Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4777

Appeal MA25-00235

Municipality of Chatham-Kent

March 13, 2026

Summary: An individual asked the Municipality of Chatham-Kent for information about the creation of its Deputy Chief Administrative Officer position and qualifications, and the tuition and expenses for the degree of a specific employee of the municipality. The municipality granted access to responsive records; however, the appellant maintains that additional responsive records should exist. In this order, the decision-maker finds that the municipality 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 as amended, section 17.

Orders Considered: Order PO-3437.

OVERVIEW:

[1] The appellant asked the Municipality of Chatham-Kent (the municipality) for access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to:

1. Copy of all documents (correspondence, emails, memos, text messages, etc..) where the sender or recipient (from, to, cc, etc.) are any one of: [four named individuals] and such correspondence refers to:

    a. the creation of the Deputy [Chief Administrative Officer (the deputy)] position; or

b. the development of the minimum requirements/qualifications to apply for the [deputy] position.

2. All tuition and expense records for [a named employee]'s degree.

[2] The municipality issued a decision, granting partial access to records responsive to part 1 of the request under the closed meeting exemption at section 6 of the *Act* and the personal privacy exemption at section 14 of the *Act*, and full access to records responsive to part 2 of the request.

[3] The appellant appealed the municipality's decision to the Information and Privacy Commissioner of Ontario (the IPC). IPC Appeal MA25-00235 was opened this matter.

[4] During mediation, the municipality issued a revised decision and released the records previously withheld under section 6 of the *Act*. The appellant confirmed that they were not seeking access to the personal information withheld by the municipality under section 14 of the *Act*.

[5] However, the appellant advised the mediator that they believed additional records responsive to the request should exist. The municipality maintained that it had conducted a reasonable search and that no further records exist. As no further mediation was possible, the appeal was transferred to the expedited stage of the appeal process and assigned to me as the case lead.

[6] I decided to conduct an inquiry and issued a Notice of Expedited Inquiry, seeking representations from the parties. I received representations from the municipality and the appellant, which were exchanged between the parties, in accordance with the IPC's *Code of Procedure*.

[7] In this order, I find that the municipality conducted a reasonable search for responsive records under section 17 of the *Act* and dismiss the appeal.

DISCUSSION:

[8] The sole issue in this order is whether the municipality conducted a reasonable search for responsive records.

[9] Where a requester claims that additional records exist beyond those identified by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.[1] 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.

[1] Orders P-85, P-221, and PO-1954-I.

[10] 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.[2]

[11] The *Act* does not require the institution to prove with certainty that further records do not exist.[3] However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[4] that is, records that are "reasonably related" to the request.[5]

[12] 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.[6] 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.[7]

Informal dispute resolution

[13] In response to why the creation of such a position would produce only a limited number of internal records, the municipality advised that "emails… are responsive only if one of the senders or recipients was one of the individuals identified within the scope of the request."

[14] Rather than submitting an access request using boarder language, the appellant maintained that additional responsive records should exist based on the wording of their access request.

Representations

The municipality's representations

[15] The municipality provided an affidavit from its Manager of Privacy and Information (the manager), who has personal knowledge of the facts of this appeal and conducted the search for responsive records.

[16] He affirms that he:

- carried out searches for responsive records, including searches for records in the Legal Services Division, Human Resources Division, Chief Administrative Office, and the Mayor's Office.

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[2] Order MO-2246.
[3] *Youbi-Misaac* v. *Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.
[4] Orders P-624 and PO-2559.
[5] Order PO-2554.
[6] Orders M-909, PO-2469, and PO-2592.
[7] Order MO-2185.

- contacted both junior and senior staff members to assist with the searches, including the Director of Legal Services; the General Manager/Chief Human Resource Officer at the relevant time; the Chief Administrative Officer; and the Mayor of Chatham-Kent (based on the request).

- provided a copy of the municipality's retention policy to support his position that, to the best of his knowledge, no responsive records have been deleted.

The appellant's representations

[17] The appellant submits that there is a "palpable absence of internal communications" responsive to the request. They submit that the search methodology was unreasonable because it allowed the subjects of the access request to control which records were identified and released. They argue that a better approach would have been to order the IT department to conduct a thorough search of the emails and text messages of the individuals named in the request.

[18] Apart from the few records released, there is no record of communications between any of the named individuals on the creation of the deputy position, even though four versions of the job description were located.

[19] One text message appears to indicate that someone in human resources wanted to speak with the former Director of Legal Services (who was later the successful candidate for the deputy position) about the role. However, no further responsive records were identified regarding the outcome of that conversation.

