



# **Guide to searches for electronic, paper and other records**

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## 1. Overview

### Essential Search Steps

- ✓ Clearly understand the search parameters
- ✓ Identify program areas and subject-matter experts relevant to the request
- ✓ Identify all databanks and places to be searched and develop a search plan
- ✓ Identify employees to conduct searches
- ✓ Provide clear search instructions to employees searching for records
- ✓ Can the requested record be created?
- ✓ Records not in custody or control, or destroyed?
- ✓ Document search efforts
- ✓ Identify and address any search gaps

## 2. Introduction

Public bodies are often called upon to undertake searches for records in response to access requests made under the *Access to Information and Protection of Privacy Act* (ATIPP Act).

This guidance document offers suggestions and outlines steps that public body employees should consider when conducting a search for records in response to an access to information (ATI) request.

This document was produced by the Office of the Information and Privacy Commissioner (IPC) and partially modeled after the guide produced by the Information, Privacy and Archives Division in the Ontario Ministry of Government and Consumer Services.

**This guide is for informational purposes only and does not constitute legal advice. Please contact your legal counsel to obtain advice with respect to any particular issue or problem.**

For any questions about this guide please contact the Office of the IPC at 867-667-8468 or by email at [info@yukonombudsman.ca](mailto:info@yukonombudsman.ca).

## 3. Audience

This guide is intended to assist:

- **ATIPP coordinators** - employees of a public body tasked with coordinating the public body's search for records in response to an ATI request, including locating all potentially responsive records and reviewing the records to determine if any exceptions to the right of access apply to the information therein.
- **Persons searching for records** - Public body employees identified as potentially having responsive records may be asked to search for records and provide them to the ATIPP coordinator. (These may be employees involved in the subject matter of the request, branch managers, IT personnel, HR personnel, etc.)
- **Public Bodies** should consider using this guidance document to assist in developing, implementing, or updating department-specific ATI procedures.

## 4. Access to information process

The ATIPP Act gives individuals the right to request access to records held by public bodies. To obtain access to a record, an applicant must make an ATI request to the Government of Yukon records

manager. The records manager must pass the request on to the public body that has “control or custody” of the requested record.

#### **i. Role of the public body**

The public body decides which of its officers or employees will deal with the request and is responsible for deciding whether access will be granted to the requested record. Typically, this duty falls to the public body’s ATIPP coordinator. The public body must respond to the records manager and provide information and comments that enable the records manager to respond in compliance with the ATIPP Act. The public body has a duty to assist the records manager in responding to each applicant openly, accurately, and completely, and within the timelines set out in the ATIPP Act.

#### **ii. Role of the records manager**

The records manager is responsible for responding to the applicant within the legislated timeline of the ATIPP Act (30 days, unless an extension has been authorized). The records manager has a duty to assist the applicant and must make every reasonable effort to respond to each access request openly, accurately, and completely.

#### **iii. What is a reasonable search?**

The Information and Privacy Commissioner of Ontario has established criteria for what is considered to be a “reasonable search.”

*“...a reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request.*

*...in locations where the records in question might reasonably be located.<sup>1</sup>”*

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

For a search for records to be adequate, the following steps must be taken when searching for records related to an ATI request.

## **5. Essential search steps**

### **i. Clearly understand the search parameters**

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<sup>1</sup> [Order M-909, Information and Privacy Commissioner of Ontario](#)

As a best practice, ATI requests should be reviewed in detail by the ATIPP coordinator and program area(s) responding, to ensure there is a clear understanding of what records are being requested.

The ATIPP Act requires that individuals making an ATI request provide enough detail to allow the public body to identify the record they are seeking. Where a request is not clear, the ATIPP Act requires that the records manager make reasonable efforts to assist the applicant in clarifying their request.

IPC investigations respecting the adequacy or reasonableness of a search typically require a public body to demonstrate that steps were taken to work cooperatively with the records manager and applicant in scoping the request and ensuring the access request is clear enough that the public body is able to identify the records sought by the applicant. As such, clarification is an important first step and should be undertaken as soon as possible after receipt of the request, if a request is unclear or ambiguous or if the scope is very broad. It can be helpful to have program area employees assist the ATIPP coordinator in this regard as they are often best positioned to answer questions raised by an applicant.

