

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-4685-R

Appeal PA24-00477

Safety, Licensing Appeals and Standards Tribunals Ontario

Order PO-4504

July 24, 2025

Summary: The appellant submitted a request for reconsideration of Order PO-4504. In that order, the adjudicator partly upheld a decision of the Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO). The adjudicator held that personal notes and draft decisions of SLASTO adjudicators were excluded from the application of the *Freedom of Information and Protection of Privacy Act* under section 65(3.1) (quasi-judicial records), and allowed SLASTO to make a late, alternate claim of the discretionary exemption at section 19 (solicitor-client privilege) over some records. However, the adjudicator did not uphold the rest of SLASTO's decision and directed SLASTO to issue a new access decision for the remaining records.

In this reconsideration order, the adjudicator finds that the appellant has not established any of the available grounds for reconsideration and she denies the reconsideration request.

Orders Considered: Orders PO-2538-R, PO-3062-R, PO-3703-I, and PO-4504.

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

OVERVIEW:

[1] This reconsideration order addresses the request for a reconsideration by counsel for the appellant of Order PO-4504, issued April 4, 2024.

[2] Order PO-4504 addressed the appellant's right of access under the *Freedom of*

Information and Protection of Privacy Act (FIPPA or the Act) to two files involving her (the files) with the Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO). SLASTO had denied the appellant access to the hundreds of records in the files claiming the exclusion at section 65(3.1) (quasi-judicial records) of the *Act* applied to them. SLASTO also claimed that the solicitor-client privilege exemption in section 19 of the *Act* applied to some of these records, a claim it made late in the appeal process.

[3] I allowed the appeal in Order PO-4504, in part. I upheld SLASTO's decision to withhold adjudicator's notes and draft decisions under the exclusion at section 65(3.1). I did not uphold SLASTO's claim of the exclusion for the remaining 406 pages of records at issue. I found that SLASTO had not provided sufficient evidence to establish that the exclusion applied to the remaining records at issue, noting that SLASTO had not provided the IPC a copy of the records or a chance to examine them. I allowed SLASTO to claim section 19 late but directed it to do so properly; since it was highly likely that many, if not all, the records contain the appellant's personal information, SLASTO should have considered section 47(1) (the right of access to one's own personal information) and section 49(a) (the exemption to consider when an individual seeks access to her own personal information in a record to which section 19 would apply). I ordered SLASTO to issue another access decision, within 30 days, addressing the remaining records at issue and considering the application of sections 47(1) and 49(a) of the *Act*.

[4] On May 6, 2024, the appellant's counsel filed an application for judicial review of Order PO-4504. On June 24, 2024, SLASTO issued its access decision as required by order provision 3 of Order PO-4504 (the June 2024 decision). On July 12, 2024, the appellant's counsel appealed the June 2024 decision to the IPC and on the same day, he contacted the IPC to ask for a reconsideration of Order PO-4504. In doing so, he also expressed reasons for challenging the June 2024 decision.

[5] Although the appellant's counsel submitted a request for reconsideration late, after the timeframe¹ set by the IPC's *Code of Procedure* applicable at the time that has since been repealed (the *Code*)², I exercised my discretion under the *Code* to allow him to do so, given considerations related to the appellant's ongoing judicial review application

¹ Under section 18.04(a) of the *Code*, which said:

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[.]

² The repealed Code that was in effect at the time was the "Code of Procedure for appeals under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*, October 2004." The repealed Code applies in this reconsideration order. A copy of the repealed Code is available here: [\[REPEALED\] Code of Procedure for Appeals Under FIPPA and MFIPPA | Information and Privacy Commissioner of Ontario](#). The *Code of Procedure* was revised in September 2024 and is available here: [Code of Procedure and Related Policies | Information and Privacy Commissioner of Ontario](#).

regarding Order PO-4504.

[6] For the reasons that follow, I find that the appellant's counsel has not established any of the grounds in section 18.01 of the *Code* for reconsidering Order PO-4504 and I deny the reconsideration request. I do not address the June 2024 decision here because it is not before me in this request for reconsideration.

DISCUSSION:

Are there grounds under section 18.01 of the *Code* to reconsider Order PO-4504?

[7] The IPC's reconsideration criteria and procedure were set out in section 18 of the *Code*.

[8] Section 18 said, in part:

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.

