

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 MO-4237

Appeal MA20-00531

Municipality of Chatham-Kent

August 15, 2022

**Summary:** The Municipality of Chatham-Kent (the municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to fire inspection records related to a specified building. The municipality issued a decision granting partial access to the responsive records withholding information under the mandatory personal privacy exemption at section 14(1) of the *Act*. The appellant appealed the municipality's decision to the Information and Privacy Commissioner of Ontario because he believes further records responsive to his request should exist. In this order, the adjudicator finds that the municipality conducted a reasonable search for responsive records, and dismisses the appeal.

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

### OVERVIEW:

[1] This order determines whether the Municipality of Chatham-Kent (the municipality) conducted a reasonable search for fire inspection records relating to a building at a specified address that was constructed in the 1970s. The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the municipality for the following:

A copy of all Fire Code inspection reports for [a specified address]: all reports that have been issued to this building, both in compliance of said codes or any non-compliances of the Ont. Fire Inspection Codes.

[2] The appellant also wrote "building file drawings" in the margin of his original request.

[3] The municipality located responsive records and issued a decision to the appellant granting him partial access to these records, withholding portions of the records under the mandatory personal privacy exemption at section 14(1) of the *Act*. The municipality conducted a second search for responsive records following discussions with the appellant, but advised that it did not locate any additional responsive records.

[4] The appellant appealed the municipality's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution.

[5] During mediation, the appellant raised the issue of reasonable search, claiming that additional records responsive to his request should exist. The appellant identified fifteen types of records that he believes should exist. The municipality conducted another search based on the appellant's list and located additional records. The municipality granted the appellant partial access to these records withholding portions under section 14(1). The municipality advised that some of the records identified by the appellant, such as fire inspections for specified times, do not exist.

[6] The appellant advised that he is not pursuing access to the information withheld under section 14(1). However, he advised that he continues to believe that further records responsive to his request should exist, such as final building drawings. The municipality conducted another search, but did not locate any further records.

[7] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator originally assigned to this appeal commenced an inquiry by inviting representations from the municipality, initially. She received representations from the municipality, which she shared with the appellant, and invited representations from the appellant. She received and shared the appellant's representations with the municipality, and received reply representations from it. She shared the municipality's reply with the appellant, and invited and received sur-reply representations from him. The appeal was then transferred to me.

[8] In this order, I find that the municipality has conducted a reasonable search for responsive records, and dismiss the appeal.

## **DISCUSSION:**

### **Did the municipality conduct a reasonable search for responsive records?**

[9] The appellant claims that further records responsive to his request exist. Where a requester claims additional records exist beyond those identified by the institution, the

issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.<sup>1</sup> If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[10] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.<sup>2</sup> A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related (responsive) to the request.<sup>3</sup>

[11] 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.<sup>4</sup>

### ***Representations of the municipality***

[12] The municipality submits that it conducted a reasonable search for responsive records. In support of its position, the municipality submitted the affidavit of its Director of Municipal Governance, Municipal Clerk and Freedom of Information Coordinator (FOI Coordinator). The relevant portions of the FOI Coordinator's affidavit are as follows:

- She was responsible for conducting the search for records and she is an experienced employee with the most knowledge about the matter.
- To locate responsive records, she asked the municipality's Fire and Emergency Services (fire department) and the municipality's Building Services (building department) to search for all fire code inspection reports and all reports issued in compliance or noncompliance with the Ontario Fire Inspection Codes for the specified building. A fire inspector and the director of the building department assisted her with the search, as well as other junior and senior staff members from those departments.
- After the appellant advised that he was looking for additional drawings related to a particular hallway, she broadened the scope of the initial search conducted by the fire and building departments to include additional drawings. She also asked the municipality's archivist to specifically search for additional drawings. These searches yielded additional records, such as fire inspection reports, that were disclosed to the appellant, but no additional drawings were located.

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Orders M-909, PO-2469 and PO-2592.

<sup>4</sup> Order MO-2246.

