

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-4474-R

Appeal PA21-00511

Ministry of Public and Business Service Delivery

Order PO-4463

January 11, 2024

Summary: The ministry submitted a request for reconsideration of Order PO-4463, seeking a reconsideration on the grounds that there was a fundamental defect in the adjudication process under section 18.01(a) of the IPC's *Code of Procedure* (the *Code*). In this Reconsideration Order, the adjudicator finds the ministry did not establish that grounds exist under section 18.01 of the *Code* for reconsidering Order PO-4463, including a fundamental defect in the adjudication process. She denies the reconsideration request and orders the ministry to comply with Order PO-4463.

Statutes Considered: The IPC's *Code of Procedure*, section 18.01(a).

OVERVIEW:

[1] This reconsideration order addresses the Ministry of Public and Business Service Delivery's (the ministry's) request that I reconsider Order PO-4463 on the basis that there is a fundamental defect in the adjudication process, which is a ground for reconsideration under section 18.01(a) of the Information and Privacy Commissioner of Ontario's (the IPC) *Code of Procedure* (the *Code*).

[2] Order PO-4463 disposed of the issues in an appeal arising from a request made by the appellant to the ministry under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The appellant made a continuing access request for the current

business contact information for the heads.

[3] The ministry issued a decision to the appellant denying him access to the records. The ministry claimed the exemption in section 22(a) (information publicly available) of the *Act*, advising the information the appellant requested is publicly available in the Directory of Institutions. The ministry advised the appellant it denied his request for continuing access under section 24(3) because the information requested was publicly available.

[4] The appellant appealed the ministry's decision to the IPC.

[5] During mediation, the appellant raised the application of sections 31(b) (publication of information re institutions), 32(c) (publication of types of records of the institution), 35(1) (documents made available), and 36(2) (annual review) of the *Act*. Mediation did not resolve the issues under appeal.

[6] Following my inquiry into the appeal, on November 30, 2023, I issued Order PO-4463. I determined the discretionary exemption in section 22(a) does not apply to the information the appellant requested and ordered the ministry to disclose the contact information of the heads of the two named colleges to the appellant. I also found the appellant's request qualified for continuing access under section 24(3) of the *Act* and ordered the ministry to provide the appellant with a proposed schedule for continuing access. Finally, I found the ministry fulfilled its obligations under sections 31(b), 32(c), 35(1) and 36(2) of the *Act*.

[7] On December 19, 2023, I received a reconsideration request from the ministry. The ministry seeks a reconsideration of Order PO-4463 on the ground that there was a fundamental defect in the adjudication process as per section 18.01(a) of the *Code*. The ministry submits my finding regarding section 22(a) is inconsistent with my finding that the ministry fulfilled its obligations under sections 31(b), 32(c), 35(1) and 36(2) of the *Act*.

[8] In this reconsideration order, I find the ministry failed to establish there is a fundamental defect in the adjudication process under section 18.01(a) or that any of the other grounds for reconsideration under section 18.01 apply. Accordingly, I deny the ministry's reconsideration request and order the ministry to comply with Order PO-4463.

DISCUSSION:

[9] The sole issue in this decision is whether the ministry has established grounds under section 18.01 of the *Code* to reconsider Order PO-4463.

[10] The IPC's reconsideration process is set out in section 18 *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.

[11] Previous orders of the IPC have held that a fundamental defect in the adjudication process may include a failure to notify an affected party,¹ a failure to invite representations on the issue of invasion of privacy,² or a failure to allow for sur-reply representations where new issues or evidence are provided in reply.³ These examples demonstrate there must evidence of a breach of natural justice for a party to establish grounds for reconsideration under section 18.01(a) of the *Code*.

[12] The ministry did not claim either section 18.01(b) or (c) and I find those are not relevant here.

[13] The reconsideration process set out in the Code is not intended to provide parties with a forum to re-argue their cases.⁴ It does not appear the ministry is re-arguing its case; rather, the ministry takes the position there is an inconsistency in my consideration of section 22(a) and sections 31(b), 32(c), 36(1) and 36(2) of the Act.

Ministry's request for reconsideration

[14] The ministry asks me to reconsider my finding that section 22(a) does not apply to the information requested by the appellant, specifically the business contact information for the chairs of the boards of governors of St. Lawrence College of Applied Arts and Technology (St. Lawrence) and Collège d'arts appliqués et de technologie La Cité collégiale (La Cité). Further, the ministry asks me to reconsider my decision that the appellant's request qualifies for continuing access under section 24(3) of the *Act*.

