

**Department of Defense
Office of Inspector General**

**DOD INSPECTOR GENERAL
SUBPOENA REFERENCE GUIDE**



**DoD Office of Inspector General
Investigative Policy and Oversight
Policy and Programs Directorate
DoD IG Subpoena Program Office**

AUGUST 2009



FORWARD

Department of Defense (DoD) Inspector General (IG) subpoenas are an essential tool for DoD special agents and other law enforcement and prosecutive agencies. In many cases, DoD IG subpoenas are the only means of compelling the production of key records and documents in criminal investigations. The advantage of utilizing DoD IG subpoenas is that they can be used in criminal, civil and administrative actions.

The DoD IG Subpoena Program Office is dedicated to ensuring that the DoD Law enforcement community is provided superior support and assistance in the timely and efficient processing of requests for subpoenas. In Fiscal Year 2008, our office issued 354 subpoenas, an 18% increase over the previous year, with an average turn-around time of 13.6 days.

This reference guide was developed to assist you in the preparation of your requests for DoD IG subpoenas and to answer the most frequently asked questions. If you need assistance or need to discuss aspects of your subpoena request, please contact us.

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GENERAL INFORMATION



GENERAL INFORMATION		
NO.	TOPIC	COMMENT
1-1	Eligibility to Request a DoD IG Subpoena	<p>Any agent of a Defense Criminal Investigative Organization (DCIO) may request a DoD IG subpoena.</p> <p>This includes the Defense Criminal Investigative Service (DCIS), the US Army Criminal Investigation Command (USACIDC), the Naval Criminal Investigative Service (NCIS), and the Air Force Office of Special Investigations (AFOSI).</p> <p>Requests from other DoD investigators and law enforcement officials will be considered on a case-by-case basis.</p> <p>It is expected that military police organizations will work through USACID, NCIS or AFOSI.</p>
1-2	Benefits of Using DoD IG Subpoenas	<ol style="list-style-type: none"> 1. An IG subpoena is enforceable. If the recipient fails to comply, a court order may be sought to compel compliance. 2. An IG subpoena is administrative. Unlike a grand jury subpoena, an IG subpoena can be used to support civil and administrative remedies, as well as criminal prosecution. 3. An IG subpoena is not subject to the secrecy requirements associated with a grand jury subpoena.
1-3	Requesting a DoD IG Subpoena	<p>MCIOs and others send e-mail DoD IG subpoena requests and associated supporting documentation to the DoD IG Subpoena Program Office at subpoena@dodig.mil.</p> <p>DCIS agents send requests to the Investigative Operations Directorate at DCIS Headquarters.</p>



GENERAL INFORMATION		
NO.	TOPIC	COMMENT
1-4	Means of Serving the Subpoena	<p>DoD IG subpoenas may be served in person by a DCIO special agent or by registered or certified mail with a return receipt.</p> <p>Subpoenas may also be served via fax or email, provided the recipient agrees in advance.</p>
1-5	Serving DoD IG Subpoena to Recipient	<p>The <u>Custodian Cover Letter</u> to Subpoena Recipient, <u>Privacy Act Notice</u>, and a copy of the front of the <u>DoD IG Subpoena</u> with <u>Appendix A</u> (if applicable) must be served.</p> <p>Complete the Certificate of Service on the reverse side of the DoD IG Subpoena and fax or e-mail a scanned copy to the DoD IG Subpoena Program Office.</p> <p>The original DoD IG Subpoena should be placed in the case file for retention with other case-related documents.</p>
1-6	Request by Recipient for Additional Time for Compliance	<p>The subpoena should be served as soon as the agent receives the signed copy from the DoD IG Subpoena Program Office.</p> <p>If you believe the recipient is making a good faith effort to compile the requested records and simply needs more time, you may grant a reasonable extension to the due date.</p> <p>Get all such time extensions in writing. If it begins to appear as if the recipient does not intend to properly comply, contact the DoD IG Subpoena Program Office.</p>



GENERAL INFORMATION

NO.	TOPIC	COMMENT
1-7	Delivery of Subpoenaed Records to Case Agent	<p>While the subpoena recipient is technically required to deliver the records in person, it is acceptable to allow the recipient to mail the requested records.</p> <ul style="list-style-type: none">- The issue of delivery should be addressed in the subpoena cover letter.- Make sure you have the recipient sign a Certificate of Compliance attesting that all requested documents were provided.
1-8	Approximate Processing Time for DoD IG Subpoena	<p>The DoD IG Subpoena Program Office has specific goals and timelines for subpoena processing.</p> <ul style="list-style-type: none">- Our current goal is 15 calendar days or less from the date that the DoD IG Subpoena request is received.- On many occasions, the requests will be processed more quickly.- The key is to follow the instructions on the DoD IG Subpoena Internet site and ensure that all relevant information is included in your subpoena request.- Most delays are due to incomplete requests, such as incomplete interrogatories and missing forms.- The processing time metric does not begin until the DoD IG Subpoena Program Office has received complete answers to all interrogatories and all required documents.



FINANCIAL INFORMATION



FINANCIAL INFORMATION		
NO.	TOPIC	COMMENT
2-1	Right to Financial Privacy Act (RFPA)	The Right to Financial Privacy Act (RFPA), Title 12, United States Code (U.S.C.) §§ 3401-3422, establishes limitations, rules, and procedures for obtaining financial records from financial institutions, and sets forth penalties for Government and financial institution employees who violate the RFPA.
2-2	Definition of Financial Institution	Any office of a bank, savings bank, credit card issuer, industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution that is located in any state or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands. (§3401)
2-3	Definition of Financial Record	An original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution. (§3401)
2-4	Definition of Customer	Any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name. (§3401)
2-5	Definition of Person	An individual or a partnership of five or fewer individuals. (§3401)



FINANCIAL INFORMATION		
NO.	TOPIC	COMMENT
2-6	Obtaining Financial Records Through a DoD IG Subpoena	<p>If your subpoena is for records from a financial institution, you cannot serve the subpoena until you have met the customer notification requirements contained in the RFPA.</p> <p>Serve the notification documents to the account holder and wait ten (10) days if you notified them in person, or fourteen (14) days if you notified them via registered or certified mail with a return receipt.</p> <p>Regardless of whether the account holder sent you or the DoD IG Subpoena Program Office a certificate of service, you must check with the applicable clerks of court to determine if the account holder filed a motion to challenge the subpoena. The U.S. district courts should include the Eastern District of Virginia (location of DoD IG), the district court where the financial institution is located, and the district court where the customer resides.</p> <p><u>[Please see U.S. District Court link under Resources Section]</u></p> <p>If a motion to challenge has been filed, obtain as much information about it as possible from the court clerk and contact the DoD IG Subpoena Program Office immediately. You may not serve the subpoena on the financial institution until the court has denied the customer's motion.</p> <p>If after you have contacted the applicable clerks of court and determined the account holder did not file a motion to challenge the subpoena, you may then serve the subpoena on the financial institution along with a certificate attesting that you have complied with all RFPA requirements (Certificate of Compliance).</p>



