



**F**ew events can be more disruptive to a workplace than a knock on the door from government officials with a search warrant.

Although other demands for information, such as document subpoenas and letter requests, create less of a public spectacle, a search warrant can produce considerable anxiety for corporate officers who may wonder what the government wants, why the government wants it, and what the government might find.

Whenever the government asks for information, the recipient of the request naturally feels at a disadvantage. To the law enforcement official, this is just another investigation. To the corporate personnel on the receiving end, this is often a new and enormously stressful experience. While this pamphlet cannot level the playing field, it will help you understand how the process works, what rights you have, and to whom you can turn for help.

## *What to Do When the Government Knocks*

### **THE LETTER REQUEST**

A letter requesting documents or other information is often seen as an “informal” way for the government to get information. Unlike a search warrant or a subpoena, you are not obligated to provide requested information. The government may be making an informal request because the particular agency lacks the authority to compel your company to submit the information.

Regardless of whether the government can force you to provide information requested, your company needs to make a business decision about whether to cooperate. There are tactical advantages to cooperating with the government, and the burden of complying with a letter request is often less than the burden of complying with a subpoena or submitting to a search warrant. However, sometimes your company will want the government to make a formal request before disclosing information. For example, your company may have entered a confidentiality agreement preventing it from disclosing certain information except where required by law. Your lawyer can help you decide whether you should respond to a letter request.

Either way, a letter request is serious. We offer the following tips to help you respond to a letter request:

#### **Do**

- 1** Call your lawyer immediately. If you delay your response too long, the government may follow its letter request with a subpoena or search warrant that is significantly broader in scope than the letter request.
- 2** Many companies have document retention policies and computer programs that destroy documents automatically once they reach a certain age. Immediately speak with your IT department about freezing electronic documents that are potentially responsive to the government’s request, so they are not deleted under these protocols.
- 3** Examine the categories of documents carefully and consider the burden of locating those documents. Because compliance with the letter request is not compulsory, your lawyer can negotiate with the government regarding the extent of your search. This may reduce the cost and time to prepare your responses and may provide your lawyer with important information about the inquiry.
- 4** Consider whether any documents that are responsive to the letter request contain trade secrets or other confidential business information, and raise this issue with your lawyer as soon as possible. Your company may be under contractual obligation to notify business partners, vendors or other third parties before disclosing information the government requests.

#### **Don't**

- 1** Do not ignore the letter request hoping that the government will go away. It won't.
- 2** Even if your company has legitimate business reasons for deleting or destroying potentially responsive documents, you should not take any action without consulting with your lawyer. You may be accused of the crime of obstruction of justice if responsive documents are destroyed, regardless of the reason.
- 3** Do not put anything in writing about the letter request unless you have consulted with your lawyer. As a general rule, all communications about the letter request should be in person or over the telephone, preferably with your lawyer present. If you receive a follow up call from the official who made the request, explain that you are seeking advice of counsel and ask him or her to contact your lawyer.
- 4** Some letters of this type request that the person responding certify under oath that the responses are complete. You should be wary of executing such a certification without speaking with your lawyer. The law may not require you to certify the responses, and there may be business or legal reasons why you should not certify the responses.

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### THE DOCUMENT SUBPOENA

A subpoena is more intimidating than a letter request, because it can force you to disclose your records within a certain time period. Failure to respond in good faith to a subpoena carries serious consequences, including potential criminal prosecution for obstruction of justice.

Although you cannot ignore a subpoena, you have rights you can exercise in crafting a response that fulfills your legal obligations while minimizing the company's exposure. We offer the following tips to help you respond to a subpoena:

