

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4471-R

Appeal MA23-00529

Kingston Police Services Board

Order MO-4403

December 12, 2023

Summary: An affected third party opposed disclosure of a record ordered disclosed by Order MO-4403. They submitted a request for reconsideration, claiming a defect pursuant to section 18.01(a) of the IPC's *Code of Procedure* and submitted fresh submissions in support of their position against disclosure. The adjudicator finds that the grounds for reconsideration in section 18.01 have not been established and that the submission of additional representations does not establish a basis for reconsidering the order pursuant to section 18.02. The adjudicator denies the reconsideration request.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, sections 14(1), 14(2)(a) and (f); *IPC Code of Procedure*, section 18.01(a) and 18.02.

Orders Considered: Orders PO-2358-R, PO-3062-R, and MO-4403.

Cases Considered: *Chandler v. Alberta Assn. of Architects* (1989), 62 D.L.R. (4th) 577 SCC.

OVERVIEW:

[1] This decision addresses an affected third party's request for a reconsideration of Order MO-4403, which dealt with a request for access to a list of homicides involving intimate partners cleared by the Kingston Police Services Board (the police) over a five-year period between 2015 and 2020.

[2] The police created a record that lists homicides the police determined involved intimate partners during the requested time period.¹ The record contains names, locations and outcomes,² and indicates whether there had been any peace bonds in place. The police denied access to the record, and the appellant appealed the police's decision to the Office of the Information and Privacy Commissioner of Ontario (IPC). The appellant is the original requester, a member of the media.

[3] I conducted an inquiry during which I sought representations from the appellant and the police, as well as from individuals whose interests might be affected by disclosure of the record (affected parties).³ The affected party making this reconsideration request is one of two affected parties who submitted representations during the inquiry. The affected party's family members are identified in the record, and the affected party opposes disclosure of their names.

[4] The affected party was notified of, and invited to make submissions during, the inquiry. The notice to affected parties included a consent form that they could complete by indicating whether or not they consent to disclosure of all, some, or none of the personal information in the record. The affected parties had the option to return a completed consent form, or to submit more comprehensive representations.

[5] The affected party returned a consent form indicating that she did not consent to disclosure of any information contained in the record. The affected party added a handwritten note onto the form in which she stated that she opposed disclosure because her family has suffered enough and that it is not okay to reopen wounds while they are still trying to cope and heal. She asked that her family not be made to re-live what happened as it was sufficiently difficult to live through on its own. She did not submit additional representations.

[6] In Order MO-4403, I found that the record contains personal information belonging to victims and accused individuals. I found that, although the record contains information that is highly sensitive (a factor weighing against disclosure in section 14(2)(f)), this factor was outweighed in the circumstances by the factor in section 14(2)(a), which favours disclosure where it is desirable for the purpose of subjecting

¹ The request defined intimate partners as individuals where the closest accused-victim relationship (as reported to the Canadian Centre for Justice Statistics at Statistics Canada) was a current or former romantic partner, and included a current or former spouse, common law partner, boyfriend/girlfriend, same-sex partner or other intimate partner. The requester – the appellant in this appeal – sought access to the names of the victims and accused, dates and locations of the homicides, a list of any charges or convictions, and any police records associated with peace bonds (pursuant to section 810 of the *Criminal Code*) in these cases.

² Charges, convictions, or deaths of perpetrators, whether as part of a murder-suicide or after.

³ Individuals whom I notified of the appeal and whom I invited to submit representations if they believed their interests might be affected by disclosure of some or all of the record at issue. These were an accused individual, and survivors of victims and deceased perpetrators. The record at issue does not contain personal information belonging to the affected party making this request. The record identifies the affected party's parents.

government or its agencies – in this case law enforcement and the criminal justice system – to public scrutiny. I found that disclosure would not constitute an unjustified invasion of personal privacy and that the record was therefore not exempt under section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[7] The affected party asks that the order be reconsidered pursuant to section 18.01(a) of the IPC's *Code of Procedure* (*Code*) because it is defective.

[8] For the reasons that follow, I find that the affected party has not established grounds in section 18.01 of the *Code* for reconsidering Order MO-4403.

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-4403?

[9] The *Act* does not contain an express power of reconsideration.⁴ The procedure and criteria for reconsideration of an order are set out in section 18 of the *Code*. Section 18 states in part that:

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.

[10] The affected party relies on the grounds for reconsideration in section 18.01(a). She states that:

This is a request for reconsideration of your order MO-4403 because under section 18.01(a) I find it defective.