FINANCIAL INFORMATION

NO.	TOPIC	COMMENT
2-7	Transfer of Financial Information to Another Federal Agency	Financial records may be transferred to another Federal agency under 12 U.S.C. §3412 only if an official of the transferring agency certifies in writing that there is a reason to believe the records are relevant to a legitimate law enforcement inquiry, or intelligence or counterintelligence activity (to include investigation or analyses related to international terrorism) within the jurisdiction of the receiving agency. In addition, within 14 days of any transfer, serve or mail to the customer, at his or her last known address, unless the Government has obtained, in connection with its original access or at the time of the transfer, a court order delaying notice, a copy of the certification and the following notice: <i>“Copies of or information contained in your financial records lawfully in possession of [name of Component] have been furnished to [name of Agency or Department] pursuant to the Right to Financial Privacy Act of 1978 [12 U.S.C. § 3401 et seq.] for the following purposes: [state the nature of the law enforcement inquiry with reasonable specificity]. If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Right of Financial Privacy Act of 1978 or the Privacy Act of 1974 [5 U.S.C. § 552a].”</i>



FINANCIAL INFORMATION

NO.	TOPIC	COMMENT
2-8	Transfer of Financial Information to Other Agencies	Transfer restrictions do not apply to intradepartmental transfers (e.g., AFOSI may transfer financial records to USACIDC or DoD litigating officers without restrictions). In addition, post-transfer notice is only required for transfers between Federal departments – the RFPA does not restrict the transfer of financial records from state or local government agencies to Federal agencies or from Federal to state and local agencies. Neither does the RFPA cover transfers of financial records between a Federal agency and an agency of a foreign government. The RFPA was amended in 1988, adding a provision that limits transfer of records obtained under the RFPA to the Department of Justice to only those documents relevant to violation of Federal criminal law, and their use only for criminal investigative or prosecutive purposes. This precludes the transfer of records obtained under RFPA to the Fraud Section, Civil Division.



FINANCIAL INFORMATION

NO.	TOPIC	COMMENT
2-9	Restrictive Markings	<p>Financial records obtained via a DoD IG subpoena should be marked with the following: <i>“This record was obtained pursuant to the RFPA of 1978, 12 U.S.C. § 3401 et seq., and may not be transferred to another Federal agency or department without prior compliance with the transferring requirements of 12 U.S.C. § 3412.”</i></p> <p>Any report of investigation or other correspondence that in its body or in its attachments contains any information obtained under the RFPA should be marked with the following restrictive legend on the front cover or first page: <i>“Some of the information contained herein [cite specific paragraph or attachment] is financial record information which was obtained pursuant to the RFPA of 1978, 12 U.S.C. § 3401 et seq. Do not release this information outside DoD without compliance with the specific requirements of 12 U.S.C. § 3412.”</i></p>



FINANCIAL INFORMATION

NO.	TOPIC	COMMENT
2-10	Financial Institution Request for Costs Associated with Subpoena Compliance	<p>The RFPA provides for the reimbursement to Financial Institutions for their research and copy costs.</p> <p>Rates are established in the Code of Federal Regulations.</p> <p>If you receive an invoice from a financial institution requesting reimbursement for costs associated with complying with a DoD IG subpoena, contact the DoD IG Subpoena Program Office. You will be asked to forward the invoice to the DoD IG; and, qualifying costs will be paid by the DoD IG.</p>



ELECTRONIC DATA



ELECTRONIC DATA		
NO.	TOPIC	COMMENT
3-1	Authority to Subpoena Information from Internet Service Providers	<p>The Electronic Communication Privacy Act (ECPA), 18 U.S.C. §2701 et seq., establishes provisions for access, use, disclosure, interception and privacy protections of electronic communications.</p> <p>Whenever agents seek stored e-mail, account records, or subscriber information from a network service provider, you must comply with the ECPA.</p>
3-2	Definition of Electronic Communications	<p>According to the ECPA, electronic communications means, generally, “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce.” Additionally, the law establishes procedures the Government must follow in order to require a provider to disclose electronic communications.</p> <p>The ECPA prohibits an electronic communications provider from producing <u>contents</u> of electronic communications, even pursuant to subpoena or court order, except in limited circumstances.</p>



ELECTRONIC DATA		
NO.	TOPIC	COMMENT
3-3	Disclosure of Basic Subscriber Information	<p>The ECPA allows for the disclosure of basic subscriber information with a subpoena. This information includes:</p> <ol style="list-style-type: none">1. names(s);2. address(es);3. local and long distance telephone connection records, or records of session times and durations;4. length of service (including start date) and types of service utilized;5. telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and6. means and source of payment for such service (including any credit card or bank account number). <p>18 U.S.C. §2703(c)(2)</p>
3-4	Disclosure of Other Information Pertaining to a Customer or Subscriber	<p>The ECPA restricts the disclosure of records or other information pertaining to a subscriber or customer that contains transactional information. Examples of transactional information are records such as account logs that record account usage, cell-site data for cellular telephone calls, and email addresses of other individuals with whom the account holder has corresponded.</p> <p>In order to obtain transactional information, a 2703(d) court order is required.</p> <p>18 U.S.C. §2703(c)(1)</p>



ELECTRONIC DATA		
NO.	TOPIC	COMMENT
3-5	Disclosure of Electronic Communications Contents (180 days and under)	<p>The ECPA divides providers covered by the statute into “providers of electronic communication service” and “providers of remote computing service.”</p> <p>A governmental entity may require the provider of electronic communication service to disclose the contents of a wire or electronic communication, that are in electronic storage in an electronic communications system for <u>180 days or less</u>, only pursuant to a search warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent state warrant.</p>



ELECTRONIC DATA		
NO.	TOPIC	COMMENT
3-6	Disclosure of Electronic Communications Contents (over 180 days)	<p>ECPA divides providers covered by the statute into “providers of electronic communication service” and “providers of remote computing service.”</p> <p>A governmental entity may require the disclosure by a provider of electronic communications services of the contents of wire or electronic communication that has been in electronic storage in an electronic communications system for more than 180 days by the following means:</p> <ul style="list-style-type: none">a. Without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure by a court with jurisdiction over the offense under investigation or equivalent State warrant; orb. With prior notice from the governmental entity to the subscriber or customer if the governmental entity either 1) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena; or 2) obtains a court order for such disclosure (emphasis added). <p>See page 69 for an example of the ECPA Customer Notice Letter.</p> <p>18 U.S.C. §§2703(b)(1)(B) and 2705</p>



