

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4419-R

Appeal MA22-00357

Niagara Regional Police Services Board

Order MO-4386

July 26, 2023

Summary: The appellant submitted a request for reconsideration of Order MO-4386, which dismissed her appeal of the police's decision to deny her correction request. In her reconsideration request, the appellant claimed fundamental defects in the adjudication process and jurisdictional defects. In this order, the adjudicator finds that the appellant has not established any ground under section 18.01 of the IPC's *Code of Procedure* for reconsideration and denies the reconsideration request. She also denies the appellant's request that another adjudicator respond to her reconsideration request.

Statutes Considered: IPC *Code of Procedure*, sections 18.01 and 18.08.

Orders and Investigation Reports Considered: MO-4386.

OVERVIEW:

[1] This decision addresses the appellant's request for a reconsideration of Order MO-4386, which dismissed Appeal MA22-00357 with no inquiry. The appellant filed Appeal MA22-00357 under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) after the Niagara Regional Police Services Board (the police) denied her request for correction of certain police records involving her.

[2] In Order MO-4386, I determined that the corrections sought by the appellant in

Appeal MA22-00357 did not meet the requirements for the police to grant them; they did not involve information that was “inexact, incomplete or ambiguous” and they sought to replace the opinion of the investigating police officers with the opinion of the appellant about the incidents in question. I concluded that, because correction of the investigatory records at issue could not be granted under the *Act*, no inquiry was warranted. Accordingly, I exercised my discretion under section 41(1) of the *Act* not to conduct an inquiry.

[3] By letter dated June 28, 2023, the appellant expressed her dissatisfaction with Order MO-4386 and requested that it be reconsidered by another adjudicator. In the discussion that follows, I explain why I deny the appellant’s reconsideration request.

DISCUSSION:

Has the appellant established any ground for reconsideration?

[4] There is no express power of reconsideration in the *Act*. The IPC’s *Code of Procedure (Code)*, which sets out procedural guidelines for appeals before the Information and Privacy Commissioner of Ontario (IPC), addresses the IPC’s reconsideration process.

[5] Section 18.01 of the *Code* sets out the grounds for reconsideration of an IPC order and reads:

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.

[6] As confirmed in many IPC orders, the reconsideration process is not a forum for parties who disagree with a decision to reargue their case in an attempt to obtain a more agreeable decision. And mere disagreement with an order is not a ground for reconsideration under section 18.01 of the *Code*.¹ The appellant’s reconsideration request repeats the arguments she made during the adjudication stage of the appeal; specifically, her complaints about the police officers’ conduct during their investigation of the incidents at issue in the police records, and her assertion that her correction request was valid and should have been granted. These repeated arguments are an attempt by the appellant to reargue Appeal MA22-00357, because she is dissatisfied

¹ See, for example, Orders PO-2538-R, PO-3062-R, PO-4199-R, MO-4154-R and MO-4167-R.

with Order MO-4386, and they do not establish any ground for reconsideration.

[7] The appellant's reconsideration request also claims that there is a fundamental defect in the adjudication process and there are other jurisdictional defects in the order, alluding to the grounds in sections 18.01(a) and (b) without citing them and without providing arguments that clearly address each ground. The main defect the appellant claims is that I did not consider each of her arguments and all of the evidence that she provided. I reject this claim. Paragraphs 13 and 14 of Order MO-4386 confirm that I considered all of the appellant's representations and examined all of the documents that she submitted as evidence.

[8] The appellant also claims that the federal *Privacy Act*² applies and that the police's actions contravened three sections of that Act.³ The federal *Privacy Act* does not apply to the police; it applies to federal institutions, as defined in the *Privacy Act*. The IPC has no jurisdiction under the *Privacy Act*. Moreover, this argument is not relevant to the correction issue that was before me in Order MO-4386, and it is not relevant to the grounds for reconsideration set out in section 18.01 of the *Code*. As I stated at paragraph 12 of Order MO-4386, I have no jurisdiction to address the appellant's concerns about the police officers' conduct.

[9] Finally, the appellant asserts that her records should have been destroyed six months after their creation because there was no conviction. She argues that the police's retention of the records contravenes her fundamental rights under the *Canadian Human Rights Act*⁴; however, she does not cite a specific section of that Act or specify the fundamental rights that have allegedly been contravened. These arguments, about the purging of her police records, appear to refer to procedures that some police services have established that allow individuals to request the purging of non-conviction records. While a purge request may be available to the appellant in another forum, I have no jurisdiction to address that issue. As I stated in Order MO-4386, there is no provision under the *Act* that contemplates the destruction of the records at issue.

[10] As I noted above, the appellant also asks that another adjudicator be assigned to her reconsideration request in my place. In asking for another adjudicator, the appellant does not allege that I am biased; rather, she asserts that I did not conduct the adjudication appropriately and she disagrees with my decision to exercise my discretion in Order MO-4386 not to conduct an inquiry. Section 18.08 of the *Code* states that a reconsideration request will be addressed by the adjudicator who made the decision in question, unless that person is unable to do so for any reason. The appellant has provided no reason for me to deviate from section 18.08 of the *Code* in this

² R.S.C., 1985, c. P-21.

³ The appellant cites sections 5(3)(a) and (b) (exceptions to the duty of government institution to inform an individual about the purpose for the collection of their personal information), 7(a) (use of personal information) and 10(1)(a) (information to be included in information banks).

⁴ R.S.C., 1985, c. H-6.

instance.⁵ I deny the appellant's request for another adjudicator.

[11] I have considered all of the appellant's submissions in her reconsideration request and find that they establish no ground for me to reconsider Order MO-4386. The appellant's reconsideration request does not fit within any of the three grounds for reconsideration in section 18.01 of the *Code*. It does not fit within section 18.01(a) because it does not establish a fundamental defect in the adjudication process. Past orders have found that various breaches of the rules of natural justice respecting procedural fairness will qualify as a fundamental defect in the adjudication process for the purpose of section 18.01(a); for example: a failure to notify an affected party,⁶ or to invite sur-reply representations where new issues or evidence are provided in reply.⁷ It also does not fit within section 18.01(b) because it does not establish any jurisdictional defect. Finally, the reconsideration request does not establish any clerical, accidental or similar error, as required to fit within section 18.01(c).

[12] Having found that the appellant's reconsideration request does not establish any of the grounds for reconsideration in section 18.01 of the *Code*, I deny it.

Original Signed by: _____

Stella Ball
Adjudicator

July 26, 2023

⁵ Section 20.01 of the *Code* states:

The IPC may waive or vary any of the procedures prescribed by or under this Code, including any requirement or time period specified in any written communication from the IPC, if it is of the opinion that it would be advisable to do so in order to secure the just and expeditious determination of the issues.

⁶ Orders M-774, R-980023, PO-2879-R and PO-3062-R.

⁷ Orders PO-2602-R and PO-2590-R.