

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4786

Appeals PA23-00683 and PA24-00112

Southlake Regional Health Centre

February 6, 2026

**Summary:** The appellant made two requests under the *Freedom of Information and Protection of Privacy Act* to the hospital for records relating to plans for the proposed construction of a new hospital in the Township of King. The hospital withheld portions of the responsive records under the exemption for third-party commercial information (section 17(1)). The appellant appealed the hospital's decision and questioned the reasonableness of the hospital's searches claiming additional responsive records ought to exist.

In this order, the adjudicator finds the records do not contain third-party commercial information exempt under the *Act* and orders the hospital to disclose them to the appellant. The adjudicator upholds the hospital's searches for responsive records as reasonable.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 17(1)(a) and (c), and 24(1).

### OVERVIEW:

[1] The appellant made two requests under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to Southlake Regional Health Centre (the hospital) for records relating to proposed plans for the potential construction of a hospital in the Township of King.

[2] In the first request, the appellant stated he sought access to records falling in the category of "Capital Projects" relating to the acquisition of land for the new hospital.

[3] In the second request, the appellant requested access to records relating to an email located in response to the first request. Specifically, the appellant identified a “fit test” for the proposed hospital in a specific location and any records showing the location of the proposed hospital or related buildings as records that would be responsive to his request.

[4] After notifying affected parties of the requests and considering their views regarding disclosure,<sup>1</sup> the hospital granted the appellant partial access to the records. The hospital withheld portions of the records under the mandatory third-party commercial information exemption in section 17(1) of the *Act*.<sup>2</sup>

[5] The appellant appealed the hospital’s decisions to the Information and Privacy Commissioner of Ontario (the IPC) and two appeal files were opened: Appeal PA23-00683 concerning the first request and Appeal PA24-00112 concerning the second.

[6] During mediation, the appellant confirmed his interest in pursuing access to the withheld information and raised the issue of the reasonableness of the hospital’s searches, claiming additional responsive records ought to exist.

[7] The hospital conducted another search and issued a revised access decision granting the appellant access to additional information, but maintained its exemption claims for the remainder.

[8] Mediation did not resolve the appeals and they were transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. I am the adjudicator and I sought and received representations from the hospital, the appellant, and two affected parties.<sup>3</sup>

[9] Upon review of the parties’ representations, I decided to draft a joint order due to the overlapping issues, parties, and searches conducted. I will refer to the two affected parties who provided representations as Affected Party A and Affected Party B.

[10] In the discussion that follows, I find the exemption for third party information at section 17(1) does not apply to the records and order the hospital to disclose them to the appellant. I uphold the hospital’s searches for records responsive to both requests as reasonable.

## **RECORDS:**

[11] The records at issue in Appeal PA23-00683 are described by the hospital as

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<sup>1</sup> Notice was given under section 28 of the *Act*.

<sup>2</sup> The hospital also raised the application of section 18(1) to withhold some of the information at issue, but it dropped this exemption claim during the inquiry.

<sup>3</sup> I notified five affected parties, but only two responded.

follows:

<b>Record No.</b>	<b>Description</b>	<b>Exemption(s) claimed</b>
6.1 (identified as record A in this order)	Email attachment – drawing *duplicate of record 8 at issue in Appeal PA24-00112	Withheld in full under section 17(1)
8	Site Sketch	Withheld in full under section 17(1)
9	Email Chain with attachments	Withheld in full under section 17(1)
11	Site Sketch	Withheld in full under section 17(1)
14	Site Sketch *duplicate of the attachment to record 9	Withheld in full under section 17(1)
15	Draft memorandum	Withheld in full under section 17(1)
19.1	Email attachment – Southlake Masterplan Site Analysis Report	Withheld in part under section 17(1)

[12] The records at issue in Appeal PA24-00112 are described by the hospital as follows:

<b>Record No.</b>	<b>Description</b>	<b>Exemption(s) claimed</b>
1	Southlake Land Solutions Report dated May 2023	Withheld in part under section 17(1)
2	Draft Report on Land Solutions	Withheld in part under section 17(1)
3	Draft Report on Land Solutions with comments	Withheld in part under section 17(1)
4	Draft Southlake Solutions Report dated April 2023	Withheld in part under section 17(1)
5	Southlake Land Solutions dated April 2023 – slide deck	Withheld in part under section 17(1)
6	Southlake Land Solutions dated April 2023 – PowerPoint presentation	Withheld in part under section 17(1)
7	Drawing – Proposed Site Plan with Comments	Withheld in full under section 17(1)
8 (identified as record A in this Order)	Drawing – Preliminary Concept Plan *duplicate of record 6.1 at issue in PA23-00683	Withheld in full under section 17(1)

## **ISSUES:**

- A. Does the mandatory exemption for third party information apply to the records?
- B. Did the hospital conduct reasonable searches for records responsive to the appellant's requests?