ELECTRONIC DATA		
NO.	TOPIC	COMMENT
3-7	Delay of Customer Notification	<p>You may request a delay of up to 90 days upon execution of a written certification by a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result as described below.</p> <p>An adverse result is considered if:</p> <ul style="list-style-type: none"> a. endangering the life or physical safety of an individual; b. flight from prosecution; c. destruction of or tampering with evidence; d. intimidation of potential witnesses; or e. otherwise seriously jeopardizing an investigation or unduly delaying a trial. <p>Upon expiration of the period of delay notification, you must serve in person or through registered or first class mail, a copy of the Customer Notification Letter and state that the notification was delayed and that a certification or determination of that delay was made.</p> <p>See page 71 for an example of the ECPA Adverse Result Letter.</p> <p>18 U.S.C. § 2705</p>
3-8	Reimbursement of Costs for Subpoena Compliance	<p>As with the Right to Financial Privacy Act, the Electronic Communications Privacy Act allows electronic communications providers to be reimbursed for research and copy costs. Forward invoices you receive to the DoD IG Subpoena Program Office for reimbursement.</p>



LEGAL INFORMATION



LEGAL INFORMATION		
NO.	TOPIC	COMMENT
4-1	Legal Authority for Issuing a DoD IG Subpoena	The Inspector General Act of 1978 as amended.
4-2	Unique Provisions of the Inspector General Act Applicable to the DoD IG	<p>Section 8 (c) of The Inspector General Act of 1978 as amended, assigns the DoD Inspector General nine unique additional duties, two of which are relevant to the issues of subpoenas.</p> <ul style="list-style-type: none"> - Initiate, conduct, and supervise such audits and investigations in DoD (including military departments) as the IG considers appropriate. - Investigate fraud, waste, and abuse uncovered as a result of other contract and internal audits, as the IG considers appropriate.
4-3	Office of General Counsel (OGC) Review of DoD IG Subpoenas	<p>The DoD IG Office of General Counsel (OGC) reviews all requests for DoD IG subpoenas for the following reasons:</p> <ul style="list-style-type: none"> - To ensure legal enforceability. - To ensure admissibility of evidence obtained via subpoena. - To help ensure the field agent gets what they need to resolve their investigation. - To prevent inadvertent or intentional overreaching by the IG or Government.



LEGAL INFORMATION

NO.	TOPIC	COMMENT
4-4	Recipient Refuses to Comply with DoD IG Subpoena (Field Actions)	<p>If the recipient of the DoD IG subpoena refuses to comply, immediately contact the DoD IG Subpoena Program Office. DoD IG representatives will get additional information and coordinate with the Department of Justice (DoJ), Washington, DC, about enforcement action. The subpoena and a request for enforcement should be sent via e-mail to the DoD IG Subpoena Program Office with a copy to the DoD IG Office of General Counsel (OGC). The designated OGC attorney will assist the field agent in preparing an affidavit to be filed in a District Court proceeding.</p> <p>The case agent should be prepared to provide the following information:</p> <ul style="list-style-type: none">- Detailed information outlining noncompliance, lack of compliance, or partial compliance.- Copies of subpoena, proof of service, memorandum requesting subpoena.- Copies of all correspondence related to subpoena compliance and/or notes of telephone conversations and e-mail communications.- Synopsis detailing efforts to obtain compliance; i.e., telephone calls, discussions, extensions granted.- Synopsis of investigative efforts to date.



LEGAL INFORMATION

NO.	TOPIC	COMMENT
4-5	Recipient Refuses to Comply with DoD IG Subpoena (OGC Actions)	<p>If the recipient of the DoD IG subpoena refuses to comply, immediately contact the DoD IG Subpoena Program Office. DOD IG representatives will get additional information and coordinate with DoJ about enforcement action.</p> <p>The DoD IG OGC will take the following enforcement action steps:</p> <ul style="list-style-type: none">- Draft decision memorandum to DoJ requesting enforcement.- Work with field agent to prepare affidavit concerning facts to date.- May attempt to obtain compliance without DoJ action; shows that Government is trying to be reasonable.- Forward affidavit and case synopsis to DoJ / USAO for action.



LEGAL INFORMATION		
NO.	TOPIC	COMMENT
4-6	DoD IG Office of General Counsel (OGC) Legal Review Criteria for DoD IG Subpoena	<p>The DoD IG Office of General Counsel (OGC) subpoena review criteria are:</p> <p>Legal Standards</p> <ul style="list-style-type: none"> - Is it within the authority of the DoD IG? - Is the demand reasonably relevant to the subject matter of the investigation? - Is the demand overly broad or unduly burdensome? <p>Additional Factors</p> <ul style="list-style-type: none"> - Is the subpoena addressed properly, i.e., custodian of records? - Are company and individual names consistent and spelled correctly? - Is the address correct and consistent? - Is the location of return of service consistent and correct? - Is the DoD nexus clear on its face?
4-7	Release of Information from Federal Travel Card Contractor	<p>12 U.S.C. §3413, entitled "Exceptions," (q) Disclosure of information with respect to a Federal contractor-issued travel charge card. Nothing in this title [i.e., the Right to Financial Privacy Act] shall apply to the disclosure of any financial record or information to a Government authority in conjunction with a Federal contractor-issued travel charge card issued for official Government travel.</p>



LEGAL INFORMATION		
NO.	TOPIC	COMMENT
4-8	DOD IG Subpoenas in Support of Non-Fraud Related Investigations	<p>Subpoenas can be requested for non-fraud related investigations that satisfy the DoD nexus test criteria. The Defense Criminal Investigation Organization (DCIO) submitting the request must have investigative authority for the crime(s) under investigation and if the investigation is being conducted jointly with another law enforcement organization, the DCIO must be designated as the “lead investigative organization” for that joint investigation. The particular crime at issue must be of such a nature and/or concern to DoD as to warrant the DoD IG’s involvement in the investigation. The crimes must be listed in the Particular Crimes matrix that is contained in the DoD IG Memo, “Use of DoD IG Subpoenas in Support of Non-Fraud Related Investigations”. (See page 35)</p>
4-9	Subpoenas for Audits, Projects and Senior Official Cases	<p>The policy on use of DoD IG subpoenas in support of audit and investigative projects and senior official investigations has been in effect since June 2005 and must meet the following criteria:</p> <ul style="list-style-type: none"> - Must be a clear DoD nexus. - DoD does not already possess the records. - Records are relevant to ascertaining the truth in the matter. - Request not unduly broad or burdensome. - Reasonable alternatives have been unsuccessful or are impracticable.



