



**IfrahLaw**

Strategic Defense in  
Federal Investigations

## Five Important Steps to Take if the Government Comes Knocking

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# The Unexpected Visit

A surprise visit by a government agent could result in a host of problems if you are unprepared



# Likely Purpose of the Visit

- Serve a subpoena
- Interview employees
- Execute a search warrant
- Conduct a government audit or investigation
  - Note: the visit could have nothing to do with the company – it may involve an employee personally or a third party (e.g., company with whom company does business)



# Possible Problems

Random employees make unprepared statements on the company's behalf, leading to:

- Further questions
- Inconsistencies with subsequent company statements
- And then, *MORE GOVERNMENT INVOLVEMENT*

Employees may offer materials to agents, resulting in:

- Waiver of company legal rights



# Resulting Costs

## Government action is expensive

- Production of materials
- Employee time commitment
- Cost of counsel



# What to Do

## Curb government involvement by being prepared

- Educate employees
- Designate and prepare a point of contact
- Identify issues per nature and scope of visit
- Contact counsel



# #1 Educate Employees

This means:

- Distribute pointers by email or memo and include in employee handbook
- *Ensure those most likely to come in contact – e.g., receptionists or security guards – know how to respond*



# Educate Employees (cont'd)

## The message:

- Don't provide information without knowing the purpose of the visit
- Refer the agent to the company representative
- Don't provide tangible evidence as it may waive legal protections
- Employees are not required to submit to an interview if approached by an agent





# Educate Employees (cont'd)

## Be mindful of the FINE LINE

- Exercise courtesy AND caution
- Impressions count--employees should not come across as obstructionist or uncooperative, but rather polite and courteous
- However, to avoid complications, employees should refer the agent to the company representative and refrain from volunteering information



## #2 Designate a Company Representative

### Who:

- In-house attorney, human resources representative, company executive
  - Note: select a back-up in case that individual is unavailable

### The benefits:

- Unified message
- Clear response to agent requests
- Coordinate individuals as necessary



# Prepare the Company Representative

The representative should identify...

- the agency, the person, their credentials
- the purpose and scope of the visit
- what, if any, contractual provisions exist to authorize the visit
  - sometimes, the visit comes with a notice and related affidavit that presents the agent's view of the case



# Prepare the Representative (cont'd)

The representative should obtain...

- Contact information/business card
- Who from the company the agent has had prior contact
- Information on any prior contact from that company employee
- A complete copy of any document the agent relies on (e.g., subpoenas, search warrants and supporting affidavits)



# Prepare the Representative (cont'd)

The representative should be cautious...

- When an auditor or investigator with prior regular contact asks questions outside the normal course of past dealings
- When an agent says they want to talk to or interview individuals
  - Common predecessor to subpoena or warrant as agents believe individuals will be more candid outside the legal process
- To avoid inconsistencies in statements



# Prepare the Representative (cont'd)

The representative should ...

- Prepare detailed notes of the visit and mark them “attorney-client privileged”
  - Include duration of any search, what was searched, what was reviewed or removed
- Preserve any security video of the visit



# #3 Identify Issues by Purpose/Scope of Visit

## Matters involving the company

- Implicate operations, business relationships, employee relationships

## Matters involving an individual employee

- Implicate privacy rights issues, work disruption
- Could ultimately implicate the company

## Matters involving a third party (e.g., customers, suppliers, contractors)

- Could ultimately implicate the company



## #4 Contact Counsel

- Communicate with counsel before answers are provided
- Ensure agents understand attorney input is routine and company policy
- Do not consent to a search, which may waive right to contest legal validity





## #5 When the Government Leaves

- Establish a separate investigation file with limited access to protect privileged information
- Ensure policy of marking related documents privileged



# When the Government Leaves (cont'd)

## Involve counsel

- To conduct an internal investigation and determine the scope of inquiry, facts involved and what employees said in any interviews
- To respond to any subpoena and determine what documents to produce





# Ifrah Law

Jeff@ifrahlaw.com  
CrimeInTheSuites.com

