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Top 5 Tips for Responding to a PRA Request (Hint: Communication is Key)

BB&K Attorney Jessica Lomakin Writes on Public Records Act Requests for *PublicCEO*



By Jessica K. Lomakin

Public agencies in California, along with those across the country, are seeing a dramatic increase recently in the number of Public Records Act requests. Some cities and local public agencies are

staffing up to meet the demand, but the additional resources come at a high cost. Not adequately addressing PRA requests, though, can be costlier.

Below are five tips for public agencies to utilize in responding to PRA requests.

5. Don't Be Afraid to Follow Up and Clarify, In Fact – It's the Law

It's no secret PRA requests can be vague, confusing and downright cryptic. Often, the public is not savvy in municipal record maintenance, or general finance and policy issues. This results in unclear requests that can be extremely frustrating for public agency staff who are making a good faith effort to respond.

A PRA request, though, does not have to be an adversarial exchange. There is no rule preventing your agency from reaching out to the requester to clarify a request. In fact, the PRA affirmatively requires agencies to assist a requestor to "make a focused and effective request that reasonably describes an identifiable record or records. . . ." (Government Code section 6253.1)

Don't be afraid to seek clarifications or offer suggestions. Many unnecessary disputes and misunderstandings can be avoided with some simple dialogue. Providing the wrong, or less comprehensive, documents than those sought frustrates the process and potentially exposes the responding agency to costly litigation.

4. Identify ALL Responsive Documents, then Evaluate for Exemptions/Privilege

People



Jessica K. Lomakin

ASSOCIATE

(909) 483-6643

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When a request is received, seasoned PRA responders may be able to identify categories of documents that are either privileged or exempt from disclosure without reference to the underlying documents. It is tempting to simply draft a determination letter withholding the documents on those grounds. However, this shortcut approach can lead to problems in the long run. While public agencies are under no obligation to create a privilege log (or any document for that matter) cataloguing all documents withheld in a PRA response, it does have the burden to articulate why documents were withheld, if challenged. (section 6255(a))

If your agency did not identify all documents responsive to the request prior to applying an exemption or a privilege, it will be difficult to retroactively put the pieces together to defend the response.

3. Give as Much Information in the Determination Letter as Possible

Transparency and communication are key. When an agency withholds a record claiming a disclosure exemption, the agency must notify the requester of the reasons for withholding the record. (section 6255(a).) A well-documented and thoroughly developed determination letter communicates to the requestor that your agency took the request seriously, diligently searched for responsive records and thoughtfully applied exemptions.

In that sense, the determination letter is an under-utilized opportunity for your agency to both document its efforts to respond and build trust with the public. A determination letter is most compelling when your agency can articulate the categories of responsive records identified (e.g. “police reports related to the ongoing investigation of XYZ”) and the corresponding exemption justifying nondisclosure (“are being withheld pursuant to Government Code section 6254(f).”)

Don't leave the requestor with questions about what documents exist or why existing documents weren't produced. Comprehensive determination letters are an agency's first line of defense against a legal challenge. If a challenge is inevitable, the same determination letter will become a crucial piece of evidence for a judge evaluating your agency's response efforts.

2. Do What You Say You are Going to Do

Personally and professionally, it's incredibly frustrating when someone doesn't follow through on a promise or says they will do something by a particular date — and they don't. The same is true when agencies identify PRA response times and fail to follow through. Notably, the PRA does not require the agency to produce documents on any specific time schedule. It does, however, require the agency to provide the requestor with a written determination within 10 days, and if the agency determines that the request seeks disclosable public records, “the estimated date and time when the records will be made available.” (section 6253(c))

Failure to meet this estimate not only exposes your agency to a legal petition commanding production of the documents, but it also has the potential to damage your agency's credibility with the requestor. An agency's reputation and reliability matter — particularly when attempting to negotiate resolutions with the public short of litigation.

Agencies should focus on offering a realistic time line. If producing the records will be unusually time consuming, offer the requestor some factual support for the delay. For example, cite the number of files, pages or documents your agency is reviewing or redacting. Advise whether the records must be sent to legal counsel for review. Estimate the number of staff hours it will take to reproduce the responsive records. Offering this insight into the process may buy some patience from the requestor by bolstering your agency's response time.

In short, give the requestor confidence that your agency's word means something. You just might avoid a lawsuit in the process.

1. When in Doubt, Contact Counsel

A 30-minute phone call to your agency's legal counsel will always be less expensive than a PRA lawsuit. Should you have questions about specific PRA requests or wish to schedule a training for your agency, do not hesitate to contact your public agency counsel or the author of this article.

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