LEGAL INFORMATION		
NO.	TOPIC	COMMENT
4-10	Subpoenas for Educational Records	<p>Under the Family Educational Rights and Privacy Act (FERPA), educational institutions may lose federal funding if they permit the release of records without a parent’s written consent. However, subpoenas issued for “law enforcement purposes” are an exception. The issuing agency may also order nondisclosure of notification by institution employees.</p> <p>20 U.S.C. §1232g; 34 CFR Part 99</p>
4-11	Service of a DoD IG Subpoena for Production of Documents Physically Located Outside of the United States	<p>The IG Act contains no provisions for service of process extraterritorially (i.e., outside the United States). You must serve the subpoena on someone in the U.S. (corporate agent representative or subsidiary), so that DoD IG is able to obtain jurisdiction over the party with records in any necessary enforcement proceeding to obtain the records.</p>



LEGAL INFORMATION		
NO.	TOPIC	COMMENT
4-12	Service of DoD IG Subpoena After a Grand Jury Has Been Impaneled	<p>Requesting the issuance of an IG subpoena AFTER a Grand Jury has been impaneled to investigate the same or similar fact pattern raises significant legal issues, principally, (1) the actual/apparent misuse of Grand Jury/Rule 6(e) material and (2) the danger of "overreaching" by the Government.</p> <p>Simply put, if an agent who has access to Grand Jury/6(e) material drafts the IG subpoena request and that fact becomes known, the Government has no way of disproving a defendant's assertion that the agent intentionally, or more likely inadvertently, utilized 6(e) material when formulating the IG subpoena request. This, in turn, could place the criminal case in jeopardy and/or expose the agent to possible sanctions for violating the grand jury secrecy rules.</p> <p>These legal concerns can be avoided in situations where there is a desire to conduct parallel criminal and civil investigations by creating two separate investigative teams, a criminal team which is privy to Grand Jury proceedings and whose members are named on the 6(e) list, and a civil team which is not privy to Grand Jury proceedings and whose members are not named on the 6(e) list.</p> <p>Naturally, the civil team can share its entire investigative file with the criminal team and the criminal team can share its entire investigative product, EXCEPT FOR GRAND JURY/6(E) MATERIAL, with the civil team.</p> <p>This approach gets us/the investigative agent out of the box of having try to prove the negative; i.e., that the agent drafting the IG subpoena did not misuse Grand Jury/6(e) material.</p>



LEGAL INFORMATION		
NO.	TOPIC	COMMENT
4-13	Service of DOD IG Subpoena After an Indictment or Information Has Been Issued / Filed	<p>The Federal Rules of Criminal Procedure establish limitations on a prosecutor’s discovery after an indictment has been issued. If you attempt to obtain documents through an investigatory subpoena after these limitations have been imposed, the court may conclude the prosecutor is acting improperly and impose sanctions against the prosecutor and/or dismiss the criminal case.</p>
4-14	Service of DoD IG Subpoena After a Qui Tam Case Has Been Filed	<p>A DoD IG subpoena may be served after a <i>qui tam</i> case has been filed because the Government is not a party to a qui tam case until it formally intervenes in the case.</p> <p>(31 USC §3730)</p> <p>Once the DoJ/the USAO intervenes in a <i>qui tam</i> suit, use of an IG subpoena could be viewed as improper by the trial court and result in sanctions against the DoJ attorney/AUSA and/or dismissal of the case.</p>



OTHER INFORMATION



OTHER INFORMATION		
NO.	TOPIC	COMMENT
5-1	Required Case Updates	<p>Once a DoD Inspector General subpoena is issued, the case falls under the oversight of the DoD Inspector General. We ask that you keep us informed of the results of subpoena actions and case progress. Place the Subpoena Program Office on distribution for reports of investigation (ROI); and, at a minimum, every ninety (90) days, send updates on the progress of your investigation. Be sure to include the case number and a brief summary of case status, to include actions related to subpoena service. Send updates until the case is closed and all action is taken (report action taken to the Subpoena Program Office as well). You can send your updates via e-mail, fax or hard copy to the appropriate address below.</p> <p>When submitting case updates, be sure to include the DoD IG subpoena unique identification number on any correspondence with the DoD IG Subpoena Program Office.</p>



APPENDICES



DOD IG SUBPOENAS IN SUPPORT OF NON-FRAUD RELATED INVESTIGATIONS



DoD IG Subpoenas in Support of Non-Fraud Related Investigations

DOD NEXUS

Is there sufficient DoD nexus to the crime at issue to warrant the DoD IG's involvement in the investigation? Criteria: The Defense Criminal Investigation Organization (DCIO) submitting the request has investigative authority¹ for the crime(s) under investigation and, if the investigation is being conducted jointly with another law enforcement organization, the DCIO has also been designated as the "lead investigative organization" for that joint investigation.²

¹ For the purpose of this memorandum, the phrase "has investigative authority" means the DCIO has the legal authority to conduct the investigation in question pursuant to its own regulations and investigative authority has not been specifically reserved to another agency or entity.

² For example, if a DCIO is supporting local police in an investigation wherein a Service member's car was allegedly stolen from his off-base residence, we would not issue a subpoena for records of the auto dealership where the car was purchased, but would defer to the local police as the "lead" investigative agency.



DoD IG Subpoenas in Support of Non-Fraud Related Investigations

PARTICULAR CRIMES

Is the particular crime at issue of such a nature and/or such concern to DoD as to warrant the DoD IG's involvement in the investigation? Criteria: At least one of the crimes under investigation is an offense listed below.

OFFENSE	U.S.C. CITATION	UCMJ VIOLATION
Murder	18 U.S.C. §1111	UCMJ Article 118
Manslaughter / Death or injury to an unborn child	18 U.S.C. §1112	UCMJ Article 119 UCMJ Article 119a
Attempts to commit murder or manslaughter	18 U.S.C. §1113	UCMJ Article 80
Negligent homicide		UCMJ Article 134 (Homicide, negligent)
Other death investigations conducted by MCIOs		
Kidnapping	18 U.S.C. §1201; 18 U.S.C. §875	UCMJ Article 134 (Kidnapping)
Peonage, slavery and trafficking in persons	18 U.S.C. Chapter 77	UCMJ Article 133 UCMJ Article 134
Robbery ³	18 U.S.C. §2111	UCMJ Article 122
Bomb threat or hoax	18 U.S.C. §875	UCMJ Articles 134
Arson or aggravated arson	18 U.S.C. §81	UCMJ Article 126
Unlawful acts involving a firearm	18 U.S.C. Chapter 44	
Maiming	18 U.S.C. §114	UCMJ Article 124
Riot	18 U.S.C. §2101	UCMJ Article 116
Drugs – Unlawful manufacture of, importation of, or trafficking in, a controlled substance ⁴	21 U.S.C. §§841-843	UCMJ Article 112

³ Only includes offenses where a firearm (as defined in the Commentary, Applicable Notes 1(e) to §1B1.1 of the Federal Sentencing Guidelines (18 U.S.C. Appendix §1B1.1) was used in the commission of the crime. Restrictions apply to both Title 18 and UCMJ offenses.