## **DISCUSSION:**

### **Issue A: Does the mandatory exemption for third party information apply to the records?**

[13] The hospital relies on the exemption for third party information at section 17(1) to deny the appellant access to the withheld portions of the records. The affected parties also claim the records are subject to the exemption for third party information.

[14] The purpose of section 17(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,<sup>4</sup> where specific harms can reasonably be expected to result from its disclosure.<sup>5</sup>

[15] Both affected parties claim the information at issue is exempt from disclosure under sections 17(1)(a) and (c). These sections read,

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization;

...

(c) result in undue loss or gain to any person, group, committee or financial institution or agency[.]

[16] For section 17(1) to apply, the party arguing against disclosure must satisfy each part of the following three-part test:

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<sup>4</sup> *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (Boeing Co.).

<sup>5</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information;
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a) and/or (c) of section 17(1) will occur.

[17] The parties resisting disclosure of the information must satisfy the requirements of all parts of the test. This means the failure to satisfy any part of the test will lead to a finding that the exemption does not apply.

[18] The hospital declined to make submissions to support its section 17(1) claim<sup>6</sup>, referring and relying instead on the submissions of the affected parties that provided representations regarding the exemption's application.

### ***Part 1: type of information***

[19] Affected Party A confirms there is one record relating to them at issue in both appeals.<sup>7</sup> To avoid confusion, I will identify the record relating to Affected Party A as record A in this order. Record A is a drawing of a Preliminary Concept Plan. Affected Party A submits the record contains their sensitive commercial and technical information, specifically, "preliminary technical information" as well as commercially sensitive information. Affected Party A submits the information is commercially sensitive due to the competitive nature of the industry.

[20] Affected Party B submits the information relating to it, specifically, portions of records 1 (specifically pages 55 to 65) and 7 in Appeal PA24-00112 and records 9, 11, 14, 15, and 19.1 in Appeal PA23-00683, contains its trade secrets and technical information. These records include reports, memoranda, emails, site sketches and drawings. Affected Party B submits it developed the trade secrets and technical information found in these records to address the placement, contents, and site selection of the future hospital. Affected Party B also submits the records contain "details on site selection factors that are [its] owned work product." Finally, Affected Party B submits the records contain details on the technical approach it proposed for site selection and site components which it submits are its trade secrets.

[21] The appellant accepts some of the information at issue, such as the site sketches, is technical information. However, the appellant submits he has "no knowledge" about whether the remainder of the information at issue contains technical or commercial

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<sup>6</sup> Email from hospital's legal counsel dated March 10, 2025 for Appeal PA23-00683 and email from hospital's legal counsel dated March 27, 2025 for Appeal PA24-00112.

<sup>7</sup> Identified as record 6.1 in Appeal PA23-00683 and record 8 in Appeal PA24-00112.

information.

[22] I have reviewed the records at issue and accept they contain technical information relating to third parties. The IPC has defined technical information as

Information belonging to an organized field of knowledge in the applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. Technical information usually involves information prepared by a professional in the field, and describes the construction, operation or maintenance of a structure, process, equipment or thing.<sup>8</sup>

[23] Specifically, I find record A, as well as the site sketches found in Appeal PA23-00683<sup>9</sup>, and the drawing in Appeal PA24-00112<sup>10</sup> contain technical information because they are drawings prepared by experts regarding the potential site for a new hospital.

[24] I also find the records containing analysis and review of the sites proposed for consideration for the new hospital contain technical information. This information is found in records 9, 15, and 19.1 at issue in Appeal PA23-00683 and records 1 to 6 at issue in Appeal PA24-00112.

