

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4695

Appeal MA23-00663

The Corporation of the County of Prince Edward

September 17, 2025

Summary: The county received a six-part access request under the *Municipal Freedom of Information and Protection of Privacy Act* about uses of a certain property. The county withheld access to the responsive records claiming that disclosing them could reasonably be expected to interfere with a law enforcement matter (under section 8(1)(a) of the *Act*). The requester appealed the county's decision and asserted that there should be additional responsive records. In this order, the adjudicator agrees that the records should not be disclosed because section 8(1)(a) applies to them. However, she finds that the county did not provide enough information to show that it conducted a reasonable search under section 17 of the *Act*, and she orders the county to conduct another search.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 8(1)(a) and 17.

OVERVIEW:

[1] The Corporation of the County of Prince Edward (the county) received a six-part access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) related to uses of a certain property.¹

[2] The county initially issued an interim decision, granting full access to the records. It later decided to fully withhold the responsive records under six discretionary

¹ The request is set out in the Appendix to this order.

exemptions, and shared links for information responsive to the sixth part of the request.

[3] The requester, now the appellant, appealed the county's decision to the Information and Privacy Commissioner of Ontario (IPC).

[4] The IPC appointed a mediator to explore resolution. During mediation, one of the six exemptions claimed was removed from the scope of the appeal and the appellant added the issue of reasonable search. The county also provided the appellant with a revised index of records and stated that no further responsive records exist.

[5] No further mediation was possible, and the appeal moved to adjudication stage of the appeal process, where an adjudicator may conduct an inquiry.

[6] I conducted a written inquiry under the *Act* and invited written representations on the issues of the appeal, first from the county, and then from the appellant.

[7] For the reasons that follow, I uphold the town's application of the discretionary exemption at section 8(1)(a) (interfere with a law enforcement matter) over the four records at issue. As a result, I do not consider any other exemption claimed in the alternative. I do not uphold the county's search as reasonable, and I order it to conduct a further search for responsive records.

RECORDS:

[8] The four records at issue are:

- record 1 - correspondence from the county's By-law Enforcement department to [named company] dated September 14, 2020.
- record 2 - correspondence from the county's Development Services department to [named company] dated May 19, 2022
- record 3 - Transport Canada approval dated May 21, 2019
- record 4 - correspondence from the county's Development Services department to [named company] dated February 1, 2021

ISSUES:

- A. Does the discretionary law enforcement exemption at section 8(1)(a) apply to the records?
- B. Did the county conduct a reasonable search for records?

DISCUSSION:

Background information and scope of the appeal

[9] The appellant submits that the county has not enforced its by-laws regarding the property named in his request and he explains his motive for requesting information under the *Act*. I do not repeat the appellant's specific allegations or the reason for his request because they are not relevant to my findings.

[10] The only issues before me and that I have legal authority to decide are the access and search issues discussed below. The appellant does not address the exemptions in his representations. Rather, he reviews the processing history of his requests, and states, for example, that the right to "obtain the information requested is mandated by" the *Act*, and the information he seeks is clearly a "record" as that term is defined." For the benefit of the appellant, I point out here that the *Act* does not give him a "right" to obtain the information he requested. It gives him the right to request it. Furthermore, the right of access under the *Act* is not absolute. The *Act* contains many exemptions that an institution may claim (or must claim, in some cases), if applicable to information that is requested under the *Act*.

Issue A: Does the discretionary law enforcement exemption at section 8(1)(a) apply to the records?

[11] For the reasons that follow, I uphold the county's decision to apply section 8(1)(a) to records 1-4.

[12] Section 8 contains several exemptions from a requester's right of access, mostly related to the context of law enforcement. Section 8(1)(a), which the county relies on to withhold the records at issue, applies where a certain event or harm "could reasonably be expected to" result from disclosure of the record. Section 8(1)(a) says:

A head may refuse to disclose a record if the disclosure could reasonably be expected to, interfere with a law enforcement matter[.]

[13] The term "law enforcement" is defined in section 2(1) of the *Act* as meaning:

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b).

[14] The IPC has found that "law enforcement" can include a municipality's

investigation into a possible violation of a municipal by-law.²

[15] IPC orders have held that the law enforcement exemption must be approached in a sensitive manner because it is hard to predict future events in the law enforcement context, and so care must be taken not to harm ongoing law enforcement investigations.³

[16] However, the exemption does not apply just because a continuing law enforcement matter exists,⁴ and parties resisting disclosure of a record cannot simply assert that the harms under section 8 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 8 are self-evident and can be proven simply by repeating the description of harms in the *Act*.⁵

[17] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.⁶ However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.⁷

[18] For section 8(1)(a) to apply, the law enforcement matter must still exist or be ongoing.⁸ This exemption does not apply once the matter is completed, nor where the alleged interference is with “potential” law enforcement matters.⁹ “Matter” has a broader meaning than “investigation” and does not always have to mean a specific investigation or proceeding.¹⁰

[19] The institution holding the record does not need to be the institution conducting the law enforcement matter for the exemption to apply.¹¹

Representations

[20] The county states that there is still an ongoing law enforcement matter relating to the records at issue. It explains that it continues to collect evidence and assess its legal response to the situation, including pursuing a prosecution in the Ontario Court of Justice

² Orders M-16 and MO-1245.

³ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

⁴ Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

⁵ Orders MO-2363 and PO-2435.

⁶ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

⁷ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

⁸ Order PO-2657.

⁹ Orders PO-2085 and MO-1578.

¹⁰ *Ontario (Community Safety and Correctional Services)*, 2007 CanLII 46174 (ON SCDC).

¹¹ Order PO-2085.

and/or an application with the Ontario Superior Court of Justice. The county further explains that the law enforcement matter pertains to both an alleged contravention of its comprehensive zoning by-law, and alleged non-compliance with a subdivision agreement, both of which are the subject of an ongoing investigation. The county says that at the time of the request in 2023, the matter in question was an active law enforcement investigation with the potential to result in the commencement of legal proceedings.

[21] The county submits that disclosure of the records related to the alleged contravention and non-compliance would significantly prejudice the county's position, including potentially revealing its enforcement and litigation strategy, and potentially impacting this and any additional legal proceedings commenced by it with respect to the law enforcement issue.

[22] The appellant's representations do not address section 8(1)(a).

Analysis and findings

[23] From my review of the records, it is clear that they all relate to the legally permitted use(s) of a property. I therefore accept the county's description of the records and find that they relate to law enforcement matters: an alleged contravention of the county's zoning by-laws and alleged non-compliance with a subdivision agreement.

[24] The county also explains that it continues to collect evidence and assess its legal response to the situation, including pursuing court action. The records span from 2019 to 2022, and I accept the county's evidence that as of 2023, the law enforcement matters were active and could have led to the commencement of legal proceedings. Therefore, I accept the county's evidence, and I find, that these law enforcement matters are ongoing.

[25] Having found that the records relate to ongoing law enforcement matters, I accept the county's submission that their disclosure may reveal its enforcement and litigation strategy and potentially impact the present legal proceedings, and any other related proceedings that the county may commence. I find that disclosure of the records could reasonably be expected to interfere with the county's related ongoing law enforcement matters within the meaning of section 8(1)(a) of the *Act*.

[26] The section 8(1)(a) exemption is discretionary, meaning that the county can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so. In addition, the IPC may find that the institution erred in exercising its discretion where, for example, it does so in bad faith or for an improper purpose; it takes into account irrelevant considerations; or it fails to take into account relevant considerations. In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.¹² The IPC cannot, however, substitute its own

¹² Order MO-1573.

discretion for that of the institution.¹³

[27] Some considerations that may be relevant in the exercise of discretion are¹⁴:

- the purposes of the *Act*, including the principles that information should be available to the public and individuals should have a right of access to their own personal information,
- the wording of the exemption and the interests it seeks to protect,
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person.

[28] The records do not contain the personal information of the appellant, who exercises the general right of access in this appeal. From my review of the records and the county's representations, I accept that the county considered the wording of the exemption at section 8(1)(a) and the interests that the exemption seeks to protect, and the nature of the information and the extent to which it is significant and/or sensitive to the county in the ongoing law enforcement matters. I find that these are relevant considerations. There is no suggestion that the county exercised its discretion in bad faith, for an improper purpose, or that it considered irrelevant factors. As a result, I uphold the county's exercise of discretion to withhold the records under section 8(1)(a) of the *Act*.

Issue B: Did the county conduct a reasonable search for records?

[29] For the following reasons, I do not uphold the county's search as reasonable.

[30] 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*.¹⁵ If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[31] 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.¹⁶

[32] The *Act* does not require the institution to prove with certainty that further records do not exist.¹⁷ However, the institution must provide enough evidence to show that it has

¹³ Section 43(2).

¹⁴ Order MO-1573.

¹⁵ Orders P-85, P-221 and PO-1954-I.

¹⁶ Order MO-2246.

¹⁷ *Youbi-Misaac v. Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9, on the analogous requirement in the provincial equivalent of the *Act*.

made a reasonable effort to identify and locate responsive records;¹⁸ that is, records that are "reasonably related" to the request.¹⁹

[33] 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.²⁰ 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.²¹

Representations

[34] In its representations on its search, the county states:

The municipality staff searched electronic systems and physical records in the custody and control of the municipality and that in the course of this search, the Deputy Clerk contacted legal counsel to arrive at the notice of decision.

[35] The appellant argues that the requests are unambiguously worded and have a broad scope. He also submits that it can be inferred from the three letters at issue that there are underlying records that were used to generate the content of the letters. In addition, he states:

At a meeting on [date], involving senior County staff, [name], the planner handling this matter, held a folder over an inch thick. When asked by the CAO what evidence supported the decision not to enforce the bylaw, [name] displayed an aerial photograph and referenced a section of an affidavit from the owner. The materials in the County's file, including the aerial photograph and affidavit, are records that should have been disclosed in response to the FOI requests.

