is not the type of error that is contemplated by section 18.01(c) because the error alleged is not with Order MO-4139, but with the actions of the city. The appellant has other appeals with the IPC in which I am also the adjudicator. The two specific records that the appellant alleges are omitted from my finding on the issue of search in Order MO-4139 are at issue in another one of his appeals before me. In fact, after the appellant requested a reconsideration of Order

⁵ Orders P-1636 and R-990001.

⁶ Order M-938.

⁷ Orders M-938 and MO-1200-R.

⁸ MO-2835-R.

MO-4139, the city issued an access decision granting him full access to these two records in this other appeal. Given these circumstances, I find that the appellant has not established the ground for reconsideration under section 18.01(c) of the *Code*, because he has not established that there was a clerical error, accidental error or other similar error in Order MO-4139 as contemplated by this section.

[18] As I stated above, the appellant has not argued that there was a fundamental defect in the adjudication process, or some other jurisdictional defect in the decision in Order MO-4139. Based on the circumstances of this appeal, I find that there is no basis for reconsideration under sections 18.01(a) or (b) of the *Code*.

[19] Accordingly, I find that the appellant has not established any of the grounds for reconsideration under section 18.01 of the *Code*, and I deny his request that I reconsider Order MO-4139.

ORDER:

I deny the appellant's request for reconsideration of Order MO-4139.

Original Signed by: _____
Anna Truong
Adjudicator

February 3, 2022 _____