



## **Under the Microscope: Training for Proper Search Warrant Response**

**Energy and Public Utility**

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In this three-part series, you will learn how to best prepare your organization to respond promptly and lawfully to a search warrant. Part one covers [readiness, preparation, and the kick-off of the search warrant response](#). Part two dives deeper into [developing a search warrant response plan](#). And part three explores training via a simulated role-playing exercise.

## Cheat Sheet

- **Practice makes perfect.** Having a written search warrant response plan and a response team is ineffective unless the team members know how to execute the plan.
- **Time to role play.** The attorney presenter should act as the officer in charge, allowing on-site team members to practice their roles in responding to a search warrant.
- **Consistency is key.** Conduct trainings whenever there updates to the search warrant response plan, or if there are significant changes to the response team roster.
- **Quick reference.** Company counsel should boil down the training materials into a concise list of bullet points (or use ACC's downloadable sample) that are then printed on card stock and can be folded into the size of a credit card.

## Conduct in-person training

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Once the search warrant response plan has been adopted and a facility search warrant response team has been organized, the next critical step is training. In other words, having a written plan and a team is ineffective unless the team members know how to execute the plan. And the best way to ensure effective execution of the search warrant response plan is for the search warrant response team to undergo training, preferably in person, or virtually in real time.

Training should begin with a presentation on search warrant basics, including its components and how to read and determine a warrant's validity. It should include an exercise where employees look at various search warrants and determine which are invalid and why. The presentation should then transition to the company's search warrant response plan and a discussion of each of its elements, concluding with a slide showing the facility's search warrant response team members.

[ACC Members: Download a sample search warrant.](#)

## **Do a role-playing exercise**

The main reason in-person training is effective is the role-playing exercise component. The company attorney giving the training will play both the officer in charge executing the search warrant and a member of the search warrant team who will collect documents — including confidential documents — inspect a process unit and take air samples and photos. The presenter should then ask for volunteers from the audience to play the following:

- The receptionist or guard
- The search warrant response team leader
- An employee-escort
- An employee who will be interviewed

The exercise begins with the attorney-presenter acting as the officer-in-charge entering the facility and presenting the search warrant to the employee playing the receptionist or guard.



0. 00:00 – 00:15 Hours, or the First 15 Minutes

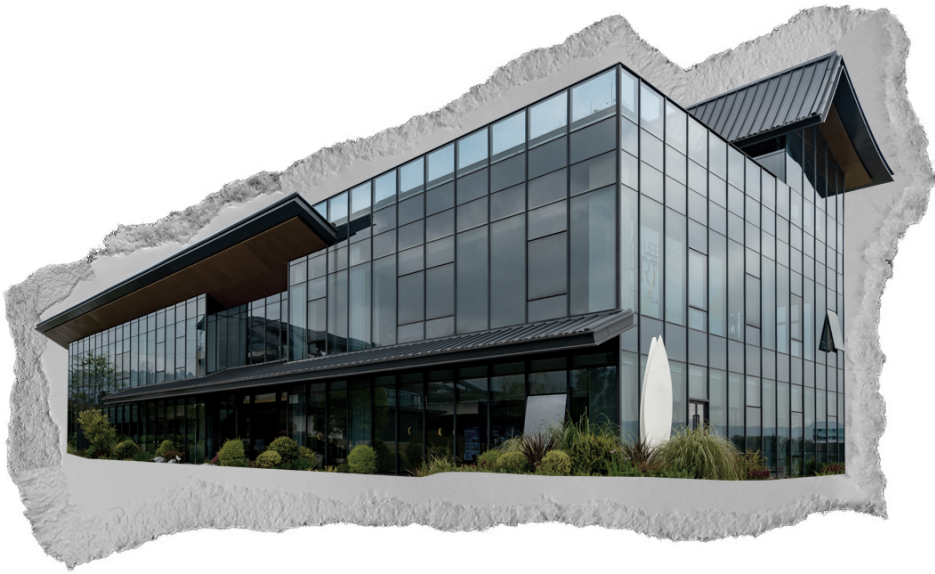
- Guard or receptionist:
  - Greets officers and asks them to each sign visitors' log.
  - Asks for officers' business cards and photo IDs and takes pictures of these with cell phone.
  - Asks to see search warrant and takes photo of it, including the scope of search, with mobile phone.
  - Checks search warrant to make sure:
    - Name of company is correct,
    - Address of facility is correct,
    - Warrant is dated and signed, and
    - Date of search is within 14 days (or other time period applicable under state law) of when the warrant was signed.
  - Alerts search warrant team leader and company attorney and texts them the search warrant.
  - Alerts search warrant team members and texts them the search warrant.
- When the team leader and team members arrive, they:
  - Introduce themselves to the officers,
  - Review the search warrant to confirm:
    - Name of company is correct.
    - Address of facility is correct.
    - Warrant is dated and signed.
    - Date of search is within 14 days (or other time period applicable under state law) of when the warrant was signed.
  - Carefully review the scope of search to determine:

