

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-4499-R

Appeal MA23-00872

Order MO-4454

Halton Regional Police Services Board

March 8, 2024

Summary: The appellant submitted a request for reconsideration of Order MO-4454 which upheld the police's decision with respect to the application of the exemptions claimed. In this reconsideration order, the adjudicator finds that the appellant has not established that grounds exist under section 18.01 of the IPC's *Code of Procedure* for reconsidering Order MO-4454 and she denies the reconsideration request.

Statutes Considered: IPC's *Code of Procedure*, sections 18.01, 18.02, 18.04, and 20.1.

Orders Considered: Orders MO-4454, PO-2538-R and PO-3062-R.

Cases Considered: *Chandler v. Alberta Assn. of Architects*, (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4th) 577 (S.C.C.), *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

OVERVIEW:

[1] This reconsideration order arises from Order MO-4454, which resolved an appeal of an access decision made by the Halton Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to all records related to the death of the appellant's boyfriend who died in her home.

[2] In Order MO-4454, I found that the responsive records are exempt from disclosure under sections 8(1)(h) (security) and 38(b) (personal privacy) of the *Act*, but I ordered the police to issue a decision to the appellant, in accordance with the *Act*, regarding access to the audio recording of her statement. The police have since disclosed the audio recording to her.

[3] After Order MO-4454 was issued on October 27, 2023, the appellant submitted a request for reconsideration of Order MO-4454 beyond the 21-day time limit to request one. The appellant requests that I allow the late reconsideration request and that I reconsider Order MO-4454 based on sections 18.01(a) and (c) of the IPC's *Code of Procedure* (the *Code*). She alleges that I did not consider all the evidence, did not observe procedural fairness, made decisions unsupported by the evidence, and did not provide her with an opportunity to respond to evidence. Additionally, the appellant submits there is new evidence that supports her claims in Order MO-4454, that further information/records should be disclosed to her.

[4] For the reasons that follow, I deny the reconsideration request because the appellant has not established grounds in section 18.01 of the *Code* for me to reconsider Order MO-4454.

DISCUSSION:

Are there grounds under section 18.01 of the IPC's *Code of Procedure* to reconsider Order MO-4454?

[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] The time limit for requesting reconsideration is set out at section 18.04 of the *Code*:

18.04 A reconsideration request shall be made in writing to the individual who made the decision in question. The request must be received by the IPC:

(a) where the decision specifies that an action or actions must be taken within a particular time period or periods, before the first specified date or time period has passed; or

(b) where decision does not require any action within any specified time period or periods, within 21 days after the date of the decision.

[7] Section 20.01 of the *Code* grants the IPC a discretion to waive any of its requirements:

20.01 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.

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

The late request for reconsideration

[9] Order MO-4454 was issued on October 27, 2023. Under section 18.04 of the *Code*, the time limit for requesting reconsideration of Order MO-4454 was November 17, 2023, 21 days after the order was issued.

[10] The appellant notified the IPC of her intention to request a reconsideration of Order MO-4454 on November 21, 2023, and requested an extension of the 21-day time limit to submit a reconsideration request. The appellant submitted her request for reconsideration on November 24, 2024, 28 days after the order was issued. The appellant explained that she had trouble seeking legal advice and she was unaware of her right to request a reconsideration until she started researching her options, and by then, it was already past the 21-day time limit.

[11] As I indicated above, section 20.01 of the *Code* permits me to “waive or vary” any procedure under the *Code*, where I am satisfied that it would be advisable to do so “in

¹ Order PO-2879-R.

order to secure the just and expeditious determination of the issues.” This includes the time limit for filing a request for reconsideration. Given the relatively brief delay, the diligence of the appellant in filing the request once her right to request a reconsideration came to her attention, and the lack of any prejudice to the police, I accept the appellant’s request to waive the time limit for filing this request for reconsideration. I find it appropriate to do so in order to secure the “most just and expeditious determination of the issues.”

The appellant’s reconsideration request

[12] The appellant requests that I reconsider Order MO-4454 based on sections 18.01(a) and (c) of the *Code*. She alleges that I did not consider all the evidence, did not observe procedural fairness, made decisions unsupported by the evidence, and did not provide her with an opportunity to respond to evidence. Additionally, the appellant submits there is new evidence that supports her claims in Order MO-4454.

[13] The appellant also mentions the drug identification test results in her representations and asks me to confirm whether they exist because she alleges she would not have removed them from the scope of the appeal if they did exist.

[14] I have reviewed all the appellant’s representations in support of her request for reconsideration. However, I will only refer to those portions of her representations that I find most relevant to my determination.