- After a further conversation with the appellant, she asked the director of the building department to search for any drawings dating back to 1970 relating to the specified building.
- Despite these further searches and inquiries, no additional fire or building records were found. She explained that building and structural inspection records are only kept for two years after the date of inspection according to the municipality's records retention by-law (by-law).
- During mediation, a further search was conducted by the fire, building, and archive departments for an additional 15 types of records listed by the appellant in his IPC appeal. These searches yielded new records that were disclosed to the appellant but no further drawings were found. Of the 15 additional types of records requested by the appellant, the following 9 were not located:

<b>Record #</b>	<b>Description</b>
1	Fire inspection reports from 1977-2003
2	Fire inspection report from 2004
3	Fire inspection report from 2014-2017
5	Building Permit Drawings 1976
6	Construction Drawings 1976
8	Plot Plan showing site
9	Site Inspection letters conducted by Building Department
11	Fire Department and Building Department records about occupancy permit
15	Inspection report provided to Fire Department about alarm verification

- A further search was conducted by the building department for drawings within all property files for the street of the building to see if the requested drawings had been misfiled in a neighbouring property file. The building department also searched the database where all drawings are recorded for file purposes. However, no further drawings for the specified building were found.

[13] The municipality submits that it has made all reasonable efforts to locate the records requested by the appellant.

### ***Representations of the appellant***

[14] The appellant submits that the municipality did not conduct a reasonable search. He states that additional records provided by the municipality were only found because he asked for specific records that were already in his possession, which were provided to him by the previous owners of the building.

[15] Referring to the 2017 version of the by-law, the appellant submits that the

municipality's by-law states that property files in relation to building permit records should be kept permanently. The appellant submits that the municipality has not provided:

- Building permit drawings (other than an outdated pre-construction floor plan),
- Building permit inspection letters by any building official employed at the time of construction,
- Inspection letters by the Engineer and Architect of Record for construction of the building to ensure that the building was constructed to the permit drawings,
- Site Plan, or confirmation that the building was constructed in 1977 meets the requirements of the building permit at the time.

[16] The appellant states that it is "unimaginable" that there are not fire inspection reports prior to July 28, 2003 for the building. The appellant acknowledges that the municipality has stated that fire department records are only kept for two years, and that it may be possible that no fire inspections were conducted between 1977 and 2003. He states, however, that several fire inspection reports were provided that are over two years old.

[17] The appellant disputes that the drawings provided by the municipality are the "as-built drawings" from 1977. He points out that there is a note on the drawing that says "See revised." He states that the drawing shows two sets of stairs, while the building was constructed with only one set of stairs. He argues that the final as-built drawings were not provided, and it should be available per the municipality's by-law.

[18] The appellant states that the municipality should have two fire safety plans – one which was provided by the original owner of the building and another from the appellant, but the municipality did not locate these during its search. He states that the municipality also did not find the alarm verification report, which was provided to the fire department as part of the fire safety plan.

[19] The appellant submits that the municipality does not seem to keep records properly, because they cannot find records such as the original building permit drawings, as-built drawings, sign-offs, and fire and other inspection reports for the building. He states that there was no explanation given as to why these records are not available, other than the records retentions by-law. He further states that no explanation has been provided as to why some records may have been destroyed, not found, or not provided.

[20] The appellant submits that due to a current fire department order from the municipality for him to comply, it is important for the municipality to provide all records in relation to the building.

***The municipality's reply***

[21] The municipality submits that the 2020 records retention by-law states that building and structural inspection records including "Building & Structural test inspection reports relating to [...] fire prevention [...] fire suppression systems, electrical and other structural inspections" are retained for a period of two years.

[22] The municipality submits that it provided fire prevention reports older than two years old, because these records were on file as they were not destroyed at the appropriate time. It further submits that all available drawings for the building have been produced.

[23] It notes that the municipality was created by an amalgamation in 1998 and it inherited the historical records as they were.