Particular attention should be paid to:

- dates applicable to the access request (date range);
- type of records sought (for example, final vs. draft versions); and
- format of the records (for example, paper vs. electronic records).

Next, the ATIPP coordinator should endeavour to work with employees knowledgeable about the subject matter of the request to develop search words and phrases (search terms) which can then be used by employees identified as potentially having responsive records to conduct electronic searches for records.

## **ii. Ensure all relevant records are retained**

All relevant program areas that may have records should be notified about the ATI request as soon as possible to ensure that any potentially responsive records are secured, including transitory records (generally, transitory information has only immediate or short-term usefulness and is of an inconsequential nature, and/or has no ongoing value to an organization) existing at the time the ATI request was made. The notification should inform employees to retain responsive records until the processing of the ATI request is complete, including any transitory records.

## **iii. Identify employees to conduct searches**

Experienced employees with knowledge of the subject matter of the request and the records management system should oversee and/or conduct searches for responsive records. Depending on

the circumstances, technical personnel may also assist with conducting searches with guidance from these subject matter expert(s).

The following questions may assist in identifying the subject matter expert.

- Did they have any responsibility for the issue related to the request?
- Did they work on the file/issue related to the request?
- Could they identify other employees who worked on the issue related to the request?

Public bodies may also want to consider assigning program area contacts to be responsible for overseeing search efforts within their respective program area. These individuals should work with the ATIPP coordinator to ensure they are familiar with the requirements of conducting a reasonable search.

When executing the search, program area contacts should consider the following.

- Ensure the source(s) searched, persons questioned, etc. are documented. See the [Document search steps](#) section of this guide for additional information.
- Be mindful of timelines and communicate with the ATIPP coordinator as soon as possible if they believe more time is required. Note that time extensions are only granted in limited prescribed circumstances. See Subsection 12 (1) of the ATIPP Act.
- Perform a structured search by using a customized version of the checklist outlined in [Appendix 1](#) of this guide.

#### **iv. Provide clear search instructions**

Often, best results are achieved from a search plan which combines the expertise of the ATIPP coordinator, subject-matter expert(s) and various search tools depending on the public body's records management system.

The following should be considered when developing search instructions.

- Provide a clear, plain-language description of the subject matter of the search.
- Identify the types of records that would be responsive to the request. (For example, reports, drafts, working files, correspondence, email, briefing notes, slide decks, phone messages, etc.)
- Identify the timeframe of the ATI request. (For example, all records created on or after March 1, 2019.)

- Identify the databanks and other places to be searched.(For example, on-site physical file storage, employee computers (all drives and email accounts), handheld devices, off-site storage, etc.)
- Identify the search terms or key words that should be used by employees when searching for electronic records.
- Provide searchers with guidance on conducting electronic searches using the search terms. See [Appendix 3](#) for additional details on this subject.
- Identify the format in which the records are to be provided back to the ATIPP coordinator, who may request:
  - original versions of paper records (applicants may ask to view original versions of records, but public bodies are only required to provide copies in response to a request);
  - photocopies of paper records;
  - hard copy (printed) versions of electronic records; and
  - electronic records copied and saved in their original format (for example, a document saved in Microsoft Word on a secure USB drive).

ATIPP coordinators must consider the security of the records provided to them in response to an ATI request. Some options for securing information include using a secure file transfer system, a folder with limited permissions in a shared drive, or password encryption.

- Specify a date to complete the search, keeping in mind the legislated timeline for response and all the tasks associated with completing the file. (For example, record review, application of exceptions to access, approvals from management, etc.) Note that time extensions can only be granted by the records manager and only in certain circumstances and should therefore be discussed with the ATIPP coordinator as soon as possible.<sup>2</sup>

The ATIPP coordinator may also want to consider providing a step-by-step guide to help employees involved in a search understand how to conduct email, electronic and paper record searches. See [Appendix 2](#) - SEARCH TIP SHEET and [Appendix 3](#) - TIPS for searching electronic records.