[15] The appellant submits that I did not consider all the evidence she submitted during the inquiry to support her position and she specifies that I did not mention or acknowledge:

1. Text messages between her and a specified police officer involved with the investigation;
2. A letter from the deceased’s wife, who was separated from him at the time of his death and the mother to his adult son, stating that the appellant is “speaking on behalf the family[;]” and
3. The letters from a church and the deceased’s mother that the appellant used to fly to another province to attend the deceased’s burial, which was required during the pandemic and “proof of significant other.”

[16] The appellant also submits that I disregarded her evidence because in Order MO-4454, I found that “a voice message of a male telling a friend he was living at the appellant’s address” was not sufficient evidence to establish that the deceased was living with the appellant at the time of his death. The appellant disputes my characterization of the evidence she provided as a “voice message.” She notes that it was a video recording of a cellphone playing the voice message which shows that it was received by the individual through a text message.

[17] It appears that the appellant takes issue with my statement in the order that her representations did not address the section 14(3)(b) presumption against disclosure. The appellant submits that she referenced the 14(3)(b) presumption in her original appeal, and if she did not mention it in her representations during the inquiry process, it was because she was not asked to do so. The appellant argues that stating that she never claimed section 14(3)(b) is an "error" in the adjudication process.

[18] The appellant argues that my decision to allow the police to raise the discretionary section 8(1)(h) exemption outside of the 35-day window for doing so was not "fair" because when I asked the appellant to provide a response to this issue in the inquiry, I did not mention to her that "doing so would allow the exemption."

[19] The appellant submits that there was a defect in the adjudication process because I did not consider section 14(2)(d) (fair determination of rights) as a factor tending to support the disclosure of personal information, despite the appellant arguing that it is her right to receive her statement and absurd result applies to it.

[20] The appellant submits that I did not give her an "opportunity to respond" because I based my findings in part on the withheld records and the confidential portions of the police's representations. She references specific portions of paragraph 85 in Order MO-4454.² The appellant states that she questions the credibility of "others" that I reference in my reasons. She also states that if a particular sentence were brought to her attention during the adjudication process, she would have been able to address the untrue submissions whether it is in a police report or not. The appellant argues that police records can be incorrect and to consider the police's evidence over hers is "beyond bias," "a fundamental error in the adjudication process," and an "error in the decision."

[21] The appellant's representations also refer to "new evidence" proving that the police are withholding records in "bad faith." I will not reiterate the appellant's new arguments and new evidence because, as I will explain below, the IPC will not simply reconsider an order based on new evidence.

Analysis and findings

Drug identification test results

[22] I will begin by addressing the drug identification test results. The appellant asks me to confirm whether the drug identification test results exist in her reconsideration request. I am unclear what the appellant means by "exist." The police have stated that a record responsive to her access request is results of a drug identification test, and they have denied access to it. Therefore, it is clear that the record exists and there is nothing for me to confirm.

² The appellant quoted snippets of the paragraph. I have reproduced the entire paragraph and underlined the portions referenced by the appellant below for accuracy and context in my analysis.

[23] It appears that the appellant might be asking me to confirm whether the police conducted a drug identification test on specific drugs found during the investigation based on her previous correspondence in this appeal. The appellant wrote to the IPC on May 31, 2022, and again on June 3, 2022, to revise the scope of her appeal. In her May 31, 2022 correspondence, she wrote, "I also learned that the drugs that were tested were not the pills in question[,]" and "I would like to remove my request for any test results as I now know the one I was hoping for does not exist."

[24] In her June 3, 2022 correspondence, she reiterated the removal of the drug identification test results from the scope of the appeal, narrowed the scope of the cellphone records she sought access to, and added the audio recording of her statement to the police to the appeal.

[25] Having revised the scope of her appeal twice to remove the drug identification test results after the appeal proceeded to adjudication, the appellant cannot now revisit it. If the appellant was unsure whether the drug identification test results identified by the police is the record she is seeking, she should not have removed it from the scope of her appeal. I cannot confirm or answer questions about a record that was removed from the scope of the appeal and not considered in Order MO-4454.

[26] In any event, none of the arguments raised by the appellant establish any grounds on which the appellant can request a reconsideration of Order MO-4454. If the appellant seeks access to the drug identification test results, it is open to her to make a new access request to the police.

Sections 18.01(a) and (c) of the Code

[27] The appellant requests that I reconsider Order MO-4454 based on sections 18.01(a) and (c) of the *Code*.

