

Developing An Effective Policy for Handling Search Warrants & Raids

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Goals

Learn – About the critical need for a law enforcement policy & procedure in your organization.

Review – The practical aspects of an effective policy & procedure, and a sample policy for use in your organization.

Discuss – Tips on handling law enforcement search warrants and raids, subpoenas and witness interviews.



Context

- Internal & External Investigations
- Highly regulated business environment
- Law enforcement investigations
- Types of evidence: Documents & Testimony
- Intent – Criminal, civil & administrative
- Methods of obtaining evidence
 - Interviews, Subpoenas & Search Warrants



Law Enforcement Techniques

- Witness Interviews
- Subpoenas
- Search Warrants



Crisis Management

- Government investigations = crisis
- Compliance & Ethics is the law
- General Counsel – report all government investigations Preparation is essential
- Law Enforcement Policy & Procedure
- Education & training
- Document retention policies
- Place your trust in a specialist
- Interpret, respond, litigate



Law Enforcement Policy & Proc.

- The Who, What, Where Why, & How
 - Where located?
 - What are your rights?
 - What are your obligations?
 - Who do you contact?
 - Who do you not contact and why?
 - Are you entitled to legal counsel?
 - If so, who is going to pay for it?
 - Is it attorney-client privilege?



Law Enforcement Interviews

- Need to know: Know your “status”
 - Criminal/Civil; Witness, subject or target?
 - What is the difference?
 - Who makes that determination?
 - Beware the *pendulum*
- Need to know: *The Fifth Amendment!*
 - Compelled self-incrimination in criminal case
- Need to know: Immunity
 - Statutory v. “Queen for the day” & informal immunity



Law Enforcement Interviews

- Need to know: It's the “whole” truth/nothing but the truth Martha!
 - The wise choose the path of least resistance
 - “Sweep the room” analogy
- Need to know: voluntary v. subpoena
 - Is it really voluntary? *Yes!*
 - But the alternative is?
 - The grand jury
 - A negotiated interview with advice, knowledge & protection



Law Enforcement Interviews

- Need to know: Timing is everything
 - The arrival home in your garage
 - The morning departure in your drive way
 - The proverbial knock on the front door at dinner



Law Enforcement Interviews

- Need to know: Scare tactics
 - “Why do you need a lawyer?”
 - “What do you have to hide?”
 - “We are just here to help”
 - “We just want some answers”



Law Enforcement Interviews

- Need to know: What is scope & theory of case?
 - Period or years?
 - Offense conduct?
 - Nature of offense
 - Who involved?
 - How may you be implicated???



Law Enforcement Subpoenas

- Need to know: Who issued subpoena?
 - State or federal?
 - Which Agency(ies)?
 - Identity of prosecutor and/or agent?



Law Enforcement Subpoenas

- Need to know: What can you learn from the subpoena?
 - What is jurisdiction of that Agency?
 - Administrative, civil or criminal?
 - Time period/scope of investigation
 - Offense conduct



Law Enforcement Subpoenas

- Need to know: Who are you and why are you involved?
 - Scope of investigation?
 - Theory of case?
 - Potential exposure?



Law Enforcement Subpoenas

- Need to know: *Oh no!* Electronic data.
 - What document retention policy?
 - Can't we just "copy" the emails?
 - What the heck is a "forensic image"?
 - Dang! This is expensive!



Law Enforcement Subpoenas

- Need to know: Do I really need to testify on Tuesday?
 - Remember evidence? Testimony or documents
 - Production in lieu of testimony
 - Choose your custodian wisely
 - Authentication of records



Law Enforcement Subpoenas

- Need to know: Testimonial Privileges
 - Attorney client privilege: communications b/w attorney & client
 - Vested in client, not attorney
 - Waived by third parties
 - Use of consultants
 - Beware crime fraud exception: legal advice in order to commit or facilitate a crime/fraud



Law Enforcement Subpoenas

- Need to know: Testimonial Privileges
 - Work product privilege
 - Ordinary work product – materials assembled in preparation for trial
 - Attorney work product – legal counsel’s mental impressions, conclusions & legal theories
 - “Anticipation of litigation”
 - Interviews – factual substance
 - Vested in both attorney & client
 - Not waived by third parties



Law Enforcement Subpoenas

- Need to know: Testimonial Privileges
 - Common law privileges
 - Fed.R.Evid. 501/Case by case basis
 - Adverse/Confidential Spousal privilege
 - Patient-psychotherapist privilege



Law Enforcement Subpoenas

- Need to know: Documentary Privileges
 - Fifth Amendment?
 - Personal or corporate?
 - Testimonial in nature?
 - Act of production immunity



Law Enforcement Search Warrants

- Need to know - Initial Considerations when the big bad wolf shows up at your door:
 - Who is the “*wolf*” at the front door?
 - Is the “*wolf*” at the right house?
 - What is the address on the warrant?
 - Is the “*wolf*” at the house at the right date/time?
 - Is the “*wolf*” entitled to blow the whole house down?
 - What does the warrant authorize?



Law Enforcement Search Warrants

- Need to know – First things first:
 - Respectfully ask for lead Agent’s identification and business card?
 - Ask for a copy of warrant AND affidavit
 - Ask for a “receipt” for any evidence/*bounty* taken
 - Who should you contact?
 - Contact & notify the appropriate personnel
 - Should you attempt to delay the search? *Yes!*
 - Should you interfere with the search? *NO!*



Law Enforcement Search Warrants

- Need to know: Important Considerations:
 - Beware the *“wolf”* wants to talk!
 - See law enforcement interviews
 - It’s a short day, send everyone home (that you can (i.e., nonessential personnel))
 - Know your rights under the law & the policy
 - Fourth Amd., Fifth Amd., privileges et al.



Law Enforcement Search Warrants

- What should you do during the search?
 - Play scavenger hunt & draw a map *of* the “bounty”
 - But not *To* the “bounty” for the Agents
 - Polity to cooperate; but that is for the org. to perform



Law Enforcement Search Warrants

– *Caution!*

- Do not attempt to conceal, alter or destroy any documents
- If leaving, do not take anything other than personal items
- If detained, immediately (if possible) notify legal counsel
- What should you do after the search?
 - Cooperate with organization/legal counsel in reviewing the search & conducting internal investigation



Sample Policy & Procedure

- Review attached:
 - Fowler White Boggs draft *“Day of Search”* e-mail to organization personnel
 - Fowler White Boggs draft *“Day of Search”* policy
 - Textron Systems General Management Policy 0115
 - Attachment 1 to Policy 0115





Questions?