[25] In addition, I am satisfied some of the records contain commercial information relating to various parties. The IPC has defined commercial information as

Information that relates only to the buying, selling or exchange of merchandise or services. This term can apply to commercial or non-profit organizations, large or small.<sup>11</sup> The fact that a record might have monetary value now or in future does not necessarily mean that the record itself contains commercial information.<sup>12</sup>

[26] I find records 1 to 6 at issue in Appeal PA24-00112 as well as record 8 at issue in Appeal PA23-00683 contain commercial information because the party that prepared these records (Affected Party C) was contracted by the hospital to conduct a review of the potential properties for a proposed hospital.

[27] Therefore, I find all the information at issue in both appeals contain either technical information or commercial information, or both, and satisfy the first part of the three-part test that must be established for section 17(1) to apply.

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<sup>8</sup> Order PO-2010.

<sup>9</sup> Specifically, the attachment to record 9 (which is identified as record 9.1 by Affected Party B), and records 8, 11 and 14.

<sup>10</sup> Record 7.

<sup>11</sup> Order PO-2010.

<sup>12</sup> Order P-1621.

***Part 2: supplied in confidence***

[28] For section 17(1) to apply, part 2 of the test requires the information was supplied to the institution in confidence, either implicitly or explicitly. Below I find some of the records were supplied to the hospital in confidence, while others were not.

[29] Affected Party A submits it provided record A to the hospital with the understanding "it would be treated in a confidential manner." It submits the information in record A has never been publicly disclosed. Affected Party A submits the record was provided to the hospital on the basis that it was to be kept confidential; it was treated confidentially by Affected Party A; was not otherwise disclosed or publicly available; and was prepared for a purpose that would not entail disclosure.

[30] Affected Party B submits it provided the information in which it has an interest in to the hospital on the presumption that the information would be protected by the hospital because it contains "explicit details on the [Affected Party B]-designed technical approach" and it is "common in the industry" to expect confidentiality.

[31] The appellant claims the parties have not established whether the records were supplied in confidence to the hospital. The appellant submits the affected parties have not provided sufficient evidence to demonstrate the records were supplied in confidence beyond making bald assertions.

[32] Based on my review, it is my understanding records 1 to 6 at issue in Appeal PA24-00112 and record 8 at issue in Appeal PA23-00683 were prepared by Affected Party C for the hospital's review. I notified Affected Party C of the inquiry and provided it with an opportunity to submit representations in response to the Notice of Inquiry and specifically on the issue of the application of section 17(1). However, Affected Party C did not do so.

[33] The requirement that the information be "supplied" to the institution reflects the purpose in section 17(1) of protecting the informational assets for third parties.<sup>13</sup>

[34] Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.<sup>14</sup>

[35] To satisfy the "in confidence" component of part two of the section 17(1) test, a party resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.<sup>15</sup>

[36] In determining whether an expectation of confidentiality is based on reasonable

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<sup>13</sup> Order MO-1706.

<sup>14</sup> Orders PO-2020 and PO-2043.

<sup>15</sup> Order PO-2020.

and objective grounds, I must consider the surrounding circumstances of the case, including whether the information was:

- a. communicated to the institution on the basis that it was to be kept confidential
- b. treated confidentially by the third party in a manner that indicates a concern for confidentiality
- c. not otherwise disclosed or available from sources to which the public has access; and
- d. prepared for a purpose that would not entail disclosure.<sup>16</sup>

[37] For ease of reference, I will consider whether each record at issue in each appeal was supplied to the hospital in confidence as required by part 2 of the section 17(1) test.

*Appeal PA23-00683*

[38] Record A is a technical drawing of the proposed site for a new hospital. Record A is not marked confidential nor is there any other indication on the record itself that it was supplied in confidence. However, Affected Party A submits the drawing was supplied to the hospital in confidence with an expectation of confidentiality. In the confidential portions of its representations, Affected Party A asserts record A was supplied to the hospital as part of a confidential process which gave rise to an expectation of confidentiality. I find Affected Party A demonstrated record A was supplied to the hospital as part of a confidential process with an expectation the record would be kept confidential. Therefore, I find record A meets the second part of the section 17(1) test.

