

Using OPRA as a Litigation Tool

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When a dispute involves a public agency, public property, or public resources, the Open Public Records Act (OPRA) can be an important information gathering tool, whether a lawsuit has already been filed or a party is simply gathering facts necessary to draft the complaint and initiate the litigation. Thus, OPRA is frequently used as a litigation tool by those who do business with public agencies or those who purchase or lease public property, such as construction companies and real estate developers.

Our courts have found that it is perfectly acceptable to use OPRA in lieu of written discovery requests or subpoenas and there are several benefits in doing so. First, a response to an OPRA request is due much faster than a response to a subpoena or discovery demand. The public agency must respond within a mere seven business days. Second, the judiciary's discovery rules require that a party demonstrate that the documents requested are relevant to admissible evidence, but a request for records under OPRA requires no such showing. Any request for a government record must be honored unless one of the 24 narrow exemptions applies.

When using OPRA as a litigation tool, it is important to hire an attorney who is well-versed in crafting OPRA requests because a valid OPRA request is written much differently than a typical discovery request. As discussed before on this blog, a valid request must seek an identifiable record and not simply a general request for information or a broad category of records. A valid request does not require the custodian to perform any research or analysis, nor ask the custodian to calculate data. It instead simply asks for easily identifiable records, such as contracts, budgets, bills, meeting minutes, logbooks, RFQs, vouchers, or correspondence.