

Know Your Rights: What Happens If Law Enforcement Requests or Compels Election-Related Information, Records, or Equipment from You or Your Organization?

Frequently Asked Questions

1. What happens if a law enforcement agent shows up at my place of work or knocks on my door with a request seeking information?

- First, you should confirm the agent is legitimate by asking which agency or office they represent and asking to see their badge or law enforcement ID. You can write down (or, if possible, take a photo of) the identification information.
- Second, you should ask the agent whether he or she has a valid, judicially approved legal document authorizing them to enter the premises or to ask questions (e.g., a valid subpoena, a proper search warrant).
 - Something less formal (e.g., a letter seeking information or a voluntary interview) has no legal force and does not need to be accepted as the basis to provide any information.
- A valid search warrant means that the request is signed by a state or federal judge, with a time and date, and must be honored. The warrant must detail the places to be searched and the materials that can be taken.
 - Note: A search warrant is distinct from an “administrative warrant,” which is issued by a federal agency, not a judge, and is typically used in the immigration context to detain individuals, not to obtain records.
 - Note: Some agencies (e.g., the IRS) have “summons” authority. A summons is similar to a judicial or grand jury subpoena but is issued by the agency itself. If you are presented with a summons, the information provided below for subpoenas would be equally applicable.
- If the request is via subpoena (e.g., from a grand jury), it usually will not require immediate provision of any documents or information. (There are such things as “forthwith” subpoenas, but they are rare.) Generally, you can accept service of the subpoena and note you will confer with your lawyer about responding to it.

- No matter what form of request is made, you do not have to answer questions asked by any officer. If an officer wants to ask you questions about anything other than your acceptance of the request, you can say you need the officer's contact information so that you can have your attorney get in touch.
- **Practice Tip #1:** In the event any law enforcement request is made of you or your organization in the midst of an election (polls opening to polls closing; counting and recounting; certifying election results), it is especially important that you immediately engage with your counsel on steps that can be taken.
 - Getting counsel involved as soon as possible is advantageous so they can explore whether there are grounds to challenge or quash the issuance, breadth, or other aspects of a warrant or subpoena.
- Below are examples of a search warrant for records and a grand jury subpoena that you could expect to receive from federal law enforcement (FBI, HSI, DOJ):

AO 119 (Rev. 06/00) Subpoena to Testify Before a Grand Jury

UNITED STATES DISTRICT COURT
for the
District of Columbia

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: [REDACTED]

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.


Place: U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA U.S. Courthouse, 3 rd Floor 333 Constitution Avenue, N.W. Washington, D.C. 20001	Date and Time: Tuesday, December 23, 2020 at 9:00 AM
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You must also bring with you the following documents, electronically stored information, or objects:

PLEASE SEE ATTACHMENT

In lieu of personally appearing before the Grand Jury on the date indicated, you may comply with this grand jury subpoena by promptly providing SA [REDACTED] via [REDACTED] with the requested records.

Date: November 24, 2020

CLERK OF COURT

Signature of Clerk or Deputy Clerk

The name, address, telephone number and email of the Assistant United States Attorney, who requests this subpoena, are:

[REDACTED] Assistant United States Attorney United States Attorney's Office for the District of Columbia 555 4th Street, N.W. Room # [REDACTED] Washington, DC 20530 Phone: [REDACTED] Fax: [REDACTED] Email: [REDACTED]	Subpoena # [REDACTED] USAO # [REDACTED] Preparer: [REDACTED]
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AO 93 (Rev. 11/13) Search and Seizure Warrant

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

In the Matter of the Search of)
(Briefly describe the property to be searched)
or identify the person by name and address) Case No. [REDACTED]
the Premises Located at [REDACTED])
[REDACTED] as further described in Attachment A)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Southern District of Florida
(Identify the person or describe the property to be searched and give its location):

See Attachment A

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (Identify the person or describe the property to be seized):

See Attachment B

YOU ARE COMMANDED to execute this warrant on or before August 19, 2022 (not to exceed 14 days)
 in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to _____
Duty Magistrate
(United States Magistrate Judge)

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the a , ra , rise box)
 for _____ days (not to exceed 30) until the facts justifying the later specific date of _____

Date and time issued: 8/15/22 12:12 PM [REDACTED]
Judge's signature

City and state: [REDACTED] FL [REDACTED] U.S. Magistrate Judge
Printed name and title

2. What if the officer or agent says they have a search warrant?

- An officer or agent must provide you with the warrant onsite that forms the basis for the request or search. You may ask the officer seeking access if they have obtained a search warrant signed by a federal or state judge and may ask to see the warrant.
- You should scrutinize the substance of what the warrant seeks – for instance, seizure of “originals” vs. “copies” of documents.
 - You may ask the agent(s) if you can consult their agency’s legal officer to ensure agents are properly complying with the warrant and the warrant is executed as quickly and with the least disruption possible.
 - You may ask the agent(s) if you can consult with your attorney and even have the attorney, if possible, talk to the agent(s) and come to the site.
 - However, agents are not required to wait for any individual to reach the government agency’s legal officer or your attorney before proceeding with their search or seizing materials.
- **Practice Tip #2:** Review the face of the warrant to determine if it: (i) properly identifies the person/organization; (ii) has been executed on the proper date; (iii) at the proper address designated on the warrant; (iv) by the proper agency authorized to do so; and (v) what material it authorizes to be seized.