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- What documents are to be seized.
  - Will environmental samples (soil, water, air, etc.) be taken.
  - What locations in the facility will the officers be searching.
  - Whether the officers will need PPE or a safety briefing before searching certain locations.
    - If the search entails access to a confined-space location, then discuss with the officer in charge that the officers will have to follow OSHA (Occupational Safety and Health Administration) confined-space entry procedures.
    - If the officer in charge does not agree to comply with the need for PPE or the safety briefing, then the team leader should object and document that objection.
  - The team leader then:
    - Discusses any search warrant issues or questions with the officer in charge.
    - Organizes and assigns company escorts depending on what is in the scope of search and what locations in the facility will be searched.
      - If environmental samples are taken, make sure the escorts assigned have sampling kits to take split samples.
  - At the end of this first 15-minute period, the officers and their accompanying company escorts have been dispatched to the locations to be searched.

Having a written plan and a team is ineffective unless the team members know how to execute the plan.

0. 00:15 – 00:30 Hours, or when the company attorney has arrived on site.

- The team leader briefs the company attorney about what has transpired thus far:
  - The search warrant has been reviewed and found to be valid with no issues.
  - There are enough escorts to accompany the officers in their search.
- They should also discuss the following:
  - Whether certain documents in the scope of search might contain confidential business information, trade secrets, or information subject to the attorney-client communication privilege and, therefore, must be placed in an envelope marked as containing Confidential Information
  - Whether or not to dismiss for the day facility employees who are not part of the search warrant response team, to mitigate against the risk they would be interviewed by the officers on site.
  - If certain employees must remain on site and are at risk of being interviewed by the officers, confirm that they are familiar with the company's employee interview policy.
- The company attorney on site should keep the General Counsel and others at HQ informed about the situation. The attorney should inform team members that they are available to address any issues arising from the search.



0. 00:30 – 02:00 Hours

- During the search, each of the escorts, as well as the employees on site, should remember important lessons from their search warrant response training:
  - Cooperate with the officers:
    - Being cooperative means that we have nothing to hide.
    - Being cooperative also means the search can go faster and end sooner.
    - Being uncooperative, however, could suggest to the officers that we have something to hide, thereby causing the officers to intensify their search and potentially seize more items or documents.
  - But do not volunteer information:
    - Volunteering information means providing information that the officers did not request or ask for.
  - Do not consent to officers seeking to expand the scope of search:
    - Officers are seeking your consent when they ask, politely, for permission to enter a location or to access documents, neither of which fall within the scope of the search.
    - Respond to such requests by politely saying that what the officers are asking is beyond the scope of the search, and that you do not have the authority to grant consent on behalf of the company.