[24] The municipality states that the original request was for fire code inspection reports and it was expanded to include the building file, which resulted in the further search.

***The appellant's sur-reply***

[25] The appellant disputes the applicability of the 2020 by-law and argues that the 2017 by-law should apply. He reiterates that despite stating records older than two years are discarded, the municipality still provided records older than two years from the fire department. He questions why, if the records were not destroyed, the municipality has not provided 25 years of annual fire inspection reports. He also reiterates that the as-built drawings were not provided because of the discrepancy in the drawings and the current design of the building.

[26] The appellant submits that the by-law requires the municipality to keep building permits permanently. He states that the "property files" referenced in that section of the by-law would include all building and structural inspections, records from the architect, engineer, and fire department, records related to building occupancy, and all sign-offs by approving authorities.

[27] The appellant disputes the municipality's assertion, in their letter to him, that record #10, "Inspection letter by Engineer & Architect of record for new construction" was previously provided, and states that he has not received a copy of this record.

[28] The appellant states that the amalgamation to form the municipality does not explain why files are missing or not provided in an orderly manner, because the building and fire departments currently occupy the same building and floor as they did before the amalgamation.

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

[29] The review of the issue of whether the municipality, as an institution under the *Act*, has conducted a reasonable search for records as required by section 17 arises where a requester claims additional records exist beyond those identified by the institution.<sup>5</sup>

[30] The appellant's initial request was for fire department records relating to the specified building and the building file drawings. His request was then expanded to include a list of 15 specific types of records, 9 of which the municipality was unable to locate. The appellant submits that these records should exist. The appellant argues that the municipality's records retentions by-law states that property files/building permits should be retained permanently. He states that this would include all building and structural inspections, records from the architect, engineer, and fire department, records relating to building occupancy, and sign-offs by approving authorities.

[31] I will deal first with the appellant's arguments about the retention schedule. From my review of the municipality's records retention by-law (both the 2017 and 2020 versions), it states that building and structural inspections records, including fire prevention and other structural inspections, are kept for a period of two years. Therefore, I accept the municipality's explanation for why building and structural inspection records relating to the specified building was not located by the municipality through its searches. I acknowledge the appellant's argument that he was provided with some records that are more than two years old despite the two-year retention policy. However, the municipality has explained, and I accept its explanation, that those records were not destroyed at the appropriate time. In the circumstances of this appeal, the fact that the municipality provided the appellant with records kept longer than the retention policy requires does not provide a sufficient basis upon which to find that the municipality did not conduct a reasonable search for responsive records.

[32] I will deal now with the efforts undertaken by the municipality to locate responsive records. The municipality has described the individuals involved in the search, where they searched, and the results of their search. In my view, the municipality's search was logical and comprehensive. For example, it searched for additional building drawings within all property files of the specified building's street to see if the requested drawings had been misfiled. As noted above, a reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.<sup>6</sup> I am satisfied that the municipality has provided sufficient evidence to establish this to be the case here. When I consider the comprehensive nature of the searches undertaken and the efforts made by the municipality to clarify and carry out the searches that it did in response to the appellant's request, I am satisfied that the

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<sup>5</sup> Orders P-85, P-221 and PO-1954-I.

<sup>6</sup> Orders M-909, PO-2469 and PO-2592.

municipality's search for responsive records was reasonable.

[33] I acknowledge that the appellant has concerns with the municipality's record management practices, and he is particularly concerned that the building drawings have not been located. However, when I consider the comprehensive nature of the searches and the explanations provided by the municipality about why further records do not exist, I am not persuaded that ordering the municipality to conduct another search will locate additional building drawings and the other records that the appellant claims should exist. The *Act* does not require the municipality to prove with absolute certainty that further records do not exist. However, the municipality must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records,<sup>7</sup> which I find that it has done.

**ORDER:**

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

Original Signed By: \_\_\_\_\_  
Anna Truong  
Adjudicator

\_\_\_\_\_ August 16, 2022

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<sup>7</sup> Orders P-624 and PO-2559.