#### **v. Identify all databanks and places to be searched and develop a search plan**

Experienced employees with knowledge of the subject matter of the request and/or with special knowledge of the public body’s record holdings should be the ones to identify the databanks and places to be searched.

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<sup>2</sup> Subsection 11 (1) of the ATIPP Act establishes 30 days to respond to an ATI request. Subsection 12 (1) sets out the circumstances where the records manager may extend the time limit for responding to an ATI request.

When searching for responsive records, the following areas should be considered.

a) A search of **email**, including:

- electronic email accounts (all folders including inbox, sent mail, deleted items, public folders, personal folders, and calendar entries);
- email accessed or stored on other mobile devices including tablets or cell phones; and
- email in other electronic storage systems that the user has access to.

b) A search of **electronic records and other records**, including:

- records maintained on the local hard drive (C: or desktop) of an individual's laptop or workstation computer;
- records maintained on the drive assigned to employees, often referred to as a "home share" or "personal drive," or group-shared drives accessible to an individual through their laptop or workstation;
- records saved on any external media or mobile storage device including mobile devices such as cell phones, CDs, DVDs, USB memory sticks or external hard drives;
- records maintained in any other electronic storage systems that the individual has access to;
- any messaging services including text messages, instant messages (chat applications such as WhatsApp, Facebook Messenger, Instagram, Snapchat, etc.) that have been retained on laptops, workstations or work mobile devices (including cell phones);
- voicemail messages saved to phones, home shares or group shares, workstation laptops and work mobile devices (including cell phones); and
- audio and video recordings, digital photographs, microfiche, or any other media used for saving, maintaining, or storing information.

c) **Paper records**, including handwritten notes, photographs, technical drawings, or specifications, wherever saved, maintained, or stored. Employees should search their paper files and records for responsive records, including any handwritten notes maintained in notebooks. Note that **anything** recorded may be responsive to an ATI request.

Searches should include all record repositories that may reasonably be expected to contain responsive records including on-site file storage and off-site storage facilities. In this regard, records retention schedules and file plans for each office should be consulted.

In general, a search of electronic records should be undertaken where such records may reasonably exist in the public body's electronic recordkeeping environment, including email accounts, shared drives, electronic archives, and other electronic storage systems (for example, external drives). Exceptionally, and in extraordinary circumstances, a search of a system maintained for disaster recovery purposes, such as back-up tapes, may be considered. An example would be where evidence exists that responsive records may have been deleted or lost out of the normal recordkeeping environment and the lost records are likely to be located on the back-up tapes.<sup>3</sup> In these cases, consultations should be undertaken with the public body's ATIPP coordinator and IT personnel, prior to commencing a search.

#### **vi. Can the public body create the requested record?**

When conducting a search for records, the public body must consider whether it can create a record that is responsive to the applicant's request.

If the requested data exists but does not exist in the form requested by the applicant, the public body has a duty to create the record for the applicant in accordance with section 14 of the ATIPP Act, which states "**...the public body that has the record in its custody or control must create a record in a form usable by the applicant...**"

For example, an applicant has requested all the motor vehicle accidents at a particular intersection within a particular time frame. Instead of gathering all the responsive records from the database and doing a line-by-line review, which could prove time consuming, the public body should consider creating a record for the applicant that corresponds to their specific request.

In instances where information is stored in databases, creating a record may be faster than gathering and redacting all the responsive records.

#### **vii. Records not in custody or control, or destroyed**

In some cases, through the course of responding to an ATI request, a public body may determine that it does not have the responsive record "**in its custody**" or "**under its control**", but believes that responsive records may exist within another public body. In accordance with its duty to assist, the public body should, as soon as possible, inform the records manager accordingly.

As well, it may be possible that additional records exist, but are not or are no longer, in the public body's custody or control (for example, archived records or records transferred to another public body).

- After completing the search, the ATIPP coordinator may determine that the requested records are not in the custody or control of the public body.

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<sup>3</sup> See Ontario IPC [Order PO-3050](#)

- When this occurs, the ATIPP coordinator should identify which public body may have these records, if known, and document the steps taken to make this determination.
- The ATIPP coordinator should inform the records manager how they arrived at the conclusion that the records requested are not in the public body's custody or control, including that a search was undertaken but resulted in no responsive records being located.