[36] The appellant asks that I make a number of specific orders, including ordering the county to meet with him in person and to waive any fees the county may charge for any additional records the county locates in a further search for responsive records.

[37] When I asked the county for reply representations, it declined to provide any. The individual who responded also stated that she was not at the meeting mentioned in the appellant's representations so she could not speak to what he was referring to. She also noted that the request was quite detailed and difficult to define in scope, so she suggested that the appellant submit a new access request that was narrower and more specific,

¹⁸ Orders P-624 and PO-2559.

¹⁹ Order PO-2554.

²⁰ Orders M-909, PO-2469 and PO-2592.

²¹ Order MO-2185.

however, the appellant would not agree.

Analysis and findings

[38] The county's representations about its search efforts were minimal and vague. The county's statement that "[t]he municipality staff searched", provides insufficient details about the steps it took to search for records responsive to the appellant's request; there is no information on the specific staff who conducted the search, including their roles with the county and why these staff would be considered "experienced employees" in the subject matter of the request. The county does not provide information on which department(s)' physical records were searched, and any particulars of the search criteria. This lack of detailed information from the county leaves me unable to conclude that the county's search was reasonable. I am also satisfied that the appellant has provided a reasonable explanation for his belief that additional responsive records exist. I note that the county did not respond to the appellant's submissions. Since the county has not provided sufficient evidence that it conducted a reasonable search, I do not uphold its search as reasonable. As a result, I will order it to conduct a further search.

[39] I am mindful of the county's expressed concern to the IPC about its ability to understand exactly what records the appellant seeks, considering the complexity and length of the access request. On the other hand, I appreciate that the appellant believes that he used clear language in his request. In the circumstances, I encourage the parties to work together, and to reflect those efforts in writing, to clarify the scope of the request before the county conducts the further search I order below. I remind the appellant that the IPC has held that, where a requester fails to respond to an institution's attempts to clarify the access request, the IPC may decide that all steps taken by the institution to respond to the request were reasonable.²²

[40] I dismiss the appellant's request that I order a face-to-face meeting between him and the county and the waiver of any fees as those remedies are unavailable and inappropriate in the circumstances of this appeal. For clarification, while I have determined that the appellant has established a reasonable basis for believing that additional responsive records exist, I am not making a finding that additional responsive records actually exist.

[41] I find that the county did not conduct a reasonable search for responsive records, as required by the *Act*, and I order it to conduct a further search.

ORDER:

1. I uphold the county's decision to withhold the four records at issue under section 8(1)(a) and dismiss that aspect of the appeal.

²² Order MO-2213.

2. I order the county to conduct a further search for responsive records, to issue another access decision, and to provide the appellant with an affidavit reflecting the county's search efforts, within 30 days of this order. If the county requires clarification on any aspect of the request, it is to seek clarification from the appellant within that time period. The affidavit must include the following details of the county's search efforts: the names and titles of the employees involved in the search, the search terms used, the names of the electronic and physical locations searched and why those locations would reasonably be expected to contain responsive records.

Original Signed by: _____
Marian Sami
Adjudicator

September 17, 2025 _____

APPENDIX

"In respect to [specified address] (or any businesses operating on that property including [six named entities])

1. Evidentiary record of any historical uses (save and except seasonal trailer park or campground) at the time of the passing of the zoning bylaw that qualifies as a valid legal-non-conforming use ("use"); and specifically,
 - a. the type or nature of that use;
 - b. the intensity of that use was for the public (i.e., uses excluding those that were *incidental and subordinate to, and exclusively devoted to* the seasonal trailer park residents and overnight campers of [specified address]; and
 - c. evidence of uninterrupted continuity of a valid legal non-conforming use, i.e. that the use was not *discontinued for a period of 24 consecutive months or longer*.
2. Evidentiary record, as above, of any lawful permissions granted by the County for a continuing use to be offered to the general public, save and except a use that was *incidental and subordinate use exclusively devoted to* the seasonal trailer park or campground.

If there is a lawful permission in #2, then please produce:

3. Evidentiary record of consents in that application from the four deeded right-of-way owners over the affected property.
4. Any reports of communications of the County with the owner or his lessee regarding, permissions, discontinuance order or requirement to seek proper zoning permission for any uses (save and except seasonal trailer park or campground or an incidental and subordinate use that was *incidental and subordinate use exclusively devoted to* the seasonal trailer park or campground.)
5. Evidence relied on by the County for refraining from prosecuting regarding violations of the zoning bylaws for the property by including seasonal uses or intensity of uses on this property that exceed the uses represented by the attached 2005 aerial photograph (save and except seasonal trailer park or campground or an incidental and subordinate use that was *incidental and subordinate use exclusively devoted to* the seasonal trailer park or campground):
6. Status of any report or partial report together with a copy thereof and exhibits prepared by the County in response to Motion 2020-368 *THAT staff bring back a*

report regarding the concerns raised by the deputants on Sheba's Island, with enforcement, zoning and other concerns by Q4 2020. CARRIED"