[20] In sum, the appellant argues that the municipality's position is "simply not credible".

The municipality's reply representations

[21] The municipality submits that the appellant made a detailed request that was clear in scope, identifying the exact nature of the records sought and the specific individuals of interest. It argues that it acted reasonably in conducting its search as a direct result of the request's clarity, allowing staff to target logical record-holding areas.

[22] In response to the appellant's representations referring to several communications that reference the need for a "chat" or "talk" among municipal representatives, the municipality cites Order MO-2185, which it submits confirms that the standard for a reasonable search under the *Act* does not require institutions to produce records that do not exist. The municipality submits that the *Act* and IPC jurisprudence recognize that the absence of records due to verbal discussions does not undermine the reasonableness of a search.

[23] The municipality rejects the appellant's representations as an attempt to impugn the integrity of municipal staff. It submits that such allegations are not only unfounded

but also irrelevant to the legal test for a reasonable search under the *Act*. It also submits that the IPC has consistently focused on verifiable evidence of search efforts, such as affidavits, detailed descriptions of search methods, and confirmation of logical recordholding areas, rather than on personal opinions or speculative assertions about staff conduct. The municipality maintains that its representations are grounded in documented, good-faith efforts that meet the standard of reasonableness established by IPC jurisprudence.

The appellant's sur-reply representations

[24] The appellant submits that, given the creation of such an important position, which included four drafts of the job description, it is unreasonable to conclude that there were no substantive communications other than the one email identified.

[25] The appellant submits that the affiant has no firsthand knowledge of what search efforts were undertaken and can only state that he sent a request to the named individuals. When an access coordinator requests searches for records relating to the conduct of individual staff members, a search cannot be considered reasonable if the coordinator relies on the "good faith" of the staff in question.

[26] The appellant concludes that, on a balance of probabilities, the municipality did not complete a search "in good faith" or one that could be described as reasonable.

Analysis and findings

[27] For the following reasons, I find that the municipality conducted a reasonable search for responsive records.

[28] As noted above, the *Act* does not require an institution to prove with certainty that further records do not exist; however, it must provide sufficient evidence to demonstrate that it made a reasonable effort to identify and locate records that are "reasonably related" to the request. In this case, I find that the municipality has done so.

[29] The appellant is not satisfied that the municipality conducted a reasonable search. They argue that it is unreasonable to conclude that the creation of a high-profile role within the municipality would not have generated additional records. However, I note that the municipality is only required to search for records responsive to the appellant's request as written. The municipality has explained that, based on the specificity of the request, its search only identified the records that were released.

[30] The appellant also questions the impartiality of the search, given that the individuals involved in conducting it were also involved in creating the new deputy position. While I acknowledge the appellant's concerns, I find that the municipality has been transparent on how it conducted the search and documented its methodology in an affidavit, outlining where it searched and the internal process it used to locate responsive records.

[31] In Order PO-3437, Adjudicator Hale states:

> [72] …While its searches may not have uncovered all of the documents which the appellant feels ought to have been found, I am satisfied that the searches were reasonable in their scope and addressed each aspect of the request in a comprehensive fashion. I must reiterate that the *Act* does not require the ministry to demonstrate with absolute certainty that additional records do not exist. Rather, it is required to provide evidence that the searches which it undertook for responsive records were reasonable, given all of the circumstances present. In this case, I find that the ministry has satisfied this onus.

[32] I adopt the same approach in this order. In the circumstances of this appeal, while the municipality's search may not have uncovered all the documents the appellant believes ought to have been found, I am satisfied that the search was reasonable.

[33] Finally, I considered whether a further search would be likely to produce additional records. In a reasonable search appeal, the only possible outcome in favour of an appellant is an order requiring the institution to conduct a further search. Even if I had found that the municipality did not conduct a reasonable search, which I do not, I could only order it to conduct a further search for responsive records. However, I see no basis for doing so. Given the narrow scope of the appellant's access request, I am not satisfied that ordering a further search would serve a useful purpose. I am not convinced that an additional search based on the same wording of the request would produce further responsive records.

[34] For the reasons stated above, I find that the municipality has conducted a reasonable search for records responsive to the appellant's request and has complied with its obligations under the *Act*. Accordingly, I dismiss the appeal.

ORDER:

I uphold the municipality's search as reasonable and dismiss the appeal.

Original Signed by:	March 13, 2026
Kelley Sherwood Case Lead	