[28] Previous orders have held that a fundamental defect in the adjudication process under section 18.01 (a) may include:

- failure to notify an affected party,³
- failure to invite representations on the issue of invasion of privacy,⁴ or
- failure to allow for sur-reply representations where new issues or evidence are provided in reply.⁵

[29] Previous IPC orders have held that an error under section 18.01(c) may include:

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

⁴ Order M-774.

⁵ Orders PO-2602-R and PO-2590.

- a misidentification of the "head" or the correct ministry;⁶
- a mistake that does not reflect the Adjudicator's intent in the decision;⁷
- information that is subsequently discovered to be incorrect;⁸ and
- an omission to include a reference to and instructions for the institution's right to charge a fee.⁹

[30] 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.¹⁰

[31] In paragraph 83 of Order MO-4454, I wrote:

The appellant's representations go into detail about her relationship with the deceased. I have reviewed all of her representations and the supporting evidence. However, I will only refer to those portions of her representations that I find most relevant to the issues in this appeal.

[32] 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*.¹¹ 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 law set out in *Chandler* and other leading cases such as *Grier v. Metro International Trucks Ltd.*¹²

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-

⁶ Orders P-1636 and R-990001.

⁷ Order M-938.

⁸ Orders M-938 and MO-1200-R.

⁹ MO-2835-R.

¹⁰ *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. 708.

¹¹ [1989] 2 SCR 848 (*Chandler*).

¹² 1996 CanLII 11795 (ON SC).

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.

[33] This approach has been adopted and applied in subsequent IPC orders.¹³ In Order PO-3062-R, for example, the adjudicator 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...

[34] I accept and adopt this reasoning here. As established by section 18.02 of the *Code*, 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. Therefore, I will not address the appellant's new arguments and new evidence as it does not establish grounds for reconsideration under the *Code*.

[35] As noted above, the appellant requests that I reconsider Order MO-4454 based on sections 18.01(a) and (c) of the *Code*. She alleges that I did not consider all the evidence, did not observe procedural fairness, made decisions unsupported by the evidence, and did not provide her with an opportunity to respond to evidence.

[36] Overall, I find the appellant's arguments are generally an attempt to reargue the issues in the appeal and to introduce new evidence, which as stated above, is not the purpose of the reconsideration process, nor does it establish grounds for reconsideration under the *Code*.

[37] The appellant argues that I failed to consider the evidence she submitted in her appeal because I did not mention everything she submitted with her representations. The appellant also submits that I disregarded her evidence because I found that it was not sufficient evidence to establish that the deceased was living with her in a conjugal relationship at the time of his death.

[38] While I did not reiterate all the appellant's representations and supporting evidence in Order MO-4454, I considered all the evidence before me and addressed her arguments related to whether she and the deceased were living in a conjugal relationship at the time of his death.¹⁴ As noted above, an administrative decision maker is not required to explicitly address every argument raised by the parties, and not addressing all arguments

¹³ See, for example, Orders MO-3478-R, PO-3062-R and PO-3558-R.

¹⁴ See paragraphs 76-94 of Order MO-4454.

made will not, on its own, impugn the validity of the result of the decision.¹⁵ Therefore, I find that the appellant's argument in this respect does not establish grounds to reconsider Order MO-4454 under sections 18.01(a) and (c) of the *Code*.

[39] The appellant argues that by stating that she "never claimed" the section 14(3)(b) presumption, I made an "error" during the adjudication process. The appellant further argues that if she did not raise the section 14(3)(b) presumption during the inquiry, then she was not asked to do so.

[40] To begin, I note that the police raised the section 14(3)(b) presumption in their initial representations and section 14(3)(b) was included in the Notice of Inquiry¹⁶ (NOI) sent to the appellant. The appellant was asked for representations in response to both the NOI and the police's representations during the inquiry. Furthermore, in Order MO-4454, I did not state that the appellant "never claimed" the section 14(3)(b) presumption. I stated at paragraph 71, "The appellant's representations do not address the section 14(3)(b) presumption."

[41] If the section 14(3)(b) presumption applies, disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy. A presumption is generally claimed by the party resisting disclosure. As the party seeking disclosure of the personal information, the appellant would not claim that the section 14(3)(b) presumption applies. Therefore, I find that the appellant's argument regarding my reference to her lack of representations on section 14(3)(b) does not establish grounds to reconsider Order MO-4454 under sections 18.01(a) and (c) of the *Code*.

[42] The appellant argues that my decision to allow the police to raise the discretionary section 8(1)(h) exemption outside of the 35-day window for doing so was not "fair" because when I asked the appellant to provide a response to this issue in the inquiry, I did not mention to her that "doing so would allow the exemption."