[9] Ordinarily, under the common-law principle of *functus officio*, once a decision-maker has determined a matter, she does not have jurisdiction to consider it further.³ The Supreme Court of Canada has said that "there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals."⁴ 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*. The provisions in section 18.01 of the *Code* summarized the common law, acknowledging that a decision-maker has the ability to re-open a matter to reconsider it in certain, limited circumstances.⁵

[10] The reconsideration process in section 18 of the *Code* was not intended to provide

³ *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.

⁴ *Chandler v. Alberta Assn. of Architects* [1989] 2 SCR 848 (SCC).

⁵ Order PO-2879-R.

parties who disagree with a decision a forum to re-argue their case⁶ – whether or not they made those arguments during the inquiry.⁷ In other words, even if a party disagrees with an adjudicator’s interpretation of the facts or the legal conclusions drawn in a decision,⁸ the reconsideration process is not meant as a chance to convince the adjudicator to make a different decision.

The appellant’s representations

[11] The appellant’s counsel cites section 18.01(a) of the *Code* as the ground for seeking reconsideration, saying that there was “a fundamental defect in the adjudication process.” More specifically, he asserts that “there was a lack of procedural fairness including”:

- The appellant was not given the opportunity to be heard;
- The appellant was not given the opportunity to cross-examine SLASTO’s affiant; and
- The written reasons given are not clear and transparent to justify the decision based on the submissions given.

[12] In addition, the appellant’s counsel expresses disagreement with various findings in Order PO-4504. For example, he makes submissions about whether SLASTO’s adjudicators should have been found to be decision-makers. I do not set these points out here because it is well-established that disagreement with findings was not a ground of reconsideration under the *Code*, as I explained above. To the extent that some of the appellant’s disagreements with my findings in Order PO-4504 relate to claims about a fundamental defect in the adjudication process, I summarize and discuss them below.

The opportunity to be heard

[13] The appellant’s counsel submits that I did not provide an appropriate opportunity for the appellant to be heard on “critical aspect[s] of submissions and acceptance of evidence.” He argues that, as a result, I failed to provide procedural fairness.

[14] The appellant’s counsel asserts that I considered legislation that was not raised in the party’s submissions. In the appeal underlying Order PO-4504, he argued that the exclusion claimed by SLASTO would not apply to the records his client requested because they were created before the exclusion became a part of the law. Regarding this issue, he asserts that I relied on section 65(16) of the *Act*, which is a different exclusion, and

⁶ 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).

⁷ See Order PO-3602-R.

⁸ 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).

"external legislation," and argues that had I asked for representations about section 65(16), my reasoning and conclusion would have been different.

[15] In addition, the appellant's counsel asserts that I accepted evidence from SLASTO without giving his client the opportunity to make representations. He speculates that such an opportunity would have "likely changed the outcome" because he believes I would have "likely" reached a different conclusion about SLASTO's affidavit evidence. This is particularly true, he claims, about SLASTO's definition of "draft orders," which I determined were excluded under section 65(3.1).

Cross-examination

[16] The appellant's counsel also claims that failure to provide an opportunity to cross-examine the person who swore the affidavit provided by SLASTO (the affiant) resulted in a lack of procedural fairness. Counsel argues that this lack of procedural fairness led to a lack of scrutiny regarding SLASTO's late claim of the discretionary exemption at section 19 of the *Act*. He asserts that my finding that SLASTO would be prejudiced if I did not allow it to claim that exemption was "made based on the aforementioned flaws in procedural fairness." He then submits:

With proper application of procedural fairness including ordering cross examination of the affiant one would expect that a different outcome would have occurred. Specifically Adjudicator Sami would have . . . required the claimed privileged documents be produced as per the practice guidelines.

[17] He also states that the *Act* "encourages the availability of information, with very limited and specific exemptions, with review independent of the government." He submits that SLASTO's affidavit was an "'opinion' affidavit" that "fundamentally interfered" with the IPC's fact-finding. He argues that this is contrary to the *Act*. He also submits that SLASTO identified records that "do not accord with affidavit 'opinion'."

Intelligibility of the decision

[18] Counsel's third argument about procedural fairness is that Order PO-4504 is unintelligible for the reasons he set out in his reconsideration request. He asserts, for example, that I "accepted bald claims devoid of fact in certain circumstances." He also questions the intelligibility of my reasoning, flagging my reasoning on the issues of conflict of interest alleged by his client and the application of section 65(3.1) to certain records.