#### Do

- 1** Call your lawyer immediately. While the 30 or 45 days you typically have to respond seems generous at first, the process of gathering, reviewing and preparing documents for the subpoena response is time consuming. You should begin the process as soon as possible by speaking with your lawyer.
- 2** Many companies have document retention policies and computer programs that destroy documents automatically once they reach a certain age. Immediately speak with your IT department about freezing electronic documents that are potentially responsive to the subpoena, so they are not deleted under these protocols.
- 3** Examine the categories of documents and consider where documents in those categories might be located and how they can be found most easily. If you needed to find these documents, where would you look? Whom would you ask? Does someone need to search through file drawers? Can your IT department perform a key word search?
- 4** Consider whether any documents that are responsive to the subpoena contain trade secrets or other confidential business information. If so, raise this issue with your lawyer as soon as possible. He or she may be able to negotiate a confidentiality agreement with the government to protect your information. Additionally, your lawyer can help determine whether your company is under a contractual obligation to notify business partners, vendors or other third parties before disclosing information the government requests.
- 5** Have your lawyer speak with the government official who issued the subpoena. The government may agree to narrow the scope of the subpoena through such a conversation. That discussion may also give your lawyer important information about the nature of the investigation and what information the government thinks your company can provide.

#### Don't

- 1** Do not speak to your employees about the subpoena until you have consulted with your lawyer. Your lawyer will help you advise your employees about how to comply with the subpoena. Your lawyer can also help ensure that your conversations with employees are privileged as much as possible.
- 2** Even if your company has legitimate business reasons for deleting or destroying potentially responsive documents, you should not take action without consulting with your lawyer. You may be accused of obstructing justice if responsive documents are destroyed, regardless of the reason.
- 3** Do not put anything in writing about the letter request until you have consulted with your lawyer. As a general rule, all communications about the subpoena should be in person or over the telephone, preferably with your lawyer present. If you have an e-mail exchange with an employee about the subpoena, for example, the government may later compel you to disclose those e-mails.
- 4** Do not create documents because of the subpoena. A subpoena asks only for responsive documents that exist; if you do not have any such documents, you are under no obligation to create them.
- 5** Do not speak with the government or anyone about the subpoena. Anything you say can and will be used against you and your company. Allow your lawyer to be your spokesperson.

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### THE SEARCH WARRANT

A search warrant is the most stressful and disruptive tool that the government possesses to obtain information from your company. In the context of a typical investigation, the law requires a warrant signed by a judge before government officers can enter private property to search for and seize evidence. To obtain the warrant, officers have to tell the judge exactly where they want to look and exactly what they expect to find, and they

have to give the judge probable cause to believe the search is likely to turn up that evidence.

By the time the warrant arrives at your door, officers have the judge's approval for the search. You still have rights, however, and you should exercise them. We offer the following tips to help you respond to a search warrant:

#### Do

- 1** Remain calm and polite.
- 2** Introduce yourself to the officer in charge and tell him or her what position you hold in the company.
- 3** Ask the officer in charge for his or her business card and a copy of the warrant—you will want this information when you speak with your lawyer. You should also ask the officer in charge to let you read the warrant before the search begins. Often, the officer in charge will agree, but you should not try to obstruct the investigation if he or she says no.
- 4** Tell the officer in charge you are going to call your lawyer and request that he or she not begin the search until after your attorney arrives.
- 5** Tell the officer in charge you are going to let your employees go home. The officer in charge may be upset, but this is often worth avoiding the risk that a nervous employee will inadvertently blurt out something that harms the company.
- 6** Make notes to create your own inventory of items seized. Ask for a copy of the inventory the officers have prepared.

#### Don't

- 1** Do not prevent officers from entering your premises.
- 2** You are not obligated to make a statement without your lawyer present. Even if you are not a target of the investigation, anything you say can and will be used against you and your company. Even the most innocent-seeming statement can hurt you.
- 3** The warrant will specify in writing where the officers can search, and they cannot go beyond the areas specified without your consent. Do not consent to any expanded search without consulting with your lawyer.
- 4** Do not call your lawyer in the presence of the officers, if possible. Find a private space, so you can have a candid and privileged conversation.
- 5** Do not try to prevent your employees from speaking with the officers. While they, too, have the right to remain silent, you cannot keep them from cooperating.
- 6** Do not confirm the accuracy of the inventory the officers have prepared unless you have consulted with your lawyer or unless you are certain it is accurate.

*For more information, please contact  
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