[43] The request for the appellant's response to the police's section 8(1)(h) claim was made for procedural fairness and it would have been a defect in the adjudication process had I not sought a response from the appellant on this issue. Furthermore, the NOI stated, "In deciding whether to allow an institution to claim a new discretionary exemption outside the 35-day period, the adjudicator must also balance the relative prejudice to the institution and to the requester. The specific circumstances of the appeal must be considered in making this decision." This was the analysis I applied when I permitted the police to claim the discretionary section 8(1)(h) exemption outside the 35-day period to do so. Therefore, I find that the appellant's argument regarding my allowing the police to claim the section 8(1)(h) exemption outside of the 35-day window does not establish

¹⁵ *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. 708.

¹⁶ An NOI sets out the issues in the appeal and seeks representations on these issues.

grounds to reconsider Order MO-4454 under sections 18.01(a) and (c) of the *Code*.

[44] The appellant submits that there was a defect in the adjudication process because I did not consider section 14(2)(d) as a factor despite the appellant arguing that it is her right to receive her statement and absurd result applies to it. I find that this argument is an attempt by the appellant to reargue her claims as in Order MO-4454 I already addressed her claim that it is her right to receive her statement in my analysis on absurd result.¹⁷

[45] While I concede that the appellant claimed it was her “right” to access the personal information at issue in Order MO-4454, that alone does not establish that the section 14(2)(d) factor applies. The IPC uses a four-part test¹⁸ to decide whether this factor applies, and this was communicated to the appellant in the NOI she received. The appellant did not raise section 14(2)(d) as a factor in her representations, and she did not provide an explanation as to how she meets the four-part test to establish the factor applies. Again, I find that this argument is an attempt to reargue her claims in Order MO-4454. Therefore, I find that this does not establish grounds to reconsider Order MO-4454 under sections 18.01(a) and (c) of the Code.

[46] Finally, the appellant submits that I did not give her an “opportunity to respond” to evidence because I based my findings in part on the withheld records and the confidential portions of the police’s representations. The appellant references specific portions of paragraph 85 from Order MO-4454: ¹⁹

The police submit that the appellant and others have advised them that the appellant and the deceased did not live together. The police submit that according to the appellant, she and the deceased had been dating for three months at the time of his death and this same time frame was provided by the appellant in a previous police occurrence report, days prior to the deceased’s sudden death. The records and confidential portions of the police’s representations provide further support of their position that the appellant and the deceased did not live together at the time of his death.

[47] The appellant makes two main arguments. First, she argues that there are grounds to grant her reconsideration request because I preferred the evidence of “others” and the police over hers. Again, I find this is an attempt by the appellant to reargue her claims in Order MO-4454 and I will not address it further.

[48] Second, the appellant argues that if the second underlined sentence of paragraph 85 above were brought to her attention during the adjudication process, she would have been able to address the untrue submissions whether it is in a police report or not. While

¹⁷ See paragraphs 102-108 of Order MO-4454.

¹⁸ All parts of the four-part test must be met in order to establish that the section 14(2)(d) factor applies.

¹⁹ The appellant quoted snippets of the paragraph. For accuracy and context, I have reproduced the entire paragraph and underlined the portions referenced by the appellant.

the appellant was not given access to the records or the confidential portions of the police's representations, the specific submission the appellant references was included in the police's non-confidential representations that were provided to her.²⁰ The appellant had the opportunity to respond to the police's representations and she disputed their claims about the length of her relationship with the deceased. The appellant knew the case she was required to meet, and she was provided an opportunity to respond and make her arguments. Therefore, I find the appellant's claim that she did not get an opportunity to respond to information in the police's representation is not accurate and does not establish a defect in the adjudication process or an error under sections 18.01(a) and (c) of the *Code*.

[49] For the reasons above, I find the appellant's reconsideration request is an attempt to reargue the issues in the appeal and to introduce new evidence. Therefore, I find that the appellant has not established the grounds for reconsideration in sections 18.01(a) and (c) of the *Code*.

[50] None of the arguments made by the appellant could be considered a jurisdictional defect under section 18.01(b) of the *Code*, and on the evidence before me there is no basis for finding that there has been some other jurisdictional defect in the decision.

[51] 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-4454.

ORDER:

The request for reconsideration of Order MO-4454 is denied.

Original signed by: _____
Anna Truong
Adjudicator

_____ March 8, 2024

²⁰ Page 5 of the police's initial representations.