[39] Record 8 is a site sketch submitted by Affected Party C. There are no markings on this record to indicate it was provided to the hospital in confidence. I also cannot infer from a review of the record itself that it was provided in confidence to the hospital. Further, neither Affected Party C nor the hospital provided submissions to support a claim that it was provided to the hospital in confidence. In the absence of any evidence demonstrating record 8 was supplied in confidence to the hospital, I find it was not. Accordingly, I find record 8 is not exempt under section 17(1) because part 2 of the test has not been satisfied.

[40] With respect to the remaining records at issue in Appeal PA23-00683, Affected Party B submits it provided the information to the hospital with a presumption that "these data would be protected by [the hospital] since they contain explicit details on the [Affected Party B]-designed technical approach." Affected Party B submits it is common in the industry to have this expectation of protection and privacy with respect to this type of information. Affected Party B does not offer any further details to support its claim that

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<sup>16</sup> Orders PO-2043, PO-2371 and PO-2497, *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

records 9, 11, 14, 15, and 19.1 were supplied in confidence to the hospital. Rather, Affected Party B merely asserts these records were supplied in confidence and it had an expectation of confidentiality.

[41] While record 9 has a confidentiality note as part of the signature block of the hospital's employee who sent the original message, the information supplied by Affected Party B does not have a similar notation. Further, none of the site sketches in records 9, 11, or 14, or the memoranda (in draft as record 15 and final as record 19.1) contain an explicit notation indicating that these records are subject to confidentiality, nor have I been provided with sufficient evidence to support a finding of implicit confidentiality.

[42] In any event, given my findings regarding the third part of the test relating to harms below, I do not need to make a finding regarding the second part of the three-part test for the application of section 17(1) to the records relating to Affected Party B.

*Appeal PA24-00112*

[43] I reviewed records 1 to 6 at issue in Appeal PA24-00112 and find they were not supplied to the hospital in confidence. I note the majority of the information in the records was prepared by Affected Party C. Record 1 appears to be the final version of the Southlake Land Solutions Report, with appendices prepared by other parties (such as pages 55 to 65 which were prepared by Affected Party B). Records 2 to 4 are draft versions of record 1, prepared by Affected Party C. Records 5 and 6 are slide decks prepared by Affected Party C relating to the Southlake Land Solutions Report.

[44] None of these records contain any markings to indicate they were provided to the hospital in confidence and I cannot infer from their contents that they were supplied in confidence. Further, neither Affected Party C nor the hospital provided submissions to support a finding that they were provided to the hospital in confidence. In the absence of any evidence demonstrating that these records were supplied to the hospital in confidence, I find they were not. Therefore, I find these records do not meet the second part of the test for section 17(1) to apply and are therefore not exempt under section 17(1).

[45] Record 7 is a technical drawing of the proposed sites for the hospitals. The record is not marked confidential nor is there any other indication on the record itself that it was supplied in confidence and with an expectation that it would be treated in a confidential manner. Although Affected Party B asserts the record was supplied to the hospital in confidence with an expectation of confidentiality, it did not provide evidence to support this claim. However, I do not need to make a finding regarding the second part of the three-part test for the application of section 17(1) to record 7 because of my findings regarding the third part of the test below.

[46] I will now consider whether the third part of the test has been established for record A, records 9, 11, 14, 15, and 19.1 at issue in Appeal PA23-00683, and record 7 at

issue in Appeal PA24-00112.

**Part 3: harms**

[47] For the reasons that follow, I find the affected parties have not provided sufficient evidence to support a finding that the harms in sections 17(1) could reasonably be expected to result from the disclosure of the records that remain at issue.

[48] Parties resisting disclosure of a record cannot simply assert the harms under section 17(1) 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 the harms under section 17(1) are self-evident and can be proven simply by repeating the description of harms in the *Act*.<sup>17</sup>

[49] Parties resisting disclosure must show the risk of harm is real and not just a possibility.<sup>18</sup> 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.<sup>19</sup>

[50] Affected Party A raises the harms contemplated in sections 17(1)(a) and (c), claiming that its competitive position will suffer significant prejudice and that it will experience economic loss if record A is disclosed. Affected Party A submits it has an industry reputation of conducting its business in a “professional and forthright manner by providing accurate and reliable information” and the disclosure of record A will expose it to “significant harm to reputation and loss of marketplace goodwill by creating a false and inaccurate impression of its business.” Accordingly, Affected Party A submits the disclosure of record A would put it at a “significant competitive disadvantage, result in economic loss to [Affected Party A] and prejudice” its future position.