0. At the conclusion of the search, the team leader or attorney:

- Should ask the officers for an itemized receipt of the documents and items seized.
  - The company has the legal right to the receipt.
  - Carefully review receipt to ensure its accuracy compared to the documents and items seized.

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- Double-check to make sure any privileged and confidential documents seized have been placed in a container or envelope clearly marked: “Confidential.”
  - Make sure each officer signs out the visitor log. You do not want any officer left in the facility wandering around.
  - After the officers have left, conduct an immediate debriefing with the escorts:
    - Ask each escort to report and share notes with the group.
    - How did the officers conduct the search?
    - Did they try to expand the scope of the search?
    - Did the officers follow the correct procedures when they took their environmental samples?
    - The company attorney may be present to give legal advice on any issues that arose so that the discussion can be protected under the attorney-client communication privilege.

## **Concluding the training session**

Employees will make it a point to file their search warrant training materials in a location that is easily accessible just in case. However, looking for, pulling out the slides and materials, and flipping the pages to the right section takes more time than one can spare during the execution of a search warrant. Company counsel should, therefore, boil down the training materials into a concise list of succinct bullet points which are then printed on card stock that can be folded into the size of a credit card, and stored in the employee’s wallet or purse.

[ACC Members: Download a printable template of the checklist.](#)

The training session should conclude with the company attorney handing out this credit-card sized checklist to each attendee and quickly walking through its contents. The checklist should also contain the mobile numbers of the company’s attorneys who will assist in the response. The checklist should be updated when the company’s search warrant response plan is updated or when new company attorneys will be assigned to search warrants.

The search warrant response plan should be updated when there are significant developments in the law that would trigger such changes. A facility’s search response team roster, however, should be updated whenever there are changes to facility personnel or their job responsibilities. Finally, the frequency of search warrant response training should be determined by the extent and frequency of employee changes at a facility, as well as by the critical role played by that facility in a company’s business.

## **At the end of the day**

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As you hit rush hour traffic on your way home, you relax, nodding at the brilliance of training the company's employees on how to respond to a search warrant when attorneys are not present. Your mobile phone vibrates. It is Dawn calling from the Doha International Airport. You thank her for her foresight and then tell her what happened.



As the officers arrived at the facility with the search warrant, the receptionist Jin immediately asked each of the officers for their identification and business cards, which she photographed and texted to you together with the search warrant. The facility's team leader, Barbara, and team members showed up within minutes of Jin texting and calling them.

After reviewing the search warrant and the scope of search, Barbara assigned certain employees to escort officers to specific areas of the facility. She assigned a group of escorts equipped with sampling kits to accompany officers who were going to take air, water, and soil samples at various locations. Barbara also told a group of employees that, because of the disruption caused by the search, they should take the rest of the day off and leave the facility.

You also tell Dawn that several documents seized contained trade secrets as well as privileged attorney-client communications. After objecting to their seizure, you then placed these documents in an envelope marked "CONFIDENTIAL" and made sure that this was reflected in the search warrant inventory and receipt prepared by the officer in charge. With Barbara, you reviewed the inventory and receipt to make sure they both listed and properly identified all the documents and materials seized by the officers, including the air, water, and soil samples.

Finally, after the officers left, you participated in a debriefing session with the response team members, discussing what the officers were looking for, whether they attempted to expand the scope

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of the search, if they seized any documents that were “in plain view,” and whether they made any errors when they took the air, water, and soil samples. You note that the officers had also taken pictures of an engine that was “belching smoke” and discussed with the escorts if the engine had been malfunctioning at that time. You took down the names of the employees who had been approached and interviewed by the officers, noting that you plan to contact them later about those interviews. You tell Dawn that as soon as you get back to your home office, you plan to write a report to her and executive management about the search warrant episode, where the officers went and what documents they took, adding that follow up is needed with respect to an engine that was “belching smoke.”

Dawn interrupts and tells you to stop, breathe, relax, and take the evening off. You did an excellent job.

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