If a search reveals that responsive records were **destroyed**, the ATIPP coordinator should inform the records manager about the destruction and when it occurred. The ATIPP coordinator may also want to provide information about the public body's retention policies as well as any destruction documentation confirming the date and reason for destruction. Note that this step may not be applicable for transitory records that were disposed of in accordance with the Yukon Government's Transitory Records Schedule.

If the ATIPP coordinator determines that the records were destroyed contrary to the public body's records retention policy, they should inform the person within the public body who is responsible for records management. Any concerns regarding possible non-compliance with Part 3 of the ATIPP Act should be reported promptly to the public body's privacy contact person.

### **viii. Document search details**

All participants in the search should document their search steps including their name, the date they conducted a search, the databanks, the types of files and other record holdings searched, and finally their search results (even when a search does not locate records). A sample record search checklist is included in [Appendix 1](#) of this guide.

Each search participant should confirm in writing that a search was conducted in accordance with the written search instructions. Where applicable, participants should document their explanation as to why no records were found. Where no records are found, this may alert employees of the need to perform a broader search.<sup>4</sup>

Public bodies should consider requiring that employees who have searched for records sign a document indicating that they have provided all the information in their possession relevant to the ATI request to the ATIPP coordinator.

### **ix. Identify and address search gaps (change in employment, retirement, etc.)**

In some cases, employees with potentially responsive records may have moved positions or left the institution. In such a case, the ATIPP coordinator should follow up with the individual (if possible), or

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<sup>4</sup> See Ontario [IPC Order PO-3304](#).

his or her successor, to identify where responsive records may be located, and to determine what further steps may need to be taken to search for records.

In addition, program area employees should also review records received from search participants to identify whether additional personnel may need to conduct searches. For example, an email may identify other employees who had some involvement with the subject matter at issue.

## 6. Additional Considerations

### i. Multiple copies

Be mindful that where more than one copy of a record exists, a record that contains handwritten notes (sometimes referred to as “marginalia”) is considered to be a separate record, and therefore both (or multiple) versions should be retrieved.

This may also be a consideration where there are several draft versions of a record. Any version changes to a record, no matter how insignificant, may create a separate record and, depending on the scope of the request, may be responsive. In circumstances where there are multiple versions of records, especially where revisions are not substantial (for example, grammatical and/or formatting changes), it is advisable to contact the records manager, who can clarify whether the applicant is interested in obtaining such records.

### ii. Copyrighted material

It is possible that copyrighted material may also be captured by a request. Federal legislation (*Copyright Act*<sup>5</sup>) establishes that copyrighted material can be disclosed in response to an ATI request. It is advisable that the existence of the copyright be indicated on the face of the record.

## 7. Communicating the Results

With the search for records now complete, the ATIPP Coordinator should ensure that the original package of responsive records and any communications related to the search efforts are appropriately filed for future reference, such as if an applicant has questions about the search or a complaint is made to the IPC.

Where applicable (such as with a legal hold), the ATIPP coordinator should circle back to inform the relevant program area(s) and employees that normal record retention procedures can be resumed, including for transitory records.

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<sup>5</sup> [Copyright Act](#), R.S.C., 1985, c. C-42

As a best practice, the public body should consider providing the applicant with an overview of the search effort as described above. For example,

- explain how the records management system is organized (both paper and electronic);
- identify which folders within the records management system were searched and explain how these folders link back to the subject matter requested;
- for electronic folders, indicate what key terms were used to search, if applicable; and
- explain why certain areas were searched and not others.

If applicable, explain in plain language why certain information was redacted or withheld.

If an applicant still has questions relating to the retention of information, the ATIPP coordinator should be prepared to provide details of the public body's record retention policies, schedules, and destruction certificates.

While transparency regarding the search effort is a best practice, public bodies must also be mindful not to disclose to applicants any information that could compromise the security of its records management systems.

In the case of a complaint or request or review to the IPC, more detailed information regarding the search efforts may be required.

