

ACCESS FACT SHEET

Reasonable Search

Ontario's access and privacy laws require public institutions to conduct a reasonable search for responsive records when they receive a request for access to information.

Requesters who are not satisfied with the search or believe that additional records may exist have the right to file an appeal with the Office of the Information and Privacy Commissioner (IPC). The IPC may review the search conducted by the institution to determine if it was reasonable. If the IPC decides that the search is not reasonable, it can order the institution to conduct a further search.

This fact sheet explains what a reasonable search is, how institutions can comply with their search obligations, how requesters can support institutions' efforts to find responsive records, and the role of the IPC in an appeal.

WHAT IS A REASONABLE SEARCH?

A reasonable search occurs when an experienced employee who is knowledgeable in the subject matter of the request makes a reasonable effort to locate records related to the request.¹

A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

Requesters who are not satisfied with the search or believe that additional records may exist have the right to file an appeal with the Information and Privacy Commissioner.

¹ Orders M-909, PO-2469 and PO-2592.



HOW CAN REQUESTERS SUPPORT THE SEARCH FOR RESPONSIVE RECORDS?

To help an institution find records, requesters should consider the following:

1. Ensure that the scope of the request is clear

Provide as much detail as possible about the records or information that you are requesting. By providing specific details about your request, you can help the institution in its search.

2. Provide additional information, if available

In some cases, you may know where records are held from your conversations with staff or from any previous access to information requests you have made. If you have information about where records are held, or who may hold them, you should share this information with the institution. This will help to focus the search and ensure that the right records are located.

3. Respond to requests for additional information

Sometimes institutions need more information about or clarification of a request. Both you and the institution can benefit from working together to better understand the type of information or records that are being requested.

Requesters should be as specific as possible about the records they want when making an access to information request. A clear request with a defined scope will help institutions find the records.

HOW DO INSTITUTIONS COMPLY WITH THEIR REASONABLE SEARCH OBLIGATIONS?

To meet their obligations to conduct a reasonable search, institutions should consider the following:

1. Do you need to clarify the request?

The scope of the request will determine the nature of your search. For example, if the request is for a specific email sent on a specific date, it may not be necessary to search your paper records. Contact the requester if you have any questions or require clarification about their request. Institutions are obligated to help requesters reformulate their requests to sufficiently identify the type of records they are seeking.

2. Who is responsible for overseeing the search?

Assign one person to oversee the search for records. In most cases, this task should be assigned to the freedom of information coordinator or a member of his or her department. If your office does not have a coordinator, select one person to organize and lead the search.

3. Have you identified the right people to conduct the search?

Ensure that staff members who are conducting the search are knowledgeable in the subject matter and in any relevant records storage and filing systems. Provide these staff with any detailed information about the request gathered in step one, including any information needed to ensure a consistent understanding of the scope of the search and the approach to be taken when searching.

4. Do you need to involve any other business areas?

In some cases, it may be necessary to consult with other relevant business areas or records and information management staff. For example, even with subject matter experts conducting the records search, it may be necessary to involve staff familiar with technical aspects of electronic record systems.

5. Have you reviewed files in all formats?

Records can exist in any format. Your search should normally include records in paper and electronic formats such as handwritten notes, emails, attachments to emails and instant messages. If staff conduct business with personal email accounts or instant messaging programs, those accounts and programs must be included in your search. In some cases, it may also be necessary to search back-up tapes or other back-up storage media.

6. Have you considered off-site storage and alternative holdings?

Records may have been moved off-site or stored on hard drives or other storage media that are currently not in use. Consult with business areas and information management and technology support staff to identify any off-site storage and filing systems that may also need to be searched.

7. Have you documented the details of your search?

In the event of an appeal, institutions are not required to prove with absolute certainty that no additional records exist. However, the institution must provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control. As such institutions should document their search efforts, including the following:

- a. Full understanding of the request
 - i. Did you contact the requester for clarification or to narrow the request?
 - ii. If so, what information was received? Consider keeping summaries of all conversations with the requester to keep track of additional details or commitments.

Institutions should work with requesters to ensure that requests are clearly defined.

- iii. If not, how was the scope of the request defined?
 - iv. Did you discuss with the requester how to define the scope of the request? If so, was the requester satisfied with the approach? Document any conversations in which you and the requester agree to changes in the request for the sake of clarity or to narrow the search. This can help avoid disputes in the case of an appeal.
- b. Methods of search
- i. Who conducted the search? Why was this individual or group of individuals chosen to conduct the search?
 - ii. Who was consulted during the search? What guidance was provided?
 - iii. What was searched? Provide a description of paper and electronic file plans or lay-outs, as well as a list of all devices, accounts or other storage sites searched.
 - iv. How was the search conducted? Provide details such as search terms used, dates when the search was conducted and amount of time spent.
 - v. What types of files were considered?
 - vi. Were any areas or file types intentionally left out of your search? If so, why?
 - vii. What records were found during the search? What issues or concerns were raised during the search?
- c. Destruction of records
- i. Is it possible that some responsive records were destroyed?
 - ii. If so, why, how and under whose authority? If possible, provide details of your record retention policies and schedules.
- d. Records outside of the institution's custody
- i. Is it possible that additional records may exist that are not in your custody?
 - ii. If so, who has these records and why?
 - iii. Did you search for these records or request access?

Institutions should document their search efforts and any conversations where they reach an agreement to narrow or clarify a request.

WHAT HAPPENS IF A REQUESTER IS NOT SATISFIED WITH THE SEARCH?

Sometimes, requesters believe that a search has failed to return all relevant records and that additional records exist. In these instances, requesters have the right to file an appeal with the IPC.

In an appeal, requesters should explain in detail why they believe that additional records exist. This may assist the IPC in its consideration of the appeal and the institution with any further searches. The IPC may dismiss an appeal if a requester does not provide a reasonable basis for their belief that additional records exist.

WHAT HAPPENS ONCE AN APPEAL IS FILED?

The IPC will review the appeal to determine whether it should proceed to the mediation stage of the appeal process, where a mediator will work with the requester and the institution to try to reach a settlement. Institutions may conduct further searches during the mediation stage and provide details of these searches to the IPC. If it is not possible to settle the appeal through mediation, it will move to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. In some circumstances, the IPC may choose to conduct an oral inquiry.

During the inquiry, the requester will be invited to submit the reasons why they believe additional records exist. The institution will be invited to submit a summary of its search efforts. Ontario's access and privacy laws do not require that an institution prove with absolute certainty that no additional records exist. However, the institution must provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control. The institution may be asked to provide this information in an affidavit.

The adjudicator may order the institution to conduct further searches for records if he or she decides the institution did not conduct a reasonable search.

For more information about the appeal process, visit: <https://www.ipc.on.ca/access/filing-an-appeal/>.