

What To Do When the Government Comes Knocking



Presented by:

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Government Inquiries Covered

- This presentation will talk you through responding to the three main types of government inquiries:
 - Requests for Interviews
 - Requests for Documents and Access
 - Search Warrants

Practical Tips

- It is necessary to always remember that any inquiry could be a criminal investigation
- Notifying legal counsel of any written or oral communications from a government agency that you receive is extremely important
- ***Real World Scenario:*** Mail received at a work address directed to a former employee

Other Examples of Interactions with Law Enforcement

- Corporate victim of a crime
- Witness of a crime against third parties
- Defensive briefing

Requests for Interviews

- What to consider as **principles** (owners and upper-level management):
- You do not have an obligation to speak voluntarily with a government agent and may refuse to do so

“What if an agent or investigator shows up at my office?”

- Inform the agent that you are represented by counsel and that you would like all contacts to be directed to your counsel
- Do not make any statements or “comments” about the government’s allegations or the facts underlying the investigation
- Do not be belligerent or confrontational. Maintain an agreeable demeanor.
- Do not instruct employees not to agree to an interview

REAL WORLD EXAMPLES

Requests for Interviews

What to consider for your **employees**:

- Employees may speak with an agent if they choose to do so but have no legal obligation to speak with an agent
- Consider sending a letter to your employees or have a meeting with them addressing how to respond to a government investigation
- Make arrangements for employees who do choose to speak with agents to do so in a private, secure environment
- Ask that the employee contact you after the interview as sharing such information is not illegal or inappropriate

How to assist an employee who agrees to an interview:

- Ask that they maintain an agreeable demeanor and inform you, their employer, as soon as possible
- Obtain the agent's contact information
- Consider having counsel present at the interview

Requests for Documents and Access

- Oral requests to managers or owners to inspect records without a search warrant or subpoena

Absent a search warrant, agents have no right to copy, review, or seize documents.

If an agent or investigator asks to do so:

- Obtain the agent's contact information and/or credentials
- Advise the agent that you will immediately contact your counsel
- Avoid being overly "helpful" in volunteering information to the agent

If you do choose to allow “immediate access” to records before consulting with your attorney:

- Create photocopies of the documents prior, consult your counsel as soon as possible, and know that employees may produce personal copies of documents but are not obligated to do so



REAL WORLD EXAMPLES

Requests for Documents and Access

Subpoena requests:

Both managers and employees should:

- Accept any subpoena with civility and know that it is routine for the agent to ask for a signature to prove service
- Not engage in any dialogue with the person serving the subpoena

Requests for Documents and Access

- No statements should be given and no documents should be provided to an agent at the time the subpoena is served.
 - Documents will be provided at the “return date” stated on the subpoena.
- Upon receipt of a records subpoena, seriously consider disseminating a memorandum to all employees stating the receipt of the subpoena, and the next steps to be aware of.

Requests for Documents and Access

Corporate owners or key managers should:

- Be prepared to fully assume the costs of compliance with the subpoena
- Have counsel review documents before complying
- Identify those (including former employees) who have familiarity with the documents and inform counsel
- Be prepared with your attorney to address issues that may arise with the agent

Search Warrants

- A court order that authorizes agents to search for particular evidence in a particular location

“What should I do if an agent shows up with my search warrant?”

- Obtain the agent’s contact information
- Request an opportunity to read the warrant
- Ask to call your attorney - and do so promptly
- Be cooperative with agents but do not agree to expand the search beyond the items described in the warrant
- Be sure to inform the agent of any documents or other items that are essential to your business operations
- Under no circumstance attempt to impede the agent or officer’s search
- Advise employees that they may speak to an agent but are not obligated to

Search Warrants

Be familiar with attorney-client privilege documents:

- Include those communications to/from your attorney or that were prepared by your attorney
- Be prepared to request that the agent follows the appropriate steps if you believe that documents covered by the search are protected under the privilege
- Know that your counsel will take the necessary steps to have the privilege upheld by the court if privileged documents are seized in the search

Document Preservation

- Documents should not be destroyed or altered in any way by you or your employees.
- You should not instruct your employees or anyone else on how to respond to questions by agents, only that they have the choice to respond or not.



Questions?

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