⁴ Only if the quantity of the controlled substance/drug (defined as a substance identified as a controlled substance in §2D1.1 of the Federal Sentencing Guidelines (18 U.S.C. Appendix §2D1.1) involved is, or is reasonably suspected to be, equal to or in excess of the drug quantity specified for Base Offense Level 16 or the Drug Quantity Table found at §2D1.1 of the Federal Sentencing Guidelines (18 U.S.C. Appendix §2D1.1). Restrictions apply to both Title 18 and UCMJ offenses.



DoD IG Subpoenas in Support of Non-Fraud Related Investigations

PARTICULAR CRIMES (Continued)

Is the particular crime at issue of such a nature and/or such concern to DoD as to warrant the DoD IG's involvement in the investigation? Criteria: At least one of the crimes under investigation is an offense listed below.

OFFENSE	U.S.C. CITATION	UCMJ VIOLATION
Assault with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking	18 U.S.C. Chapter 7	UCMJ Article 120 UCMJ Article 134
Assault in which grievous bodily harm is intentionally inflicted	18 U.S.C. Chapter 7	UCMJ Article 128
Firearm, discharging---willfully, under such circumstances as to endanger human life		UCMJ Article 134
Sexual assault, abuse, or exploitation / Domestic violence and stalking	18 U.S.C. Chapter 109A 18 U.S.C. Chapter 110 18 U.S.C. §§2261, 2261A, 2262	UCMJ Article 120 UCMJ Article 120a UCMJ Article 125
Terrorism	18 U.S.C. Chapter 113B	
Espionage	18 U.S.C. §793-§798	UCMJ Article 106a
Agent for Foreign Government	18 U.S.C. §951	
Mutiny or sedition; and solicitation for same		UCMJ Article 82 UCMJ Article 94
Spies		UCMJ Article 106
Aiding the enemy		UCMJ Article 104
Conspiracy to commit any of the above offenses	18 U.S.C. §§371-373	UCMJ Article 81



FORMS REQUIRED FOR ALL SUBPOENAS



FORMS		
NO.	TOPIC	COMMENT
A-2	Subpoena <i>Duces Tecum</i> (Face)	<p>The subpoena <i>duces tecum</i> is a command to a person or organization to appear at a specified time and place and to bring certain designated documents, to produce the documents, and to testify as to their authenticity as well as any other matter concerning which proper inquiry is made. This is the face of the subpoena. It must have the correct legal name of the business or person being subpoenaed. The address for either a person or business must be a physical address (not a Post Office (PO) Box). For businesses, the subpoena should be addressed to the Custodian of Records. The subpoena face will have your physical address for return of service. There will be a return of service date, which is the date the records should be provided. This is filled in by the DoD IG Subpoena Program Office in cooperation with the case agent. DoD nexus, such as the DoD contract number, DoD program affected, etc., is included in the Description of Items. The required records can be listed on the face of the subpoena or can be listed in an Appendix. Even if an Appendix is used, the subpoena face is completed as part of the process to obtain a DoD IG Subpoena.</p> <p>This form is prepared by the DoD IG Subpoena Program Office.</p>
A-2	Subpoena <i>Duces Tecum</i> (Back)	<p>The back of the subpoena <i>duces tecum</i> form contains the Certificate of Return of Service. This is not provided to the subpoena recipient and is completed by the case agent after the subpoena has been served. After the subpoena is served, the case agent completes the Certificate of Return of Service, scans and e-mails a copy to the DoD IG Subpoena Program Office.</p>



FORMS		
NO.	TOPIC	COMMENT
A-3	Appendix	<p>The Appendix, if needed, is typically completed by the requesting agent to describe the records being subpoenaed. If an Appendix is needed, the DoD IG Subpoena Program Office prefers that requesters e-mail the appendix in Microsoft Word® format in the event the Appendix must be edited or expanded.</p> <p>In most cases, the DoD IG Subpoena Program Office will prepare the final Appendix A, based on a detailed description of records needed that is provided by the requesting agent/investigator.</p>



[FACE OF SUBPOENA FORM]

United States of America
Department of Defense
Office of the Inspector General

SUBPOENA DUCES TECUM

TO Custodian of Records, ABC Corporation, 123 West Elm Street, Suite 144, New York, New York 12345-6789

YOU ARE HEREBY COMMANDED TO APPEAR BEFORE Special Agent Sam Spade, or any Special Agent of the United States Army Criminal Investigation Command (USACIDC) acting on behalf of the Inspector General, pursuant to the Inspector General Act of 1978 (5 U.S.C. App. 3), at USACIDC, Street Address, City or Post, State 00000-0000 on the _____ day of _____, 2009 at 10 o'clock a.m. of that day.

You are hereby required to bring with you and produce at said time and place the following information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence pertaining to Language identifying the DoD nexus and overall factors such as contract number, time period, etc., as specified in Appendix A, which are necessary in the performance of the responsibility of the Inspector General under the Inspector General Act.

UNIQUE IDENTIFICATION NUMBER:



[BACK OF SUBPOENA FORM]

CERTIFICATE OF RETURN OF SERVICE

I HEREBY CERTIFY that on _____, 2009
at _____, I received the attached subpoena.
(Location)

I further certify that on _____,
2009
at or about _____ m. at _____, I personally
(Time) *(Location)*
served the subpoena upon _____.
(Name and Position or Title)

By _____
(Name)

(Title)

Date _____

UNIQUE IDENTIFICATION NUMBER:



SAMPLE APPENDIX FOR DEFINITIONS

A. Definitions:

1. “Document” or “documents” means any written, recorded, graphic material of any kind, photostats, microfilms, microfiche, tape or disc recordings, computer printouts and other data electronically obtained or otherwise stored from which information can be obtained, either directly, indirectly or by translation, through devices or readers, whether prepared by your or any other person, that is in your possession, custody or control. Any such document is to be produced in a reasonable useable form.

2. The terms “document” and “documents” mean the original document (or copy thereof if the original is not in your possession, custody or control) and all copies that differ in any respect from the original or that bear any notation, marking or information not on the original.

3. (*Company Name*) includes any and all predecessor and successor entities, whether or not incorporated.