⁴ Ordinarily, under the common-law principle of *functus officio*, once a decision-maker has determined a matter, he or she does not have jurisdiction to consider it further. *Functus officio* is a common law principle which means that, once a decision-maker has determined a matter, he or she has no jurisdiction to consider it further. I am *functus* unless the party requesting the reconsideration – in this case, the affected party whose deceased parents' personal information appears in the record – establishes one of the grounds in section 18.01 of the *Code*. The provisions in section 18.01 of the *Code* summarize the common law position acknowledging that a decision-maker has the ability to re-open a matter to reconsider it in certain circumstances. See Order PO-2879-R.

I want my family's name removed from any information being supplied to the media.

Analysis and findings

[11] The reconsideration process in section 18 of the *Code* is not intended to provide parties who disagree with a decision a forum to re-argue their case in an attempt to obtain a more agreeable decision. It is also clear that the presentation of new evidence is not sufficient, on its own, to require a reconsideration of a final decision.

Section 18.01(a): defect in the adjudication process

[12] In Order PO-2538-R, 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 Association of Architects*.⁵ Regarding 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 Toronto Trucks Ltd.*].⁶

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.

[13] Subsequent IPC orders have adopted this approach.⁷ 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 *Freedom of Information and Protection of Privacy Act* did not apply to information in records at issue in that appeal. In determining 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*, Adjudicator Loukidelis wrote that:

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

⁵ [1989] 2 SCR 848 (SCC).

⁶ 1996 CanLII 11795 (ON SC), 28 OR (3d) 67 (Div. Ct.).

⁷ See, for example, Orders PO-3062-R, PO-3558-R and MO-4004-R.

substantiating arguments made (or not) during the inquiry into the appeal...

[14] I accept and adopt this approach in this reconsideration request.

[15] For me to reconsider Order MO-4403 under section 18.01(a), I must be satisfied 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).⁸ Failure to notify an affected party is an example of such breach.⁹

[16] The affected party's representations do not allege a defect in the adjudication process. Rather, the affected party alleges a defect in my conclusion, namely that the record is to be disclosed. The affected party has provided with her reconsideration request more comprehensive reasons she believes her family members' personal information ought not be disclosed. Her representations in support of her reconsideration request challenge contemporaneous media reports about her family and impugn the media's motivations and methods in general. They also describe her deceased family members' relationship and the reasons she believes their deaths do not belong on a list associated with intimate partner violence. The affected party disagrees with my finding that the impact of disclosure on the privacy of individuals is limited, arguing that there should be no impact on the affected party or her family, and would be no impact if her family members' names were not disclosed.

[17] The affected party has also submitted two letters from family members with her reconsideration request that were not submitted during the inquiry.¹⁰ Both reiterate the affected party's submissions about her deceased family members' circumstances, including those that led to the police's conclusion that homicide was involved in their deaths.

[18] In my view, these additional representations are an effort to reargue the affected party's position but do not establish a fundamental defect in the adjudication process as required by section 18.01(a). Even if these additional representations were to be viewed as new evidence, section 18.02 of the *Code* states that the IPC will not reconsider a decision simply on the basis that new evidence is provided, in this case in the form of more comprehensive representations, whether or not that evidence was available at the time of the decision.

[19] As explained above, the affected party was notified of the appeal and, although her personal information does not appear in the record, she was provided with an opportunity to submit representations on the effects of disclosure. I considered the affected party's comments provided during the inquiry in my consideration of the

⁸ Order PO-4134-I.

⁹ Orders M-774, R-980023, PO-2879-R and PO-3062-R.

¹⁰ From other relatives of one of the deceased individuals.

factors in section 14(2) and, in particular, the factor at section 14(2)(f) (highly sensitive).

[20] Overall, I find that the reconsideration request is an expression of dissatisfaction with my decision and an attempt to reargue the affected party's position by making additional submissions. I am satisfied that the affected party had the opportunity to present more comprehensive representations during the inquiry.

[21] The affected party has also not raised, and I find that there is not, a jurisdictional defect in the decision for the purpose of section 18.01(b), or a clerical or other similar error as described in section 18.01(c).

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

ORDER:

1. The reconsideration request is denied.
2. The interim stay of Order MO-4403 is lifted and the police are ordered to comply with Order MO-4403 by **January 12, 2024**.

Original signed by: _____
Jessica Kowalski
Adjudicator

December 12, 2023 _____