

## PRACTICE TIPS

For Local Government Success



The Public Records Act (PRA), chapter 42.56 RCW, requires that agencies perform an adequate search to locate records responsive to a public records request. The PRA itself doesn't provide detailed provisions on how to conduct an adequate search. Rather, such requirements can be found in court decisions interpreting the PRA, including *Neighborhood Alliance v. Spokane County* (2011); *Block v. Gold Bar* (2015), and *Nissen v. Pierce County* (2015). These practice tips are based on such case law. Use these tips to guide your agency's search for responsive records.\* For more information and resources visit [www.mrsc.org/opmapra](http://www.mrsc.org/opmapra).

### Adopt a Standard Methodology to Search for Records (This methodology will apply to each search.)

**1** **Records organization.** Understand how each department within your agency organizes and retains its records.

**2** **Implement an effective system for locating and collecting responsive records.** With an effective system in place, an agency can more efficiently find records responsive to a PRA request and more easily defend itself against a challenge that its search for records was inadequate, especially in situations in which the agency finds no records responsive to a PRA request.

a. How does the agency inform applicable staff and officials about a PRA request?  
**TIP:** Consider having the Public Records Officer (PRO) email the records request to applicable staff and officials and require them to actively respond regarding whether they have responsive records via the "voting" function in Microsoft Outlook (or equivalent).

b. Who searches for the records?  
**TIP:** If the PRO searches for records, consider developing a "tip sheet" identifying locations to search for commonly-requested records, listing commonly-used search terms, and providing other key information (see below).

### Specific Search Tips for Processing PRA Requests

(These tips are generally applicable to all requests and some are particularly useful for non-routine requests.)

**1** **Be clear on what the requester is seeking.**

- In determining the scope of the search, take care not to interpret the request too narrowly.
- If the request is unclear, seek clarification from the requester.
- Document any communication the agency has with the requester.

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| 2 | <p><b>Inform staff and officials of PRA requests in a timely manner.</b></p> <ul style="list-style-type: none"> <li>As soon as possible after receiving a PRA request, alert all agency staff and officials who may possess or know about any records responsive to the request.</li> <li>Consider providing a PRA "hold memo" to applicable staff and officials regarding all responsive records, including those records scheduled for destruction under the agency's records management protocol.</li> <li>The PRO should work closely with the agency's legal counsel, as needed, early and throughout the process so the legal counsel can provide guidance on any issues as they arise.</li> </ul>   |
| 3 | <p><b>Ask the right staff the right questions.</b></p> <ul style="list-style-type: none"> <li>Create a list of individual staff, officials, and departments that may have responsive records; meet with those staff and officials to discuss the PRA request.</li> <li>Brainstorm and list potential record types and locations.</li> <li>Develop search terms to use in locating responsive records.</li> </ul>   |
| 4 | <p><b>Search every place a record is reasonably likely to be located.</b></p> <ul style="list-style-type: none"> <li>Think through whether records may be located in multiple records systems (e.g., agency and personal computers and other e-devices, hard copy files, voicemails) and search those locations if responsive records may exist there.</li> <li>If responsive public records are reasonably likely to be located in an employee's or official's personal files, devices, or accounts, the employee or official must search those locations and provide the records to the agency.</li> <li>If the requester provides the agency with suggested search terms, don't limit your agency's search only to those terms. Instead, conduct the search based on all search terms that are reasonably likely to uncover all responsive records.</li> <li>Reasonableness and adequacy of search are key: the agency must show that it made good faith search efforts that were <b><i>reasonably calculated to uncover all responsive records</i></b>.</li> </ul> |
| 5 | <p><b>Follow any obvious leads as they are uncovered.</b></p>  |
| 6 | <p><b>Document, document, document your search. (Show your work.)</b></p> <ul style="list-style-type: none"> <li>Document which search terms were used and which locations were searched.</li> <li>If challenged, the agency can include such search details in affidavits defending the agency's search.</li> <li>Documenting search efforts at the time of the search avoids having to reconstruct the search at a later date, maintains accurate search information, and reduces the time and effort required by staff to show the search was adequate.</li> <li>Effectively track PRA requests, searches, and responses through electronic means (e.g., software) and/or on a combined records request/search/tracking form.</li> </ul>  |
| 7 | <p><b>Consider informing the requester of the locations searched and the search terms used.</b></p>  |

**Take Away Points**

1. A search is measured by the standard of reasonableness.
2. An adequate search is a prerequisite to an adequate response.



**Key Questions for Your Agency**

1. Was the search reasonably calculated to uncover all responsive records?
2. Can my agency effectively show that an adequate search was conducted?