B. Documents required:

This subpoena applies to the period of (*inclusive dates*) or (*specific date through the date of the subpoena*) and requires production of any and all documents pertaining to business conducted with (*Company Name*) including, but not limited to:

UNIQUE IDENTIFICATION NUMBER:



FORMS – REQUIRED FOR ALL SUBPOENAS

NO.	TOPIC	COMMENT
A-4	DoD IG Subpoena Request Memo with Interrogatories	This memo, prepared on agency letterhead, contains 30 interrogatories that provide information about the investigation and documents required. It provides information that is vital to determining if the request meets the DoD IG’s statutory authority, if documents are relevant to the investigation and that the request is not overly broad or unreasonably burdensome. Specific information is extracted from the memo by Subpoena Program Office staff to prepare a summary justification in the DoD IG Subpoena Action Memo that transmits the subpoena and supporting documents for the DoD IG’s signature.
A-5	Cover Letter to Subpoena Recipient / Custodian of Records	The cover letter is completed on agency letterhead by the requesting agent, explains the subpoena requirements, and provides instructions on how return of service should be made.
A-6	Privacy Act Notice Form	The standard Privacy Act Notice is provided for all DoD IG subpoenas.
A-7	Certificate of Compliance (Recipient / Custodian of Records) Form	The Certificate of Compliance form is provided to the recipient/custodian of records for completion when the records are provided to the Government.



NOTE: PREPARE MEMO ON YOUR AGENCY LETTERHEAD

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(date)

MEMORANDUM FOR DIRECTOR FOR INVESTIGATIVE POLICY AND
OVERSIGHT DEPARTMENT OF DEFENSE

SUBJECT: Request for Inspector General Subpoena

1. Case agent's name:
2. Case agent's office phone number, mobile cellular phone number and fax number:
3. Case agent's electronic email address:
4. Case agent's street address:
5. Case file number:
6. (FOUO-LES) Subject(s) of the investigation: **(Provide complete information on Subject such as rank, title, active duty/reserve status, and Social Security number.)**
7. Date investigation opened:
8. Name of case agent's supervisor who has read this request and approves:
9. Is this a substantive investigation? **(Note: DoD administrative subpoenas are not generally issued for developmental investigations or preliminary inquiries.)**
10. List investigative agencies participating jointly in this investigation, and identify the lead agency.
11. Statute(s) or UCMJ article(s) believed to be violated: **(Provide the full UCMJ or USC Section and title, i.e., UCMJ Article 132, Fraud against the U.S. Government)**
12. (FOUO-LES) Source and reliability of initial information:
13. (FOUO-LES) Summary of information obtained/evidence collected to date suggesting statutes were/are being violated **(Include sufficient detail to understand the who, what, where, when, how, etc.):**

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14. Coordination with prosecutor? Results? **(Provide the name of the prosecutor (SJA, AUSA), their concurrence with requesting a subpoena in this matter, whether they believe a crime has been committed, what the crime is, and if they are prepared to prosecute the crime)**

15. Have IG subpoenas been issued previously in this investigation? If so, explain how this (these) subpoena(s) differs. **(Please provide the identity of the subpoena recipient and the DoD IG subpoena number.)**

16. What is the DoD nexus to the records being sought (e.g., they pertain to a DoD contract, a DoD employee of military service member)?

17. What is the time period for the records sought (specific beginning and ending dates)? How are these dates relevant to your investigation?

18. If the case pertains to a contract, which organization was the contracting authority, what is (are) the contract number(s), what is (are) the period(s) of performance, and what goods or services are/were procured?

19. What is (are) the proper legal name(s) of the subpoena recipient(s), to include the type of business entity (sole proprietorship, partnership, corporation) if applicable?

20. What is the street address of the subpoena recipient? **(You must list a physical address. Post office boxes cannot be listed)**

21. Why do you believe the subpoena recipient has the records you request?

22. Is the subpoena recipient a bank, credit union, savings and loan, or credit card issuer? If so, what is the full name and Social Security number of the account holder; or, what account number(s) is (are) involved?

23. If the subpoena recipient is not a financial institution, is there another account number or numbers involved? Please list.

24. Are the records sought already in the possession of a Federal government agency? If yes, identify the Federal agency and the rationale for issuing a subpoena for records we (the Government) already have.

25. Have the records sought already been obtained through a search warrant or grand jury subpoena? Has a grand jury been involved? Explain if necessary.

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- 26. Do you have any reason to believe this subpoena will be challenged? Explain.
- 27. How will the records sought assist in this investigation?
- 28. Will copies suffice, or do you require original records?
- 29. Include any other information you believe is important.
- 30. Individually describe the records, or classes of records you require (subpoena appendix items).

Note/Comments: Under the Electronic Communications Privacy Act (ECPA), Internet Service Providers and wireless communications companies can provide only (1) basic subscriber account information without notice, and (2) basic subscriber account information plus content in electronic storage over 180 days with notice, pursuant to an administrative subpoena (such as one issued by the DoD IG). Content of communications under 180 days old requires a search warrant.

Include the following documents with this request:	
<ul style="list-style-type: none"> • Custodian Cover Letter • Privacy Act Notice • Certificate of Compliance 	
If the Right to Financial Privacy Act (RFPA) applies, include the following:	
Custodian Cover Letter	Customer Notice Letter
Certificate of Compliance	RFPA Certificate of Compliance (Agent)
Statement of Customer Rights under the Right to Financial Privacy Act	Instructions for completing motion and statement forms
Blank motion form	Blank statement form
Certificate of Service	

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(Agency Letterhead)

Custodian of Records

(Enter name and address of company)

Dear Sir or Madam:

Pursuant to the appendix to Title 5, United States Code, subsection 6(a)(4), the enclosed subpoena *duces tecum* has been issued. The materials identified should be produced by the date and time indicated on the subpoena at:

(Provide full name and address of organization)

Should you elect to personally deliver the subpoenaed records, you will be required to attest to the completeness, accuracy and authenticity of the documents produced. Or, upon request, Special Agent [insert full name] or any Special Agent of [insert organization, e.g., Air Force Office of Special Investigations (AFOSI)] will personally assume custody of the required materials at your office. However, by mutual agreement, the material may be sent by U.S. registered mail to AFOSI at the above address. If you elect to provide records via registered mail, you should include the enclosed personal affidavit/certificate of compliance as to the completeness, accuracy and authenticity of the documents mailed. Should the documents fail to arrive by the time and date set forth on the subpoena, this will be considered a failure to on your part to comply with this subpoena.

Original documents are required by this subpoena. However, for the purpose of this subpoena, certified true copies of the original documents called for by the subpoena will satisfy this provision. The personal affidavit/certificate of compliance must be made by the actual custodian of records who has the complete legal standing for the company/corporation and can testify to their authenticity, accuracy and completeness of the documents produced. If certified true copies are produced, we reserve the right to review the original documents with advanced notice, and during normal business hours. Otherwise, original documents must be submitted.

Materials required by the subpoena should be accompanied by an index identifying each document or other materials and the item or items of the subpoena to which it relates. If for any reason any of the required materials are not furnished, prepare an itemized list of the location of materials and the reason for non-production.