3. What if an officer does not have a warrant signed by a judge?

- You (or your organization) may state that, absent a signed or legally enforceable warrant, you will not permit entry or answer questions, until or unless a valid, signed warrant is present.
- Any election official can and should immediately consult counsel.
- If a law enforcement officer properly identifies themselves and insists materials be seized or provided absent a valid warrant, subpoena, or summons, even after you have indicated that there is no basis for the request, the recourse is to try to get your counsel on the phone or involved as soon as possible or, if counsel is unavailable, to request that the agent get in touch with your counsel when available.
- **Practice Tip #3:** Election officials may explain to an agent or officer, if true in your state (on which an attorney can advise), that state law or guidance governing the custody of election materials and equipment prevents them from providing access absent a judicially enforceable warrant.

4. What do I do if I or my organization receive a subpoena or other legal process seeking documents?

- A subpoena seeking documents (legally known as a *Subpoena Duces Tecum*) is a court-ordered command (or in some cases issued as an administrative agency summons) requiring a person or organization to produce specific documents, records, or physical evidence relevant to a legal proceeding or criminal investigation by a certain deadline.
- Before responding to a government subpoena, you should ensure the subpoena was properly served on you or your organization. You may wish to retain counsel to assess whether service was legally effectuated. The rules for service of process vary from state to state.
- If you can obtain legal counsel, they are often able to assist individuals or organizations communicate with prosecutors and agents and can often negotiate the terms, scope, and deadlines for complying with a subpoena's request for documents.
- A subpoena may only compel documents or records that are in an individual or organization's possession, custody, or control—but not beyond.
 - You are not required to produce any information that is protected by a valid legal privilege (e.g., attorney-client).
 - The producing party's custodian of records often has to provide a signed declaration certifying that the documents are authentic and complete, and all that must be produced has been produced.
- Other types of compelled legal process include civil investigative demands (CIDs) from government agencies, state subpoenas, or Rule 17 subpoenas.
- **Practice Tip #4:** Upon receiving a subpoena for documents, an election office or organization may consider issuing a document retention notice (sometimes called a 'legal hold' notice) to its employees and other representatives to avoid the loss, spoliation, or deletion of relevant or responsive records. You should discuss the efficacy of issuing such a notice with your legal counsel on a case-by-case basis.

5. What do I do if I receive a subpoena compelling grand jury testimony?

- A subpoena compelling grand jury (legally known as a *Subpoena Ad Testificandum*) is a formal, court-ordered command that requires a person to appear before a grand jury to provide oral testimony under oath.

- The subpoena will state some date in the future for the grand jury proceeding. As with a subpoena for documents, you should ensure that the subpoena for testimony was properly served on you or your organization.
- Legal counsel can assist you with analyzing the requirements and specifics of grand jury testimony, including the time, place, and topics of such testimony.
 - Failing to comply with a subpoena can result in a “contempt of court” charge, which may lead to fines or imprisonment.
- **Practice Tip #5:** While legal counsel is not permitted inside the grand jury room, you can always ask a prosecutor to take a break and step out to speak with your legal representative. Like with documentary evidence, you need not testify about any information that is protected by a valid legal privilege (e.g., attorney-client) and you should work with legal counsel to convey that to the government ahead of time.
- **Practice Tip #6:** Witnesses who testify before a grand jury are not bound to secrecy about the testimony they give and can share and discuss it afterwards.

6. What do I do if I am voluntarily or informally asked for information, without a subpoena, search warrant, or summons?

- An individual, including any election official, is *not* legally required to provide any information based on a voluntary or informal request (e.g., a letter, oral request) of law enforcement to obtain election information. Only formal requests (e.g., a valid subpoena, summons, search warrant) need be honored.
- Whether an officer has a warrant or not, an individual is not required to answer any questions on the spot, such as questions about where documents are stored, what a person knows about a topic, or other sensitive information.
 - Individuals may always state that they would prefer to have an attorney present before answering any other questions.
- **Practice Tip #7:** Ask the agent or officer for his or her name, agency, and contact information, so that your legal team can follow up if necessary.

7. How do I ensure I am properly preserving any records, documents and equipment sought by a subpoena or a search warrant?

- A legal hold notice (also known as a “preservation” or “document retention” notice) is an internal communication sent by an organization’s legal division

- to its employees and agents, instructing them not to delete, remove, or modify any information that might be relevant to an upcoming or active legal matter.
- Under the Federal Rules of Civil Procedure or similar state rules, once a party “reasonably anticipates” litigation, they must ensure no potential evidence is deleted or destroyed.
 - Failing to do so can lead to spoliation charges, which may result in sanctions, heavy fines, or other consequences.
 - In response to subpoena for documents or civil investigative demand, you or your organization may consider issuing a legal hold notice to prevent the loss, spoliation, or deletion of relevant records.
 - **Practice Tip #8:** Your legal counsel can advise you or your organization whether to issue such a notice on a case-by-case basis. You may also seek guidance on the scope and methods for distribution of the notice, such as by e-mail and to whom—i.e., a designated group of individuals who may possess relevant information.

***For further information, or if you would like to consult an attorney,
please contact: inquiries@lowellandassociates.com.***