## **Record searches and fees**

Subject to the *Access to Information Regulation*<sup>6</sup> (ATI regulation), public bodies may charge applicants a fee for search activities and the preparation of records in response to an ATI request. The ATI regulation provides a detailed description of what fees can be charged in what circumstances and the process for doing so.

Depending on the request, it may be helpful to do an initial assessment of the work required to execute the search. If during this preliminary phase, it is determined that an unreasonably large number of records is likely to be responsive to the applicant's request, an estimate of cost should be calculated in accordance with the ATIPP Act and the ATI regulation.

Please note that this discretionary power must always be balanced with the applicant's right of access. As well, you may want to consider requesting that the records manager contact the applicant to clarify or narrow the scope of their request.

Note that subject to certain criteria, applicants may request that the records manager waive all or part of the fees payable to the public body. (See subsection 9 (1) of the ATI regulation.)

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<sup>6</sup> [Access to Information Regulation](#) See section entitled FEES

Further note that Paragraph 48 (1)(d) of the ATIPP Act authorizes the IPC to accept a complaint about a fee waiver refusal by the records manager, and subsection 42 (b) authorizes the IPC to investigate fees charged in accordance with the ATIPP Act and the ATI regulation.

For additional resources including an *Estimate of Cost* form, please contact the records manager at the Government of Yukon ATIPP Office. <https://yukon.ca/en/atipp-coordinators>

## **8. A complaint to the Information and Privacy Commissioner (IPC)**

Through the IPC's informal case resolution process,<sup>7</sup> a public body may be asked to conduct additional searches, if there is evidence that certain program areas were overlooked or that the initial search for records was incomplete or based on a narrow interpretation of the request. Employees who carry out further searches should provide written confirmation of the results, including their explanation of why there are no records, if none are found.

The IPC publishes decisions and interprets sections of the ATIPP Act relating to access requests in inquiry and investigation reports. Public bodies should review and become familiar with the IPC's decisions in this respect. Note that any interpretation of the ATIPP Act by the IPC in an inquiry report is binding. Most IPC decisions are contained in a sectional index on the IPC website, which can be found [here](#).

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<sup>7</sup> The IPC normally investigates inadequate search allegations through an informal process and may conduct a formal investigation into an allegation of inadequate search. See the IPC website for an explanation of the different types of investigations.

## 9. APPENDIX 1 – Sample record search checklist

This form is a sample checklist for program area managers or other employees involved in an access to information request.

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### Access to information (ATI) records retrieval

#### Completed search and retrieval checklist

Complete this form if the total search time amounts to less than 3 hours.  
If your search time will be more than 3 hours, contact your ATIPP Coordinator.

Please complete this form and return it electronically to the ATIPP coordinator at \_\_\_\_\_.  
If you are mailing your retrieved records, please include a copy of this form.

Before sending digital records or digitally scanning any records, please contact the ATIPP coordinator for instructions on secure transmission.

Reference #:	[ATI request number]
Name:	[Program area contact person] One form per program area is requested.
Program area:	
Position:	[contact person's employment title]
Phone number:	
Date(s) of search:	

1. Indicate the information banks that were searched [whose computer, which files (hard copy and shared drives)], which offices or file rooms and any digital devices (what digital devices and whose).

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2. Name(s) and position title(s) of employees contacted during the search.

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3. Methods/processes used to conduct the search and types of files searched (emails, other electronic files, paper files, file lists, off-site file lists, microfiche, digital devices, etc.)

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4. Were responsive records located? If no, is there another location where they may be? If responsive records once existed but were destroyed, or have gone missing, detail how this determination was arrived at.

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5. Are there any issues/sensitivities around these records or this request? If yes, please explain. Please keep in mind that we may have no familiarity with your records.

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6. Number of hours required to complete search (to the nearest ¼ hour, do not include photocopy time): \_\_\_\_\_ hrs.

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7. Was an IT expert required to write code or otherwise to retrieve any of the records for this request? Yes/No

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## 10. APPENDIX 2 Access to information SEARCH TIP SHEET

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### Step 1 - Establish the criteria for a reasonable search

- The ATIPP coordinator should make efforts to ensure that records are searched for by employees who have knowledge of the records management system and the subject matter of the request (subject matter expert).
- Employees tasked with searching for records should endeavor to respond to every aspect of the request related to the program area.
- Any questions or concerns from employees searching for records should be directed to the subject matter experts and the ATIPP coordinator.