Analysis and findings

[19] For the following reasons, I deny the reconsideration request. Section 18.01(a) of the *Code* specified that the IPC *may* reconsider an order where it is *established* that there is a fundamental defect in the adjudication process. Past IPC orders found that various breaches of the rules of natural justice respecting procedural fairness qualified as a

fundamental defect in the adjudication process for the purpose of section 18.01(a).⁹ Examples of such breaches included a failure to notify an affected party,¹⁰ or failure to invite sur-reply representations where new issues or evidence are provided in reply.¹¹

[20] On my assessment of the evidence before me, I find that counsel's reconsideration request consists mainly of disagreements with various findings in my order. Disagreement with a finding was not a ground of reconsideration under the *Code*.

[21] In addition, I do not accept that the appellant was denied the opportunity to be heard because, as IPC records show, the appellant was provided with an opportunity to address all issues listed in the Notice of Inquiry sent by the previously assigned adjudicator (including the late raising of section 19). One of the "critical aspects" identified by counsel is that his client should have been given an opportunity to comment on records that SLASTO decided to disclose during the inquiry. Since these records were removed from the scope of the appeal, there was no need to seek representations about them from the appellant. In the end, I did not rely on these records to make my decision.

[22] Counsel argues that I relied on "external legislation" that I did not give his client an opportunity to comment on and, as a result, wrongly decided the issue of whether section 65(3.1) could apply to records created before that exclusion became a part of the *Act*. Counsel does not identify the external legislation he refers to. If he means the footnote reference to the *Tribunal Adjudicative Records Act, 2019*¹² regarding section 65(16) of *FIPPA*, which became law the same day as section 65(3.1) of *FIPPA*, this is an attempt to re-argue an issue that he raised during the inquiry. Counsel challenged the application of section 65(3.1) based on the date of the creation of the records without considering that the Legislature had turned its mind to limiting the temporal reach of the exclusion at section 65(16) and could have imposed, but did not impose, a similar temporal limit for the exclusion at section 65(3.1). The fact that counsel did not consider this aspect of the issue is not a breach of procedural fairness on my part and is not a fundamental defect in the adjudication process. As the Divisional Court has said, the "IPC is entitled to assume that lawyers know the substantive law and procedure for the areas of law in which the lawyer practises . . . [and] cannot be expected to second guess a lawyer's decisions on behalf of a client."¹³

[23] Regarding the lack of cross-examination, there is no right of cross-examination under the *Act*, and the *Code* did not even contain the word "cross-examine."¹⁴ In Order PO-3703-I, the IPC held that it has *discretion* to permit cross-examination in a suitable case, but this would be "highly unusual" to use and "should not be granted lightly, and

⁹ Order PO-4131-R.

¹⁰ Orders M-774, R-980023, PO-2879-R and PO-3062-R.

¹¹ Orders PO-2602-R and PO-2590-R.

¹² [S.O. 2019, chapter 7, Schedule 60](#).

¹³ *Canadian Home Healthcare Inc. v. Halton Healthcare Services and Information and Privacy Commissioner of Ontario*, 2024 ONSC 5966.

¹⁴ Neither does the current *Code*.

only where circumstances warrant.” The IPC also held that since the appellant in that case was given a Notice of Inquiry and the institution’s non-confidential representations, and invited to provide representations, it was not a breach of procedural fairness to deny a request to cross-examine a person who provided an affidavit.¹⁵ Applying that reasoning, here, since the appellant was provided with a Notice of Inquiry, SLASTO’s representations and affidavit, and an opportunity to provide representations, the lack of cross-examination was not a breach of procedural fairness. In any event, in Order PO-4504, the affidavit did not assist SLASTO’s claim over most of the records at issue, so to allow cross-examination in that context would not have been in keeping with the parameters described in Order PO-3703-I.

[24] Finally, regarding counsel’s argument that Order PO-4504 was unintelligible, this was not a ground for reconsideration under the *Code*. Counsel is essentially disagreeing with my interpretation of the facts and law. As discussed above, the reconsideration process is not an opportunity for a party to re-argue its case.

[25] I find that the appellant’s counsel has not established a fundamental defect in the adjudication of his client’s appeal within section 18.01(a) of the *Code*. As a result, I deny this reconsideration request.

ORDER:

The reconsideration request is denied.

Original Signed by: _____

Marian Sami
Adjudicator

July 24, 2025

¹⁵ Order PO-3703-I.