[51] In addition, Affected Party A submits the disclosure of record A would undermine its competitive position and harm its business. Affected Party A submits record A was provided to the hospital in confidence and contains technical and commercial information. Affected Party A submits record A is a draft and “did not result in any subsequent business activities relevant to the public interest.” Affected Party A submits record 8 was submitted in a confidential process and was not intended to become public knowledge.

[52] Affected Party B submits the records relating to it<sup>20</sup> contain information it

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<sup>17</sup> Orders MO-2363 and PO-2435.

<sup>18</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

<sup>19</sup> *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.

<sup>20</sup> Specifically, records 9, 11, 14, 15, and 19.1 at issue in Appeal PA23-00683 and record 7 at issue in Appeal PA24-00112.

developed to "address the placement, contents and site selection of the future hospital." Affected Party B submits these "details on site selection factors" are its work product. Finally, Affected Party B submits the records contain details regarding its technical approach to site selection and components for the facility that are trade secrets.

[53] Affected Party B submits its competitive position could be harmed (section 17(1)(a)) if its technical information is shared with competitors because such disclosure could reasonably be expected to affect its ability to maintain "its technical advantage and to continue to be competitive on future solicitations." Affected Party B submits that providing its competitors with access to this type of information would directly affect its competitive advantage.

[54] Affected Party B also submits it would suffer undue loss (section 17(1)(c)) if these records are disclosed. It submits there could be "the potential loss of contracts due to third party access to these data" which could negatively affect its financial position, "including the possible loss of staff."

[55] The appellant submits the affected parties have failed to provide any detailed evidence to demonstrate a reasonable expectation of harm. The appellant submits the affected parties provided no evidence to support their claims and notes the IPC has rejected "bald assertions" of harms without specific explanation or evidence.<sup>21</sup>

[56] Based on my review, I find neither affected party has provided sufficient evidence to demonstrate that disclosure of the records at issue could reasonably be expected to result in harm or undue loss to the affected parties or their competitive positions.

[57] Sections 17(1)(a) and (c) seek to protect information that could reasonably be expected to be exploited in the marketplace.<sup>22</sup> I accept the records contain technical information relating to the affected parties and their plans for the proposed sites for a new hospital. However, neither affected party provided sufficient evidence to support their claims that the information contained in the records could, if disclosed, significantly prejudice their respective competitive positions in the future and result in the affected parties experiencing undue loss as contemplated by sections 17(1)(a) and (c) of the *Act*.

[58] Neither affected party specified the impact that disclosure of the information at issue would have on their businesses or future competitive positions. The affected parties merely assert the harms will occur and do not provide evidence to connect the disclosure of the specific information at issue with the harms they claim will reasonably result from that disclosure.

[59] Further, the affected parties have not provided a sufficient explanation as to how records, such as drawings or memoranda, relating to the proposed sites for a future hospital that, according to Affected Party A "did not result in any subsequent business

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<sup>21</sup> The appellant refers to Orders PO-3256, PO-3185, and PO-3032.

<sup>22</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.

activities”, could be used by competitors to their detriment. For example, there is no indication the records at issue are or will be the subject of future proposals or negotiations with the hospital or any other organization. In particular, the drawings in the records relate to specific pieces of property and a specific use (i.e. the building of a hospital on the proposed sites). It is unclear, and the affected parties have not demonstrated, how their competitors could use the information in these site-specific drawings to the detriment of the affected parties’ competitive position or cause undue loss to them.

[60] Finally, while Affected Party B submits the disclosure of records relating to them could result in the potential loss of contracts and then the possible loss of staff due to the negative impact of the loss of contracts, in the absence of any further evidence to support this claim, I find these arguments to be speculative and remote.

[61] Therefore, I do not accept the affected parties’ claims that the disclosure of the records at issue could reasonably be expected to prejudice significantly their competitive positions and result in them experience undue loss as contemplated by sections 17(1)(a) and (c). Accordingly, part 3 of the test under section 17(1) has not been established for record A, record 7 at issue in Appeal PA24-00112, and records 9, 11, 14, 15, and 19.1 at issue in Appeal PA23-00683.

### ***Conclusion***

[62] I find records 1 through 6 at issue in Appeal PA24-00112 and record 8 at issue in Appeal PA23-00683 were not supplied in confidence to the hospital. Accordingly, they do not satisfy part 2 of the section 17(1) test.