### Step 2 - Identify locations to search records

- Once the scope of the request is clear, the subject matter experts should clearly identify which locations are to be searched.

This may include:

- Emails;
  - shared drives;
  - electronic record management systems;
  - handheld devices, including cell phones; and
  - off-site paper records.
- Employees identified as possibly having responsive records should be given clear search instructions including which locations to search and keywords if applicable.

### Step 3 - Search identified locations

Employees can begin searching and gathering responsive records to be provided to the ATIPP coordinator.

- Responsive records can be both electronic and/or on paper.
- A search for responsive electronic records can be done through keyword search or reviewing responsive content folders.
- A search for paper records can be done by physically looking in filing cabinets or boxes.

### Step 4 - Document the search steps

- Document the steps taken to complete the search.

- Keep track of what records were searched and by whom. Consider making this information transparent to the applicant when responding to the request.
- Keep in mind that the applicant can file a complaint with the Information and Privacy Commissioner (IPC) regarding adequacy of search.
- If a complaint is filed, the IPC will likely request that the public body describe the measures taken to search for a record, including if the public body claims that no records exist.

## 11. APPENDIX 3 – TIPS for searching electronic records

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- Identify the program area(s) and employee(s) to be involved in carrying out the search for records.
- Ensure the employee(s) is adequately trained in doing digital searches and understands that a structured approach should be adopted when searching for records. Document where employees searched, how and why.

It may be useful to develop a checklist to lay the foundation for the search approach. For example:

- What data sources is the program area responsible for?

**Note:** Data sources can include **any** source of information. Consider personnel registries, applications, databases, electronic file systems, legacy systems, filing cabinets, paper records, etc.

- If applicable, document what keywords were used to conduct the search.
- Identify who has worked with this information and might have relevant records in their possession or might know where to find it. Persons should be identified by using a personnel list. Identified persons should be questioned for this purpose.

**Note:** Ensure the personnel list is comprehensive and covers the entire date range of the access request. This includes employees who may have retired, are on leave, have moved to other public bodies, are no longer employed by the Yukon government, etc. In these cases, employees' email, (archived) electronic documents and physical archives should be searched for matches.

- Was there collaboration with other public bodies regarding the records? If so, notify your ATIPP coordinator.
- Inquire if any information might be contained in a case management system or other software in use. For greater certainty, consider consulting IT. Also inquire about legacy systems that may need to be searched.
- Consider whether there are mobile devices that may contain records responsive to the request (such as laptops, smart phones, cell phones, tablets, etc.).
- Ensure that employees searching for records know how to properly conduct searches of electronic file systems and email boxes, and that they are provided with instructions.

Common mistakes include:

- not searching all email boxes (to avoid this, select “All Mailboxes” as opposed to “Current Mailbox” before searching);
- not searching archived mailboxes of employees who have retired or moved to a different department;
- searching only electronic document **titles** as opposed to using parameters to also search **content**; (to avoid this, type in the search field: content: jane doe); and

*For more information on this see:*

<https://www.wikihow.com/Make-Windows-7-Search-File-Contents> for Windows 7

<https://www.howtoqeeek.com/99406/how-to-search-for-text-inside-of-any-file-using-windows-search/> for Windows 10.

- not correctly using search parameters to reduce the number of records returned by a search; (to avoid this, type in the search field: content: Jane Doe NOT Jane Doolittle).

*For more information on this see:*

<https://www.howtoqeeek.com/school/learning-windows-search/lesson4/>

<https://www.howtoqeeek.com/school/learning-windows-search/lesson5/>

- Consider records that may have been moved off-site, stored on hard drives, or other storage media that are not currently in use. Consult with information management and technology personnel to identify any off-site storage and filing systems that may also need to be searched.
- Document which individuals were consulted during the search for records.
- Document what guidance was provided to individuals searching for records.
- Were any issues or concerns raised during the search? If so, how were they addressed?
- Were any areas or file types intentionally left out of the search? If so, why?