

Best Practice: Reasonable Search

Section 9 of the *Right to Information and Protection of Privacy Act*

The purpose of this Best Practice is to provide guidance to public bodies on how to conduct reasonable searches for records while processing access requests, and, what information this Office will ask public bodies to provide when we receive a complaint about an inadequate search and/or missing records under the *Right to Information and Protection of Privacy Act*.

Duty to assist: Section 9

While the duty to assist provision found in s. 9 of the *Act* does not directly address how public bodies conduct searches for relevant records, this is a key part of the public bodies' duty to assist.

9 The head of a public body shall make every reasonable effort to assist an applicant, without delay, fully and in an open and accurate manner.

The duty to assist obligation compels all public bodies to be helpful and assist applicants throughout the processing of an access request. The duty to assist includes having discussions with applicants to ensure that the public body understands what information he or she is looking for, that a reasonable search for the relevant records is conducted, and that the public body provide a meaningful response to the access request.

Steps to conduct a reasonable search

As stated above, public bodies are required to ensure that they take appropriate steps to conduct a reasonable search for all records relevant to an access request and should always document its search process. As a general rule, the following steps should be undertaken:

- identify which staff members have knowledge of or have worked on the subject matter of the access request and ensure that they are asked to assist with search efforts;
- provide those who are asked to conduct searches for relevant records with written instructions that set out the appropriate parameters to undertake a search, including:
 - types of records to be searched (paper files, electronic files, emails, handwritten notes, database, etc.);
 - keywords for conducting searches of electronic records, etc.;
 - date range for the search;
- staff members who are asked to search should provide the Coordinator with all actual and potentially relevant records (staff members should not assess relevancy of a particular record that comes up in their search efforts) and to provide their search results in writing;
- consider whether it would be appropriate to have independent verification through IT services or to have the Coordinator supervise or conduct the search efforts in potentially contentious cases (for example, if an employee has a history of conflict or strained relations with the applicant);

- if no relevant records are found as a result of the search efforts, document the file explaining the reasons why this is the case:
 - was the public body and/or its staff not directly involved with the subject matter of the access request?
 - Did the public body previously have relevant information that has since been destroyed or sent to archives in keeping with its retention schedule?

It is helpful for public bodies to establish set written criteria and instructions for conducting searches and ensuring that they are followed by all employees when processing all access requests.

Complaints involving search issues

When this Office receives a complaint about an inadequate search or missing records, we ask applicants to provide us with supporting details or evidence as to what specific information they think was missed or unaccounted for in the public body's response.

When we notify public bodies of a complaint of this nature, we will ask that we be provided with explanations about the search that was undertaken and the accompanying search documentation so that we can assess whether the complaint has merit and if additional search efforts must be undertaken by the public body to address the complaint.

Offence provisions – Section 82

Public body employees and officials should also be made aware that it is an offence to obstruct this Office or another person (including public body employees tasked with processing access requests) in performing duties or exercising powers under the *Act* (s.82(1)(d)). It is also an offence to destroy a record or erase information in a record that is subject to the *Act*, or to direct another person to do so, with the intent to evade an access request, or to alter, falsify, conceal or destroy any record (or part of a record), or direct another person to do so, with the intent to evade an access request (ss.82(1)(e) and 82(1)(f)).