[63] In addition, I find part 3 of the test is not satisfied for the remainder of the records because the affected parties did not establish their disclosure could reasonably be expected to result in harm, including significantly prejudice to their competitive positions or result in undue loss to their businesses or competitive positions.

[64] As all three parts of the test must be met for the exemption to apply, I find none of the records at issue are exempt under section 17(1). I will order the hospital to disclose the records to the appellant.

### **Issue B: Did the hospital conduct reasonable searches for records responsive to the appellant’s requests?**

[65] If a requester claims additional records exist beyond those located by the institution, the issue to be decided is whether the institution conducted a reasonable search for records as required by section 24 of the *Act*.<sup>23</sup> If the IPC is satisfied 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.

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<sup>23</sup> Orders P-85, P-221 and PO-1954-I.

[66] 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 reasonably related to the request.<sup>24</sup> The IPC will order a further search if the institution does not provide enough evidence to show it made a reasonable effort to identify and locate all of the responsive records within its custody or control.<sup>25</sup>

[67] As background, the hospital submits that in or around 2019, the hospital initiated the planning for new hospital facilities in York Region (the Redevelopment Project). The hospital submits the Township of King was among the potential locations under consideration for the planning of the new hospital facilities.

[68] The hospital provided an affidavit sworn by its Director of Capital Development (the Director) summarizing the searches conducted for records responsive to the appellant's request at issue in Appeal PA23-00683. The hospital provided a second affidavit sworn by its Privacy Officer summarizing the searches conducted for responsive records at issue in Appeal PA24-00112.

[69] Both affiants provided summaries of the requests received, any amendments made to the requests, the search terms used by the employees that conducted the searches, and the locations they searched for records. These affidavits were shared with the appellant, in full, and the appellant was provided with the opportunity to respond to them.

[70] With regard to Appeal PA23-00683, the appellant questions the Director's knowledge of the subject matter of the request given his limited involvement in the Redevelopment Project and lack of awareness of the hospital's Directory of Records.

[71] The appellant claims the hospital did not conduct a reasonable search for responsive records in Appeal PA23-00683 because it failed to include the term "acquisition" and "its reasonable synonyms" in its search. Further, even though the Director was "aware of the general location of the property under consideration", the appellant submits he ought to have included the search terms "Bathurst" and "Davis" as well as the surname of the principal of the owner of land.

[72] Further, the appellant submits the Director limited his search to electronic files in the "Capital Development" master folder in the hospital's electronic repository of records. The appellant submits the Director did not search email servers, desktop or laptop computers, or paper records.

[73] The appellant submits responsive records ought to exist in addition to the 29 records located by the Director. Specifically, the appellant notes the Director, in his affidavit, referred to a "Prelim Concept Plan" and additional records relating to an email dated January 20, 2023 were located in response to the request. The appellant submits

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<sup>24</sup> Orders M-909, PO-2469 and PO-2592.

<sup>25</sup> Order MO-2185.

these records were not provided to him.

[74] With regard to Appeal PA24-00112, the appellant claims the hospital did not conduct a reasonable search for responsive records. The appellant submits the "lands in question" should have not been limited to one parcel of land owned by a specific developer. The appellant submits the "lands in question" ought to have incorporated a second parcel of land because, according to diagrams provided by the appellant, the proposed plans for the new hospital "straddl[ed] the boundary between" the property identified by the hospital as the land in question and the second piece of property identified by the appellant.

[75] The appellant submits the Privacy Officer's search was also limited inappropriately by time. Referring to the "first component" of the hospital's search, which incorporated the searches conducted in response to two previous requests, the appellant notes that one of the searches had an end date of July 17, 2023, which was one day before he amended the search. The appellant submits there is "no reason why the end date [for the search] should not be July 18, 2023."

[76] The appellant also submits the hospital applied overly narrow search terms. Specifically, the appellant submits he requested the location of any "hospital", but the hospital applied the search term "new hospital." The appellant also submits his request asked for the location of any "buildings", but that term was not used by the hospital.

[77] In addition, the appellant submits the hospital should have searched more than only the VP's Outlook account. The appellant submits the hospital's Director of Capital Development should have been required to search his email account.

