

WHITE COLLAR TOOLKIT

What to Do When the Government Comes Knocking

A Reference Guide for Search Warrants

REVIEW THE WARRANT

- If state or federal law enforcement agents arrive and announce a search of your home, office or business, ask to see a copy of the search warrant and the agents' credentials.
- The warrant will be bare-bones but it must specifically identify the place(s) to be searched, the things to be seized, and the date range within which the search must occur. Never consent to an expansion of the search.

COOPERATE

- Disputes regarding the scope of the search must be brought to the attention of the prosecutor or the court to be settled. Do not prevent the agents from searching areas they claim to have the right to search.
- A warrant is the equivalent of a court order from a judge, and you must obey it. Unlike subpoenas, search warrants can be executed immediately by the agents who present the warrant to the party to be searched. Expect several agents to arrive at the place to be searched and take files or records. Agents may even remove entire computer systems without advance warning.

IDENTIFY A RESPONSIBLE OFFICIAL

- Identify one company official to interact with the agents. Inform the agents and employees that any questions from law enforcement should be directed to that person. Be sure the office manager or highest-ranking employee on the premises is informed of the situation.

CONSULT COUNSEL

- Immediately contact experienced counsel on a private phone, out of the agents' earshot.

KNOW YOUR RIGHT TO REMAIN SILENT

- A search warrant cannot compel anyone, including officers or employees, to speak to or be interviewed by the agents. However, providing certain limited information upon request — such as the location or names of key computer files or databases — may minimize the disruption to your business (e.g., enabling the agents to “image” rather than seize your computers).
- Employees are not required to explain the operations of the company, bookkeeping, records, or the meaning of any document. Advise officers and employees that while they have the right to speak to the agents, they cannot be compelled to do so, and they are free to decline any request for an interview. Do not instruct anyone to refrain from speaking to the agents, or you may face criminal liability. It can be a criminal offense to instruct another person not to speak with law enforcement.

AVOID OBSTRUCTION

- You may observe the agents during the search and take notes of their activities if doing so does not interfere with the search.
- Never remove, discard, or hide any objects or documents that might be subject to the search warrant.

ATTEMPT TO SAFEGUARD PRIVILEGES

- If the search involves information subject to the company's attorney-client or work-product privileges, you should notify the agents of such status, and request that they not review, copy, or seize that information. In all instances, carefully document any seizure of privileged material, including the imaging of any electronic devices that might contain privileged material.

REQUEST INVENTORY

- The agents will prepare a cursory inventory of the items they seized. You can and should request a copy of it. When the search is concluded, request a meeting with the lead agent to review the inventory and to ensure its accuracy.

DO NOT SIGN ANYTHING

- You have no legal obligation to sign any statement in connection with the execution of a search warrant, including the receipt or inventory list of items seized; rather, request a copy of all documents you are asked to sign and provide the copy to your attorney as soon as possible.

PRESERVE RECORDS

- Once the company has knowledge of a criminal investigation, it must take steps to preserve all potentially relevant paper and electronic documents and information, and it must suspend usual records disposal and auto-delete procedures to avoid the appearance of obstruction of justice. Outside experts should be engaged where necessary to ensure that all potentially relevant information is preserved without any inadvertent alteration of metadata.