

# INTERPRETATION BULLETIN

## Search for Responsive Records

This interpretation bulletin addresses the requirement for institutions to conduct a reasonable search for records upon receipt of an access request made under **section 24(1)** of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and **section 17(1)** of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).<sup>1</sup>

### Section 24 of FIPPA and Section 17 of MFIPPA read as follows:

- 24 (1)** A person seeking access to a record shall,
- (a) make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this Act;
  - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
  - (c) at the time of making the request, pay the fee prescribed by the regulations for that purpose.

## WHAT IS A REASONABLE SEARCH FOR RESPONSIVE RECORDS?

The Office of the Information and Privacy Commissioner (IPC) has interpreted a reasonable search as 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.”<sup>2</sup>

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

<sup>2</sup> Orders **M-909**, **PO-2469** and **PO-2592**.



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 IPC. The IPC may review the search conducted by the institution to determine if it was reasonable.

## WHAT IS THE BURDEN OF PROOF?

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.<sup>3</sup>

FIPPA and MFIPPA do not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records,<sup>4</sup> that is, records that are “reasonably related” to the request.<sup>5</sup> The institution may be required to provide this information in the form of an affidavit.

If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution’s decision.

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, the IPC will order a further search for records.<sup>6</sup>

If the requester fails to respond to or assist in the 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.<sup>7</sup>

For additional information, please see the [Reasonable Search fact sheet](#).

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3 Order [MO-2246](#).

4 Orders [P-624](#) and [PO-2559](#).

5 Order [PO-2554](#).

6 Order [MO-2185](#).

7 Order [MO-2213](#).