### ***Analysis and findings***

[78] Based on my review of the parties' representations and the hospital's affidavits, I am satisfied the hospital conducted reasonable searches for records responsive to the appellant's requests. I find employees knowledgeable in the subject matter of the request, specifically the Director, the VP, the Privacy Specialist and the Privacy Officer, expended a reasonable amount of effort to locate records responsive to the appellant's request. I am satisfied the Director has the requisite experience regarding capital projects and knowledge about the electronic filing system to be considered an "an experienced employee knowledgeable in the subject matter of the request."

[79] In addition, I find the hospital searched the relevant locations for records, including the appropriate folders in the hospital's "Capital Development" master electronic folder, which included email records relating to the hospitals capital development projects, the VP's Outlook account, and other document repositories. I note the hospital reviewed electronic records only but acknowledge the hospital's submission that paper records are digitized and saved electronically.

[80] Further, given the overlapping nature of the requests the hospital has received,

including those received by the appellant, I find it reasonable for the hospital to have reviewed the records retrieved in response to requests relating to the same general subject (i.e. the proposed redevelopment of property in the Township of King for a new hospital) in the searches conducted in response to Appeal PA24-00112.

[81] I find the hospital applied broad search terms (i.e. "planning", "construction", "commissioning", "new hospital", "King" and "Township of King" for Appeal PA23-00683 and "fit", "location", "new hospital", and "land" for the Appeal PA24-00112) to conduct the searches. I acknowledge the appellant's submission that the hospital ought to have added search terms such as "hospital", "acquisition", "Bathurst" and "Davis." However, based on my review of the requests, I find the search terms applied were sufficiently broad to have captured the records sought by the appellant. With regard to the terms "Bathurst" and "Davis" identified by the appellant in relation to Appeal PA23-00683, I note the Director searched the folder called "Bathurst-Davis" which would, presumably, capture the records the appellant seeks.

[82] The appellant takes issue with the hospital's interpretation of the "lands in question" for Appeal PA24-00112 as referring to one rather than two parcels of land where the proposed hospital was to be located. However, I find the hospital's search terms which include "location" and "land" and "fit test" were sufficiently broad to capture the information responsive to the appellant's request. Further, if the proposed plans straddled two pieces of land as the appellant suggests, any records regarding such proposed plans would naturally encompass both pieces of land.

[83] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide sufficient evidence to show it made a reasonable effort to identify and locate responsive records.<sup>26</sup> In this case, I find the search terms used demonstrate a reasonable effort, on the part of the hospital, to identify and locate responsive records.

[84] With regard to the end date applied to the search conducted for Appeal PA24-00112, I note the hospital did not limit the search date to July 17, 2023 as the appellant suggests. Rather, the evidence demonstrates the hospital searched the VP's Outlook account for records created between January 18 and December 15, 2023.

[85] Finally, the appellant submits the hospital's Director of Capital Development should also have been required to search his accounts in response to Appeal PA24-00112. However, the Director searched his records in response to Appeal PA23-00683. The request that is the subject Appeal PA24-00112 was made as a result of an email record that was disclosed in response to the request at issue in Appeal PA23-00683. I accept the Privacy Officer's searches conducted in response to Appeal PA24-00112 incorporated records located in the searches completed by the Director in response Appeal PA23-00683. Therefore, I do not find it necessary to require the Director to conduct another

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<sup>26</sup> Orders P-624 and PO-2559.

search for records responsive to the appellant's requests.

[86] Overall, I find the hospital provided sufficient evidence to demonstrate it made a reasonable effort to identify and locate records responsive to the appellant's requests. It sought the assistance of experienced employees knowledgeable in the subject matter of the requests. These employees expended a reasonable effort, applying a broad range of search terms, to identify and locate records responsive to the requests.

[87] For the reasons set out above, I find the hospital's searches for responsive records complied with its obligations under the *Act* and I uphold them as reasonable.

**ORDER:**

1. I order the hospital to disclose the records to the appellant by **March 13, 2026**, but not before **March 9, 2026**.
2. In order to verify compliance with order provision 1, I reserve the right to require the hospital to provide me with a copy of the report disclosed to the appellant.
3. I uphold the hospital's searches for records as reasonable.

Original Signed by: \_\_\_\_\_  
Justine Wai  
Adjudicator

February 6, 2026 \_\_\_\_\_