

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4433-R

Appeal MA21-00159

London Police Services Board

Order MO-4402

August 29, 2023

Summary: The appellant submitted a request for reconsideration of Order MO-4402, which upheld the police's access decision and search for responsive records. In his reconsideration request, the appellant claimed that there were serious omissions in the order. In this reconsideration order, the adjudicator denies the reconsideration request because the appellant has not established any of the grounds for reconsideration in section 18.01 of the IPC's *Code of Procedure*.

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

Orders Considered: Orders MO-3980, PO-2538-R, PO-3062-R, and PO-2879-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-4402, which was issued regarding an appeal of an access decision made by the London Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to a list of every time the police searched for the appellant in a police database from 2009-2020.

[2] In Order MO-4402, I found that the police conducted a reasonable search for responsive records and that the responsive record is exempt from disclosure under section 38(a) read with section 8(1)(g) of the *Act*, and dismissed the appeal.

[3] After Order MO-4402 was issued, the appellant contacted the IPC to convey that the order was missing important information. Specifically, the appellant states that Order MO-4402 did not include his representations about an alleged conflict of interest against the police and their staff, the name of a specified organization that he alleges is a white supremacist group, and how long it took for the police to issue their access decision after the time extension. The appellant seeks a reconsideration of Order MO-4402 to include this information.

[4] 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 of Procedure* (the *Code*) for me to reconsider Order MO-4402.

DISCUSSION:

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-4402?

[5] 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 omission 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.

[6] *Functus officio* is a common law principle, which states that once a matter has been determined by a decision-maker, generally speaking, he or she has no jurisdiction to further consider the issue. However, the *Code* provisions are a summary of the common law position acknowledging the ability of a decision-maker to re-open a matter to reconsider it in certain circumstances.¹ In other words, I am *functus* and unable to

¹ Order PO-2879-R.

further consider the issues that were under appeal unless the party requesting the reconsideration establishes one of the grounds in section 18.01.

Representations, analysis and findings

[7] The appellant did not specify under which ground of section 18.01 of the *Code* he is making his reconsideration request. However, the appellant submits that I erred in Order MO-4402 because I did not include or address his representations about a conflict of interest against the police and their staff due to an alleged affiliation with a specified organization that he alleges is a white supremacist group. The appellant also submits that I erred by not naming that specific organization in my order. Lastly, the appellant states that I erred by not including how many days it took for the police to issue their access decision. The appellant seeks a reconsideration of Order MO-4402 to include this information.

[8] For me to reconsider Order MO-4402, the appellant's request must fit within one of the three grounds for reconsideration in section 18.01 of the *Code*. Since the appellant did not specify under which ground in section 18.01 he is making his reconsideration request, I will consider all three grounds.

[9] Section 18.01(a) of the *Code* specifies that the IPC may reconsider an order where it is established that there is 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).² Examples of such breaches would include a failure to notify an affected party,³ or to invite sur-reply representations where new issues or evidence are provided in reply.⁴

[10] Section 18.01(b) relates to whether an adjudicator has the jurisdiction under the *Act* to make the order in question. An example of a jurisdictional defect would be if an adjudicator ordered a body that is not an institution under the *Act* to disclose records. Section 18.01(c), meanwhile, allows for reconsideration of an order that contains clerical or other similar errors or omissions. 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

² Order PO-4134-I.

³ Orders M-774, R-980023, PO-2879-R and PO-3062-R.

⁴ Orders PO-2602-R and PO-2590.

⁵ Orders P-1636 and R-990001.

⁶ Order M-938.

- an omission to include a reference to and instructions for the institution's right to charge a fee.⁸

[11] I will begin by addressing the appellant's argument that I did not include or address his representations about an alleged conflict of interest against the police and their staff due to an alleged affiliation with a specified organization that the appellant alleges is a white supremacist group.

[12] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, the Supreme Court of Canada reaffirmed its finding in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)* that an administrative decision maker is not required to explicitly address every argument raised by the parties. Moreover, the fact that a decision maker's reasons do not address all arguments will not, on its own, impugn the validity of those reasons or the result.⁹

[13] While I did not reproduce the appellant's representations verbatim, I did address his allegations of a conflict of interest against the police and their staff. In paragraph 45 of Order MO-4402, I wrote:

[45] The appellant's representations do not specifically address the sections 38(a) or 8(1) exemptions. His representations make allegations against the police and specific police staff members. They also outline his concerns about white supremacist groups and an organization that he alleges is a white supremacist group (the organization), and their relationship with the police. The appellant's representations go on to make allegations of a conflict of interest against the FOI analyst processing his request because he alleges that she is part of the organization. Given the appellant's claims are unsupported by any evidence, I make no finding about the organization or his specific claims against the FOI analyst.

[14] 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*.¹⁰ 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

⁷ Orders M-938 and MO-1200-R.

⁸ MO-2835-R.

⁹ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; and *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R.

¹⁰ [1989] 2 SCR 848 (*Chandler*).

law set out in *Chandler* and other leading cases such as *Grier v. Metro International Trucks Ltd.*¹¹

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.

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

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...

[16] I accept and adopt this reasoning here. As noted above, I addressed the appellant’s allegations of a conflict of interest against the police and their staff in Order MO-4402, and I find that the appellant’s arguments regarding this is an attempt to re-argue this point, which does not provide a basis for granting his reconsideration request.

[17] The appellant argues that I should have included the name of the specified organization that he alleges is a white supremacist group and how long the police took to issue an access decision, implying that there was an omission in Order MO-4402. In the context of this appeal, I find that the omission of this information is not an omission that would fit within section 18.01(c) of the *Code*. The name of the specified organization and how long it took the police to issue an access decision had no bearing on my determination of the issues in Order MO-4402, so this information did not need to be included in my analysis and reasons. With respect to the name of the specified organization, the IPC typically identifies by name institutions, but it does not typically identify other parties and organizations in the order. I followed this approach in Order MO-4402 by referring to the specified organization as “the organization.” Also, given my findings about the appellant’s allegations (set out above), it is my view that it would not be appropriate to identify this organization.

¹¹ 1996 CanLII 11795 (ON SC).

¹² See, for example, Orders MO-3478-R, PO-3062-R and PO-3558-R.

[18] Based on the circumstances of this appeal, I am satisfied that the omission of the name of the specified organization and how long the police took to issue an access decision had no effect on the outcome of Order MO-4402, which was my finding that the police conducted a reasonable search and that the responsive record is exempt from disclosure under section 38(a) read with section 8(1)(g) of the *Act*. Therefore, I find that the ground for reconsideration in section 18.01(c) of the *Code* has not been established.

[19] The appellant 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). Accordingly, I find that the appellant has not established any of the grounds for reconsideration under section 18.01 of the *Code*, and I decline to reconsider Order MO-4402.

ORDER:

The request for reconsideration of Order MO-4402 is denied.

Original Signed by: _____

Anna Truong
Adjudicator

August 29, 2023