

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4498-R

Appeal MA18-00723

Hamilton Police

Service Order MO-4439

March 6, 2024

Summary: The appellant submitted a request for reconsideration of Order MO-4439. In this reconsideration order, the adjudicator finds that the appellant has not established any of the grounds for reconsideration in section 18.01 of the IPC's *Code of Procedure* and denies the reconsideration request.

Orders Considered: Orders PO-2538-R, PO-3062-R, and MO-4439.

Cases Considered: *Chandler v. Alberta Assn. of Architects* [1989] 2 SCR 848 (SCC).

OVERVIEW:

[1] This decision addresses the appellant's request for a reconsideration of Order MO-4439. That order resolved an appeal about a request for records relating to an incident involving the appellant. The police conducted a search for responsive records and issued an access decision in which they provided access to portions of the responsive records. They withheld police codes and personal information. Order MO-4439 considered the exemptions that the police applied to withhold that information. It also considered the issues raised by the appellant: the adequacy of the police's decision letter; the method of access; and the reasonableness of the police's search.

[2] In Order MO-4439, I dismissed the appeal and upheld the adequacy of the police's

decision letter, the method of access, the reasonableness of the search, and the police's decision to withhold certain information.

[3] The appellant contacted the IPC to express his dissatisfaction with Order MO-4439. He asked for a reconsideration of my decision.

[4] For the reasons that follow, I find that the appellant has not established grounds in section 18.01 of the *Code of Procedure* for reconsidering Order MO-4439 and I deny the reconsideration request.

DISCUSSION:

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-4439?

[5] The IPC's reconsideration criteria and procedure are set out in section 18 of the *Code of Procedure*. Section 18 reads, 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.

[6] 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.¹ I am *functus* unless the party requesting the reconsideration – in this case, the appellant – establishes one of the grounds in section 18.01 of the *Code of Procedure*. The provisions in section 18.01 of the *Code of Procedure* summarize the common law, acknowledging that a decision-maker has the ability to re-open a matter to reconsider it in certain circumstances.² The Supreme Court of Canada has said that “there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals.”³

¹ *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.

² Order PO-2879-R.

³ *Chandler v. Alberta Assn. of Architects* [1989] 2 SCR 848 (SCC).

Analysis and findings

[7] The reconsideration process in section 18 of the IPC's *Code of Procedure* is not intended to provide parties who disagree with a decision a forum to re-argue their case⁴ – whether or not they made those arguments during the inquiry.⁵ In other words, even if a party disagrees with an adjudicator's interpretation of the facts or the legal conclusions drawn in a decision,⁶ the reconsideration process is not meant as a chance to convince the adjudicator to make a different decision.

[8] Therefore, for me to reconsider Order MO-4439, the appellant's request must fit within one of the three grounds for reconsideration in section 18.01 of the *Code*.

[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).⁷ Examples of such breaches would include a failure to notify an affected party,⁸ or to invite sur-reply representations where new issues or evidence are provided in reply.⁹

[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.

[11] Section 18(1)(c), meanwhile, allows for reconsideration of an order that contains clerical or other similar errors or omissions.

[12] The appellant cites all three grounds for reconsideration in section 18.01.

[13] Having reviewed the appellants reconsideration request, I find that he has not established that any of the section 18.01 grounds of the *Code* apply. Although I have reviewed his entire reconsideration request, I will summarize the main points below.

Adjudication of the issue of the adequacy of the police's access decision

[14] In Order MO-4439, I upheld the adequacy of the police's access decision saying,

⁴ See Order PO-2538-R. Later IPC orders followed the approach in Order PO-2538-R (see, for example, Orders PO-3062-R, PO-3558-R and MO-4004-R).

⁵ See Order PO-3602-R.

⁶ See Orders PO-2538-R and PO-3602-R. Examples of legal conclusions include an adjudicator's finding that an exemption applies (or doesn't apply), or that a search was reasonable in the circumstances (or not reasonable).

⁷ Order PO-4134-R.

⁸ Orders M-774, R-980023, PO-2879-R and PO-3062-R.

