

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4655

Appeal MA22-00475

Town of East Gwillimbury

May 21, 2025

Summary: The sole issue in this appeal is whether the Town of East Gwillimbury conducted a reasonable search for records responsive to the appellant's request under the *Municipal Freedom of Information and Protection of Privacy Act*.

In this order, the adjudicator finds that the town conducted a reasonable search and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, section 17.

OVERVIEW:

[1] The Town of East Gwillimbury (the town) received a request, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to the following:

A copy of all my complaints against [specified address] from 2021 until current (June 1, 2022), including all evidence, inspection reports, interviews, discussion, conclusions and follow-up to said complaints.

[2] The town issued a decision granting access, in part, to two emails and three "Bylaw Enforcement Case Information" screen shots with severances pursuant to section 14(1)

(personal privacy) of the *Act*.¹

[3] After receiving the decision, the requester contacted the town raising concerns that all records were not located. The town conducted another search and issued a second decision to the requester disclosing, in full, one additional responsive record, a 2-page email chain.

[4] Dissatisfied with the town's decision, the requester, now the appellant, appealed it to the Information and Privacy Commissioner of Ontario (IPC). A mediator was assigned to explore the possibility of resolution.

[5] During mediation, the appellant stated that he believes additional records exist, specifically information relating to the town's response to his complaints about a neighbouring property.

[6] Subsequently, the town conducted a third search for responsive records and issued another supplemental decision, granting access, in part, to two emails with severances pursuant to section 14(1) of the *Act*.

[7] As a mediated resolution was not reached, the appeal was transferred to the adjudication stage of the appeal process, where I decided to conduct a written inquiry under the *Act*. I sought and received representations from both the town and the appellant.²

[8] During the inquiry, the appellant confirmed that he was not pursuing access to the withheld personal information contained in the four emails and three "Bylaw Enforcement Case Information" screen shots. As such, section 14(1) is no longer at issue in this appeal.

[9] For the reasons that follow, I find that the town conducted a reasonable search for records responsive to the appellant's request, in compliance with its obligations under section 17 of the *Act*. I dismiss the appeal.

DISCUSSION:

[10] The sole issue to be determined in this appeal is whether the town conducted a reasonable search for records responsive to the appellant's request.

[11] If a requester claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.³ If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision.

¹ Although the town relied on section 14(1), the appropriate privacy exemption is section 38(b).

² The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Practice Direction 7*.

³ Orders P-85, P-221 and PO-1954-I.

Otherwise, it may order the institution to conduct another search for records.

[12] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.⁴

[13] The *Act* does not require the institution to prove with certainty that further records do not exist.⁵ However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;⁶ that is, records that are "reasonably related" to the request.⁷

[14] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.⁸ The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁹

Representations

[15] The town submits that it conducted a reasonable search for records related to the request as required by section 17 of the *Act*.

[16] Along with its representations, the town submitted an affidavit sworn by a named employee. The named employee attests that, as a result of her experience with the town over the last number of years, she has personal knowledge of the facts set out in the affidavit.

[17] The named employee attests that the previous council/committee coordinator (coordinator) received the request and emailed the manager of by-law enforcement requesting that she search for records responsive to the request. Subsequently, the manager of by-law enforcement provided responsive records to the coordinator.

[18] After the decision was issued, due to the appellant's concern about missing records, the named employee attests that the coordinator emailed the IT department requesting that IT carry out a search for communications between a specified former by-law officer and the appellant. The named employee attests that this search located one record, a 2-page email chain. Although this record was outside the scope of the appellant's request, the town issued a second decision, disclosing the email chain to the appellant in full.

⁴ Order MO-2246.

⁵ *Youbi-Misaac v. Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.

⁶ Orders P-624 and PO-2559.

⁷ Order PO-2554.

⁸ Orders M-909, PO-2469 and PO-2592.

⁹ Order MO-2185.

[19] The coordinator also requested that another search of the town's generic bylaws email address for emails from all the appellant's known email addresses be conducted.

[20] The named employee attests that the manager of by-law enforcement contacted the specified former by-law officer who confirmed that he did not have any records responsive to the request.

[21] The named employee attests that during mediation she conducted an additional search. As well, the named employee attests that the manager of by-law enforcement conducted an additional search of her emails in Outlook and provided any emails related to the appellant's complaints, some of which were outside the scope of his request. At the conclusion of those searches, the town issued a supplementary decision to the appellant, granting access, in part, to information contained in two emails.

[22] In response to the town's representations and affidavit on search, the appellant submits that he continues to believe that the town should have located more records responsive to his request. He notes that the town has stated that it does not take a formulaic approach to by-law complaints and each case is handled on an individualized basis. He submits that for this reason additional records confirming each complaint filed within the time period of his request was investigated should exist. He submits that to conclude that no additional records exist would result in a failed "duty of care" on the town's part or at the very least "act in bad faith".

[23] Moreover, the appellant submits that each time the town conducted another search for responsive records, it found additional record(s). As such, he submits that it is reasonable to conclude that additional searches will locate additional record(s).

Analysis and findings

[24] For the following reasons, I find that the town conducted a reasonable search for records responsive to the appellant's request.

[25] In its representations and affidavit, the town identified the individuals involved in the searches, explained where they searched, and described the results of their search. In my view, the town's search was logical and comprehensive. I accept it was conducted by experienced employees knowledgeable in the subject matter who expended reasonable efforts to locate records which are reasonably related to the request. I am satisfied that the town has provided sufficient evidence to establish that its search for responsive records was reasonable and in compliance with their obligations under section 17 of the *Act*.

[26] Moreover, I am not persuaded that the appellant has established a reasonable basis for concluding that further responsive records exist. The appellant submits that additional records should exist. However, he has not provided any explanation as to why, despite the town's searches, the town did not locate those additional records.

[27] As noted above, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.¹⁰ In this case, although the appellant believes that additional records confirming that each complaint was investigated and responded to should exist, I am not satisfied that the town's statement that it does not take a formulaic approach to addressing by-law complaints provides such reasonable basis.

[28] The appellant also argues that, in the past, additional searches resulted in additional records being located. However, in my view, this argument is insufficient to establish a reasonable basis that additional records should exist. I also note that it appears that additional searches resulted in additional records being located may have resulted from the town's efforts to interpret the appellant's request as broadly as possible to find and locate records even beyond the scope of his request.

[29] As noted above, the *Act* does not require the institution to prove with certainty that further records do not exist, however, it must provide enough evidence to show that it has made a reasonable effort to identify and locate records that are "reasonably related" to the request. In this case, I have found that the town has done so.

[30] For the reasons stated above, I find that the town has complied with its obligations under section 17 and has conducted a reasonable search for records responsive to the appellant's request. I dismiss the appeal.

ORDER:

I uphold the reasonableness of the town's search for responsive records.

Original Signed by: _____

Lan An

Adjudicator

May 21, 2025

¹⁰ Order MO-2246.