This investigation is private and we request such privacy be maintained. Enclosed is a notice pursuant to the Privacy Act of 1974.



You should bear in mind you have the right to consult with and have an attorney represent you in this matter. If you have any questions concerning the subpoena or the materials required to be produced, you may call Special Agent (your name) at (your phone number).

Sincerely,

(Name and title of Special Agent in Charge/Commander)

Enclosures:

Subpoena Duces Tecum
Appendix (if applicable)
Privacy Act Notice
Certificate of Compliance



NOTICE PURSUANT TO PRIVACY ACT OF 1974

The Privacy Act of 1974 directs that persons, such as those required by the Inspector General of the Department of Defense (DoD) to supply information in response to a subpoena, be informed of the following:

1. Authority for Solicitation of the Information:

The authority for requiring production of the information is set forth in the Inspector General Act of 1978, PL 95-452 and PL 97-252. Disclosure of information is mandatory.

2. Principal Uses of the Information:

The Inspector General's principal purpose in soliciting the information is to promote economy, efficiency, and effectiveness in the administration of the programs and operations of DoD and to prevent and detect fraud and abuse in such programs and operations.

3. Effect of Noncompliance:

Failure to comply with a subpoena may result in the Inspector General's requesting a court order for compliance. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil and/or criminal sanctions for contempt of court.

4. Routine Uses of the Information:

Information you give may be used and disseminated in the routine operation of DoD, including criminal, civil, and administrative proceedings. Routine uses include, but are not limited to, the following categories:

- a. In any case in which there is an indication of a violation or a potential violation of law, whether civil, criminal, or regulatory in nature, the record in question may be disseminated to the appropriate federal, state, local, or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law;
- b. In the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local or foreign agency, or to an individual organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant;
- c. A record relating to a case or matter may be disseminated in an appropriate federal, state, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practices;



- d. A record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings;
- e. A record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter;
- f. A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement;
- g. A record may be disseminated to a federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency;
- h. A record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of license, grant, or other benefit by the requesting agency to the extent that the information relates to the requesting agency's decision on the matter;
- i. A record may be disseminated to the public, news media, trade associations, or organized groups, when the purpose of the dissemination is educational or informational, such as descriptions of crime trends or distinctive or unique modus operandi, provided that the record does not contain any information identifiable to a specific individual other than information such as a modus operandi.

5. Freedom of Information Act:

The Freedom of Information Act (FOIA), Title 5, U.S.C., Section 552, and DoD rules pursuant thereto, generally provide for access by members of the public to Governmental records, unless the requested records fall within specified exemptions. If you believe that one or more of the documents required under this subpoena should be considered exempt in whole or in part from public release under the FOIA, Title 5, U.S.C., Section 552, you must mark each document which you believe exempt. In a letter accompanying the documents, you should cite all exemptions contained in the FOIA that you believe apply and the reasons for each. It is the policy of the Office of the Inspector General to seek to notify you in the event that it receives a request under the FOIA for records for which you have claimed exemption or in the event that legal proceedings are initiated against the Office of the Inspector General to obtain such records



CERTIFICATE OF COMPLIANCE

I _____, of _____ of
(Name) (Title)

(Company/Institution/Agency)

certify the records I provided (either) to Special Agent, _____
or by certified mail accountability number _____, return receipt
requested, are accurate, complete, and in full compliance with the Department of Defense
Inspector General Duces Tecum number _____.
(Unique Identification Number)

The following subpoenaed records are not provided. (If documents are withheld based on privilege,
identify each document, specify its author and addressee, date, subject matter, all persons or entities to
whom copies were furnished, and the basis of your claim of privilege.)

(Use attachment if necessary)

In accordance with Title 28, United States Code, Section 1746, I certify under penalty of perjury the
foregoing is true and correct.

(Signature of Respondent)

(Date)



AGENTS' INSTRUCTIONS CONCERNING SUBPOENAS COVERED BY THE RIGHT TO FINANCIAL PRIVACY ACT



AGENTS' INSTRUCTIONS CONCERNING SUBPOENAS COVERED BY THE RIGHT TO FINANCIAL PRIVACY ACT

The Right to Financial Privacy Act (hereafter, the “Act”)¹ affects subpoenas served on a “financial institution” for records concerning a “customer” of that financial institution as defined by the Act. “Financial institution” basically includes traditional banks and savings and loan institutions, credit unions, and credit card issuing institutions. Investment firms, for example, would not be financial institutions under the Act unless they issue credit cards or offer draft accounts. “Customer” includes an individual or a partnership of five or fewer partners. Larger partnerships and corporations (regardless of the number of corporate owners) are not “customers” under the Act.

The purpose of the Act is to provide added privacy to a customer’s financial records. Concerning subpoenas for financial records, the Act requires that a customer be notified of the Government’s intention to obtain financial records prior to the actual service of a subpoena. Upon receiving such notification, then, a customer may file a motion in Federal district court to challenge the subpoena. To prevail, the customer must be able to show that the records sought are either not relevant to your investigation, are unduly broad in scope, or that the investigation itself is either unauthorized or baseless. Accordingly, most challenges are unsuccessful because subpoena requests are screened for the same attributes before they are approved.

SUBPOENA REQUEST PACKAGES

In addition to the standard documents (request memo, cover letter to the subpoena recipient, Privacy Act notice, and Certificate of Compliance) included in a subpoena request, subpoena requests for financial records subject to the Act must also include:

- Customer notice letter
- Statement of customer rights under the Right to Financial Privacy Act
- Instructions for completing and filing a motion and sworn statement
- Blank motion form
- Blank statement form
- Certificate of Service²
- Certificate of Compliance³

¹ 12 USC 3401 et seq.

² Customers use this form to notify the investigator that the customer is, or has filed a motion with a particular court. While the form is provided to the customer, there is no legal requirement for the customer to so notify the investigator. Therefore, investigators may not assume that a motion has not been filed simply because the investigator did not receive a certificate of service.



Be sure to include, in your customer notification letter, the address and phone number for each Federal district court (clerk's office) where the customer may file a motion to challenge. Generally, that would include the court having jurisdiction over the customer's place of residence, the court having jurisdiction over the location of the bank being served the subpoena, and the court for the Eastern District of Virginia (location of the DoD Inspector General). In overseas cases, include the court having jurisdiction in the geographical area covering the customer's home of record and/or last place of residence. The court for the District of Columbia also hears cases involving extraterritorial jurisdiction. A good resource for locating district court offices is found at <http://www.uscourts.gov/links.html>.