[15] The ministry requests I reconsider these two findings because it claims they are inconsistent with my later finding that the ministry fulfilled its obligations under sections 31(b), 32(c), 35(1) and 36(2) of the *Act*. The ministry refers to paragraph 44 of Order

¹ Orders M-774, PO-2879-R and PO-3062-R.

² Orders M-774 and R-980023.

³ Orders PO-2602-R and PO-2590.

⁴ See Reconsideration Orders PO-2538-R and PO-3062-R.

PO-4463, in which I found as follows:

... I find the ministry satisfied its obligations under sections 31(b), 32(c), 35(1) and 36(2) of the *Act*. Specifically, the schedule to Regulation 460 of the *Act* contains a list of the institutions and the job title of the head of the institution and the Directory of Institutions contains the name and contact information for the head (or delegated head) of the two colleges in fulfilment of the ministry's obligations under section 31(b) of the *Act*. In addition, the directory contains the title, business information and address of the head (or delegated head) of the two colleges pursuant to sections 32(c) and 35(1) of the *Act*. I find the contact information provided in Regulation 460 and the directory are sufficient for an individual to contact in relation to issues relating to the *Act*. While the appellant claims the contact information should be associated with a specifically identified person rather than an office, I find the contact information is for the Freedom of Information Coordinator's office and that satisfies the requirements of the *Act*. Finally, I am satisfied the ministry updates the information for the colleges as the institutions provide new updated information in fulfilment of section 36(2) of the *Act*.

[16] The ministry submits this paragraph of Order PO-4463 indicates I found the Directory of Institutions contains the name and business contact information for the heads/delegated heads of St. Lawrence and La Cité. The ministry submits that I also found that the information provided in Regulation 460 and the Directory of Institution are sufficient for an individual to contact in relation to issues relating to the *Act* and are therefore publicly available.

[17] Given these findings, the ministry submits it is unclear how section 22(a) of the *Act* could not apply to the information requested by the appellant, specifically the business information of the heads of the two colleges. The ministry submits the information the appellant seeks access to is publicly available under sections 31(b), 32(c) and 35(1) of the *Act*. Given these circumstances, it is unclear to the ministry how the information may be considered publicly available under sections 31(b), 32(c) and 35(1) of the *Act* while simultaneously not publicly available under section 22(a).

Analysis and findings

[18] I have considered the ministry's request for reconsideration. For the reasons set out below, I am not satisfied the ministry established grounds for reconsideration of Order PO-4463.

[19] In his original access request, the appellant stated he sought access to "the accurate, complete and up-to-date business contact information" of the head of St. Lawrence and the head of La Cité, "namely the chairs of the boards of governors of these two colleges." It is clear from the appellant's request that he seeks the contact

information for the chairs of the boards of governors of St. Lawrence and La Cité, who are also the heads of the institutions for the purposes of the *Act*.

[20] In response to the appellant's access request, the ministry directed the appellant to the Directory of Institutions, which lists the addresses and telephone numbers for the contacts for the head of each institution of the *Act*. In Order PO-4463 I noted the Directory of Institutions does not contain the direct contact information for the actual head of the institution; rather it contains the contact information for the individual or office for any issues regarding the *Act*. In the case of St. Lawrence, the Directory of Institutions contains the Freedom of Information and Privacy Coordinator as the Freedom of Information Contact with their phone and fax numbers. Similarly, the Freedom of Information Contact for La Cité is the Freedom of Information and Privacy Coordinator and their phone and fax numbers are listed. In other words, the contact information for St. Lawrence and La Cité's Freedom of Information Contacts is for their Freedom of Information and Privacy Coordinators and not the chairs of the boards of governors.

[21] In its decision letter, the ministry also provided the appellant with some information for the chairs of the boards of governors of the two colleges. Specifically, the ministry provided the contact information for the chairs of both institutions. Later, during the inquiry, the ministry advised it reached out to the colleges directly to obtain additional information for the appellant to use to contact the chairs of the boards of governors. The ministry referred to the websites for both colleges and submitted the websites contained the contact information for each of the chairs. However, as I noted in paragraph 18 of Order PO-4463, the contact information for each of the chairs provided on the websites for both colleges is through the care of an executive assistant or a coordinator. In other words, the direct and current contact information for the individual chair of the board of governors for each St. Lawrence and La Cité is not available on the colleges' websites.