⁹ Orders PO-2602-R and PO-2590-R.

in part:

Therefore, considering the parties' representations, the wording of the letter, and the wording of section 22, I find that the letter meets the requirements of the *Act* and is adequate in the circumstances. In any event, I am satisfied that any defect has been remedied by my inquiry because the Notice of Inquiry set out and explained the issues, and gave the parties an opportunity to comment on them.¹⁰

[15] The appellant disagrees. He does not believe the police's access decision provided adequate reasons for why certain exemptions were claimed. Some of his representations amount to re-arguing his views about the adequacy of the police's access decision. His representations about the adjudication of this issue can be summarized by the heading he used: "Conduct of inquiry into invalid decision, or using second set of reasons, or both." In other words, the appellant disagrees that the access decision is adequate (or "valid"), and he objects to the fact that I gave the police a chance to explain their position in the inquiry, and that I considered that position. He submits that had I not proceeded this way, the outcome regarding his challenge of the police's exemption claims would have been different.

[16] However, by re-arguing his position and expressing disagreement with my analysis, the appellant does not establish a ground for reconsideration.

[17] Nor does he do so by objecting to the fact that I asked the police to provide representations on an issue that the appellant raised. As I understand it, the appellant asserts that my decision to ask the police for their position about an issue that the appellant raised was unfair to him. However, because it was an issue before me to determine, the police were entitled to state their case, and I gave the appellant an opportunity to respond to that.

[18] Therefore, the appellant's arguments about the adjudication of the adequacy of the access decision issue amount to re-arguing that issue (which I already decided), and do not establish a ground for reconsideration.

Adjudication of the other issues in the appeal

[19] The appellant argues that I should not have adjudicated the other issues in the appeal unless:

- he waived (or consented on) the issue of the adequacy of the police's access decision, or
- the police issued a new access decision.

¹⁰ Order MO-4439, at paragraph 20.

[20] I find no reasonable basis to accept the appellant's position about this. In Order MO-4439, I determined that the police's decision letter was adequate in the circumstances, and that in any event, any defect was remedied through the inquiry. Therefore, it was unnecessary to ask the police to issue another access decision. The appellant's disagreement with this is not a ground of reconsidering Order MO-4439.

Alleged failure to consider relevant evidence/Errors or omissions

[21] The appellant submits another "defect by the tribunal" is that I failed to admit relevant material evidence on three "key points." In the alternative, he submits that these are errors or omissions. The three points are:

- the scope of the appeal after mediation
- reference to the appellant's name in the access decision, and
- the \$11.40 check remitted to the police by him.

[22] For the following reasons, I find that each of these points (alone or together) do not establish any of the grounds to reconsider Order MO-4439.

The scope of the appeal after mediation

[23] The appellant objects to my comment in the Overview section of Order MO-4439 indicating that at mediation, issues (including the adequacy of the police's access decision) were added to the scope of the appeal. He states that he knew that there was an issue with the adequacy of the police's decision from the time that the appeal started (which would have been before mediation).

[24] I find that this is an immaterial point, which does not establish any ground to reconsider Order MO-4439.

The appellant's name in the police's access decision

[25] In Order MO-4439, I noted the appellant's challenge to the method of access was, in part, because he saw it as "pos[ing] a second method of access to personal information granted as a result of the same request, stating that the police granted access to some personal information by way of including it in their decision letter." For context, this was regarding a line in the police's access decision that contained his name.

[26] The appellant says that the presence of his first name in the access decision, combined with his full name and address at the top of the decision, amounts to the police "disclosing" personal information to him in their access letter. As a result, he objects to my statement in Order MO-4439 that I had reviewed the police's access decision and did not accept that the police "disclosed personal information to him in the body of the access decision itself."

[27] I find that this point does not raise a ground of reconsideration. Raising this objection to my statement in Order MO-4439 amounts to disagreement with the analysis regarding the method of access issue.

The appellant's \$11.40 cheque to the police

[28] In Order MO-4439, I disagreed with the appellant's characterization of the fees involved. In his reconsideration request, he explains why he disagrees with that assessment. However, as noted, disagreement and re-argument are not grounds for reconsideration.

[29] Furthermore, even if my assessment of his fee-related argument related to the \$11.40 cheque was in error, he has not sufficiently explained how that constitutes a fundamental defect in the adjudication of his appeal, a jurisdictional defect, or an error or omission that would have changed the outcome of the decision. My assessment of the appellant's characterization of the fee issue was only one of many points that I made in my analysis of whether the police's proposed method of access was consistent with the *Act*.

Conclusion

[30] The appellant has not established a fundamental defect in the adjudication of his appeal within section 18.01(a) of the *Code* or a jurisdictional defect for the purpose of section 18.01(b) of the *Code*. I also disagree with the appellant that the errors or omissions to which he refers are errors or omissions within the meaning of section 18.01(c) of the *Code*.

ORDER:

I deny the appellant's reconsideration request.

Original Signed By: _____
Marian Sami
Adjudicator

_____ March 6, 2024