

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-4170-R

Appeal MA20-00180

The Corporation of the Township of South Glengarry

Order MO-4159

February 24, 2022

**Summary:** This order addresses the appellant's request to reconsider Order MO-4159 on the basis that he believed there are gaps in the Order, among other concerns. In this order, the adjudicator finds that the appellant has failed to establish that any of the grounds for reconsideration are present as required by section 18.01 of the *Code of Procedure* and she therefore denies the reconsideration request.

**Statutes Considered:** IPC *Code of Procedure*, section 18.01; *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O., Ch. M.56, sections 17 and 37.

### OVERVIEW:

[1] This order addresses a request that I reconsider Order MO-4159 (the Order). The reconsideration request is made by the appellant, who first made an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Township of South Glengarry (the township).

[2] The appellant requested access to his "personal information records," referencing the township's personal information bank index, among other things. The township told the appellant that it did not maintain any personal information banks or the corresponding index. After discussing it with the appellant, the township reformulated the request and issued a decision, in which it disclosed some records that were

identified as responsive to the reformulated request.

[3] The appellant appealed to the Information and Privacy Commissioner (IPC). The main focus of the appeal was the township's failure to maintain a personal information bank index and its corresponding failure to search for records within its personal information banks.

[4] Additional issues were added to the appeal, including the appellant's objection to the IPC mediator providing me with the Mediator's Report and other parts of the township's access decision.

[5] During the adjudication stage of the appeal, the township explained that it in fact does maintain personal information banks. Also during the adjudication stage, the township published on its website a personal information bank index.

[6] Although several issues were canvassed in the adjudication of the appeal, the Order addressed only the following issues: the appellant's concerns about the Mediator's Report, the appellant's concerns about the township's lack of a personal information bank index as required by section 34 of the *Act*, the scope of the request and the reasonableness of the township's search for records.

[7] I found that the issues raised by the appellant in relation to the Mediator's Report were unfounded. I also found that because the township has now published its personal information bank index concerns about whether the township is in breach of section 34 of the *Act* are moot.

[8] Regarding scope and reasonable search, I found that the township's reformulation of the appellant's access request did not reflect the appellant's request and that, therefore, the categories of records that were searched were not responsive to the appellant's access request.

[9] However, I did not order the township to carry out further searches. Rather, I explained that the appellant may now make a new request for his personal information contained within the township's personal information banks but he must first specify which personal information bank(s) that he believes contain his personal information.

[10] The appellant submitted a request for reconsideration. I notified the township of the request, although I did not find it necessary to seek the township's views.

[11] In this reconsideration order, I find that the appellant failed to establish that any of the grounds for reconsideration in section 18.01 of the IPC's *Code of Procedure* (the *Code*) apply and I therefore deny the reconsideration request.

## **DISCUSSION:**

### **Does the request for reconsideration establish any of the grounds for reconsideration set out in section 18.01 of the *Code*?**

[12] 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>1</sup>

[13] The Order is a final decision.

[14] 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.

[15] The reconsideration process set out in the *Code* is not intended to provide parties with a forum to re-argue their cases.<sup>2</sup>

[16] As a threshold matter, I must first determine whether there are sufficient grounds to reconsider the Order.

#### ***The reconsideration request***

[17] The appellant submits that there is a "jurisdictional defect in the decision" or an "omission or other similar error in the decision." I understand therefore that the appellant asserts that either ground 18.01(b) or (c) is present.

[18] To begin, the appellant refers to the second part of his original request, which was:

2. Please identify and provide all S34 [section 34 of the *Act*] Personal Information Bank index or records relating to my personal information records which I have not previously requested.

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<sup>1</sup> This is referred to as *functus officio*. See Order PO-2538-R.

<sup>2</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.) and Orders PO-3062-R, PO-3558-R, MO-3975-R, MO-4004-R and MO-4057-R, as examples.

[19] He says that this portion of his request “specifically requests the institution to identify the related personal information banks, as required by the” *Act*. He says that the published online index “without any help” does not fulfil this part of his request. He says, more directly, that the Order does not deal with the above-quoted portion of his request.

[20] He also argues “there is no jurisdiction or authority for the Order to impose – or imply the imposition of conditions, that the *Act* itself does not impose.” Specifically, the appellant disputes that when making a request he must identify which particular personal information bank that he believes contains his personal information.