[22] During the inquiry, the appellant made it clear he seeks access to the direct and current contact information for the chairs of the boards of governors of the two named colleges.⁵ The ministry, in its own representations, copied the contact information for the chairs of the boards of governors. However, the contact information for each of the chairs provided by the ministry was again through the care of an executive assistant or a coordinator. Accordingly, the ministry did not provide the appellant with the direct and current contact information for the chairs of the boards of governors. While it may be that the chairs do not have personal direct contact information, the ministry did not confirm this was the case. In any case, given these circumstances, I made the following finding at paragraph 21 of Order PO-4463:

Based on my review of the parties' representations, I find section 22(a) does not apply to the contact information of the chairs of the board of governors of the two colleges identified in the appellant's request. The ministry referred to the directory in its representations. However, as the

⁵ See paragraphs 19 and 20 of Order PO-4463.

appellant states, the directory does not contain the contact information of the chairs of the board of governors of either college. Rather, the directory contains the general contact information for the colleges and their FOI contact information. Furthermore, I confirm neither college's website has the direct contact information for its chair of the board of governors. In the case of St. Lawrence, the contact information is for the Executive Assistant to the Board of Governors. The contact information for La Cité is for the Coordinator in the Office of the President and Board of Directors. Therefore, contrary to the ministry's representations, the contact information for the colleges' chair is not publicly available as per section 22(a) of the *Act*.

[23] I concluded by finding the ministry failed to establish the application of the exemption in section 22(a) to the contact information for the chairs of St. Lawrence and La Cité's Board of Governors. To be clear, I found the direct and current contact information for these individuals, not the Freedom of Information Office or other delegated head for the purposes of the *Act*, is not publicly available.

[24] In its reconsideration request, the ministry submits the above findings are inconsistent with my finding that it satisfied its obligations under sections 31(b), 32(c), 35(1) and 36(2) of the *Act*. The ministry refers specifically to my findings in paragraph 44, which I reproduced in paragraph 15, above. Based on my review of the ministry's request and Order PO-4463, I find there is no inconsistency in my findings regarding section 22(a) and my findings regarding sections 31(b), 32(c), 35(1) and 36(2) of the *Act*. The information requested by the appellant is the current and direct contact information for the chairs of the boards of governors of St. Lawrence and La Cité. However, as discussed in Order PO-4463 and above, this specific information is not publicly available, either in the Directory of Institutions or the colleges' websites. Sections 31(b), 32(c), 35(1) and 36(2) do not require the ministry to provide the direct and current contact information of the individual who holds the position of the head of the institution for the purposes of the *Act*. Rather, it is sufficient to provide the name and contact information of the head (or their delegate) under section 31(b). Therefore, the information provided in the Directory of Institutions pursuant to section 31(b) does not necessarily need to be the direct and current contact information of the chairs of the boards of the governors of the colleges, as is the case here. In this case, the ministry fulfilled its obligations under sections 31(b), 32(c), 35(1) and 36(2) by providing the current general contact information of the colleges' Freedom of Information Offices.

[25] However, the information specifically requested by the appellant and denied under section 22(a) is the current and direct contact information for specific individuals, i.e. the chairs of the boards of governors of La Cité and St. Lawrence. This specific information is not publicly available. As such, I found section 22(a) did not apply to exempt this information from disclosure and ordered the ministry to disclose it to the appellant and provide a proposed schedule for continuing access to him as contemplated by section 24(4) of the *Act*.

[26] Given these circumstances, I find there is no inconsistency in my findings in Order PO-4463 and the ministry has not established there is a fundamental defect in the adjudication process under section 18.01(a) of the *Code*. I also find the ministry has not established any other ground that would allow for a reconsideration pursuant to section 18.01. Accordingly, I decline to reconsider Order PO-4463.

ORDER:

1. I deny the ministry's reconsideration request.
2. I lift the interim stay of Order PO-4463 and order the ministry to comply with Order PO-4463 by disclosing the business contact information for the chairs of the boards of governors of St. Lawrence College of Applied Arts and Technology and Collège d'arts appliqués et de technologie La Cité collégiale by **February 1, 2024**.
3. Pursuant to Order PO-4463, I order the ministry to provide a proposed schedule for continuing access to the appellant as contemplated by section 24(4), no later than **February 1, 2024** from the date of this reconsideration order. For greater certainty, the ministry may charge applicable fees under the *Act* for each access decision under the continuing access regime.
4. In order to verify compliance with order provisions 2 and 3, I reserve the right to require the ministry to provide me with a copy of information disclosed to the appellant and the proposed schedule for continuing access.

Original signed by: _____

Justine Wai
Adjudicator

January 11, 2024