[21] He refers to a template access request form developed by the IPC that prompts requesters to identify the personal information bank or record, “if known,” emphasizing, as I understand the argument, that a requester may not know where their personal information is located.

[22] The appellant also makes several other points. He says that the Order conflates the request at issue with prior requests and that this is a jurisdictional defect in the decision. He submits that any perceived distinction between “records that contain his personal information” and “personal information records” should be resolved in his favour.

[23] Lastly, as I understand the argument, the appellant submits that by failing to order additional searches (or other actions), the Order did not comply with a letter sent to him by the IPC Registrar in response to inquiries about the status of his file that said that issues relating to his access request “are being addressed” in this appeal (and another appeal).

[24] The appellant also provided me with copies of recent correspondence between himself and the township evidencing his efforts to seek assistance and further pursue his request.

### ***Ruling***

[25] In the reasons that follow I explain why I have concluded that the appellant has not established that any of the grounds for reconsideration set out in section 18.01 of the *Code* are present.

[26] Viewing the reconsideration request broadly and taking account of all of the appellant’s points, it contains two main arguments. First that the order contains a gap and second that the order imposes on the appellant a duty that he does not believe that he has. I will address each in turn.

#### *The perceived gap*

[27] I understand that the appellant has sought, and continues to seek, the

township's assistance to identify locations within the township where his personal information may be stored. With reference to the wording of his original request, he asserts that the Order contains an error or has a jurisdictional defect because it did not deal with the part of his request that, as I understand it, seeks the township's assistance in identifying which personal information banks may contain his personal information.

[28] In other words, the appellant believes that there is a gap in the Order and that this gives rise to an error within the meaning of section 18.01(b) or constitutes a jurisdictional defect within the meaning of section 18.01(c).

[29] I disagree. The Order fully grappled with the entirety of the appellant's request, which incorporated the context and clarification provided by the appellant's subsequent request (described at paragraph 77 of the Order). My findings about scope of the request are at paragraphs 112 to 116 of the Order.

[30] I also explained why I made no further order and addressed how the appellant could proceed if he wished. I said:

[121] The outcome is that the township has not carried out a search that is responsive to the request. Ordinarily in a case like this, the IPC would order the township to carry out further searches. In my view, it is not appropriate to do so in this case.

[122] Although the township's reformulation was not an accurate reflection of the request, the appellant's request as explained above is not sufficiently specific because it does not identify which personal information banks to search. [citing Order PO-3085.] In fairness to the appellant, he was not able to determine the township's personal information banks until recently.

[123] If the appellant wishes to continue to pursue these records, he may do so while clearly identifying which particular personal information bank that he believes contains his personal information.

[31] Although the appellant may disagree with the findings in the Order, the reconsideration process is not a forum to re-argue or further substantiate arguments made in the appeal.<sup>3</sup>

### *The appellant's obligations*

[32] I also understand that the appellant disputes that he is under any obligation to identify *which* personal information banks that he believes may contain his personal information. The appellant argues that because the Order indicates that he must

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<sup>3</sup> See for example, Orders PO-3062-R, PO-2879-R, and MO-4057-R.

identify the personal information banks that he believes contain his personal information, there is a jurisdictional defect in the Order.

[33] I disagree. The obligations of requesters seeking access to personal information about themselves – and of institutions responding to those requests – are plainly set out in sections 37 and 17 of the *Act*, which state (in part, emphasis added):

37(1) An individual seeking access to personal information about the individual shall,

(a) make a request in writing to the institution that the individual believes has custody or control of the personal information, and specify that the request is being made under this Act;

(b) identify the personal information bank or otherwise identify the location of the personal information; and

...

Access procedures

(2) Subsections 4 (2), 17 (1.1) and (2) and sections 18, 19, 20, 20.1, 21, 22 and 23 apply with necessary modifications to a request made under subsection (1).

...

17(1) A person seeking access to a record shall,

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[34] I trust that both the appellant and the township are fully aware of their respective obligations in the *Act* and will work to meet them. No further order of the IPC is necessary to supervise the township's response to any related new request made by the appellant, now with the benefit of the personal information bank index.

[35] Because the appellant has not established that any of the grounds in section 18.01 of the *Code* are present, I will not reconsider the Order.

## **ORDER:**

I dismiss the appellant's reconsideration request.

Original signed by: \_\_\_\_\_  
Valerie Jepson  
Adjudicator

February 24, 2022 \_\_\_\_\_