REQUIRED INVESTIGATOR ACTIONS FOLLOWING RECEIPT OF SIGNED SUBPOENAS FOR FINANCIAL RECORDS AFFECTED BY THE ACT

1. Serve notice on the customer by providing:
 - a. Notice to customer
 - b. Statement of customer rights under the Right to Financial Privacy Act
 - c. Copy of the subpoena and appendix (if there is an appendix)
 - d. Instructions for completing motion and statement
 - e. Blank motion form
 - f. Blank statement form
 - g. Certificate of Service
2. Customer can be notified in person or via certified mail (return receipt).
3. Wait for a period of 10 business days following in-person notification and 14 calendar days following notification by mail.⁵
4. Contact the clerks of court in all potential jurisdictions. Unless there is already an open criminal or civil case with the court, the motion you are looking for will likely be treated as a miscellaneous civil filing.



5. If a motion to challenge has not been filed, serve the subpoena on the financial institution and provide them with your certificate of compliance. If a motion to challenge has been filed, obtain as much information about it as possible from the court clerk and contact the DoD IG Subpoena Program Manager and your Assistant U.S. Attorney/military Staff Judge Advocate. The court may rule with no further action required on your part, or the Government may need to file a counter motion. You may not serve the subpoena until the court has denied the customer's motion.

³ Form completed by the investigator and provided to the financial institution certifying that the investigator has complied with the requirements of the Right to Financial Privacy Act, i.e., that the investigator has properly notified the customer and waited the requisite 10 or 14 days prior to taking custody of the subpoenaed documents.

⁴ 401 Courthouse Square, Alexandria, VA 22320. Phone: (703) 299-2100

⁵ Under Rule 6 of the Federal Rules of Civil Procedure, in computing the waiting time, the day that notice is made is not counted in the total. Additionally, if the 10th or 14th day is Saturday, Sunday, or legal holiday, or the office of the clerk of court is not accessible that day due to inclement weather, the final day will be the next day that is not one of the aforementioned days. When the period of time is less than 11 days, such is the case for RFPA subpoena service when the notification to the customer is in person, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation. In other words, when counting 10 days after notifying a bank customer in person, count only business days. "Legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President, the Congress of the United States, or by the state in which the district court is located.



FORMS REQUIRED FOR ALL SUBPOENAS REQUESTING FINANCIAL RECORDS



FORMS – ALL SUBPOENAS FOR FINANCIAL RECORDS		
NO.	TOPIC	COMMENT
A-9	Customer Notice Letter (Subject)	The customer notice form is completed on agency letterhead and provides information to the customer on what records are being sought, the criminal statutes or UCMJ Articles the subject is suspected of violating, how an objection to the release of the records can be filed, and in what court(s) the objection can be filed. As attachments, the customer notice provides copies of the following: Copy of Subpoena and Appendix (if there is an appendix); Statement of Customer Rights under the RFPA; Instructions for completing motion and sworn statement; Blank Motion form; Blank statement form; and Certificate of Service. The customer is directed to send a copy of his motion and statement to the Inspector General of the Department of Defense, c/o DoD IG Subpoena Program Manager, 400 Army Navy Drive, Suite 1037, Arlington, VA 22202.
A-10	Statement of Customer Rights Form	The Statement of Customer Rights Form provides a concise explanation of customer rights under the RFPA.
A-11	Instructions for Completing and Filing Motion and Sworn Statement Forms	This form provides the customer whose records are being subpoenaed the information needed to file an objection to the release of the records.
A-12	Blank Motion Form	This form provides the customer whose records are being subpoenaed the form needed to file an objection to the release of the records being subpoenaed.



FORMS – ALL SUBPOENAS FOR FINANCIAL RECORDS		
NO.	TOPIC	COMMENT
A-13	Blank Statement Form (affidavit)	This form provides the customer whose records are being subpoenaed the form needed to submit a sworn statement challenging the release of the records being subpoenaed.
A-14	Certificate of Service Form (Customer Notification to DoD IG)	This form provides the customer whose records are being subpoenaed, a means of notifying the DoD IG Subpoena Program Manager of a challenge to the subpoena.
A-15	Certificate of Compliance (Agent Provides to Financial Institution)	This form is prepared on agency letterhead and certifies to the financial institution that the agent/investigator complied with all of the requirements of the RFPA.



(Agency Letterhead)

CUSTOMER NOTICE

Dear (insert customer name and address):

Records or information concerning your transactions held by the financial institution named in the attached subpoena are being sought by the Office of the Inspector General, Department of Defense, in accordance with the Right to Financial Privacy Act of 1978, 12 U.S.C. Sections 3401-3422, for the following purpose(s):

(Example: “to refute or support allegations that you submitted false statements and false claims pertaining to the ABC base services contract from on or about July 4, 2007 through January 1, 2009, violations of 18 United States Code (U.S.C.) §287, False Claims, and 18 U.S.C. §1001, False Statement.”)

If you desire that such records or information not be made available, you must:

(1) Fill out the accompanying motion paper and sworn statement (as indicated by the instructions beneath each blank space) or write one of your own, stating that you are the customer whose records are being requested by the Government, and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

(2) File the motion and sworn statement by mailing or delivering them to the Clerk of one of the following United States District Courts:

Eastern District of Virginia (location of DoD Inspector General)

(location of financial institution)

(location of customer residence)

(It would simplify the proceeding if you would include with your motion and sworn statement a copy of the attached subpoena, as well as a copy of this notice.)

(3) Serve the Government authority requesting the records by mailing (by registered or certified mail) or by delivering a copy of your motion and sworn statement to: **Inspector General of the Department of Defense, c/o DOD IG Subpoena Program Manager, 400 Army Navy Drive, Suite 1037, Arlington, VA 22202-4704.**

(4) Be prepared to come to court and present your position in further detail.

(5) You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.



If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer.

Sincerely,

Special Agent in Charge

Enclosures:

Subpoena Duces Tecum
Appendix (if applicable)
Statement of Customer Rights under the
Right to Financial Privacy Act of 1978
Instructions for Completing and Filing
Motion and Sworn Statement
Motion Form
Sworn Statement Form
Certificate of Service



STATEMENT OF CUSTOMER RIGHTS UNDER THE FINANCIAL PRIVACY ACT OF 1978

Federal law protects the privacy of your financial records. Before banks, savings and loan associations, credit unions, credit card issuers, or other financial institutions may give financial information about you to a federal agency, certain procedures must be followed.

CONSENT TO FINANCIAL RECORDS: You may be asked to consent to the financial institution making your financial records available to the Government. You may withhold your consent, and your consent is not required as a condition of doing business with any financial institution. If you give your consent, it can be revoked in writing at any time before your records are disclosed. Furthermore, any consent you give is effective for only three months, and your financial institution must keep a record of the instances in which it discloses your financial information.

WITHOUT YOUR CONSENT: Without your consent, a federal agency that wants to see your financial records may do so ordinarily only by means of a lawful subpoena, summons, formal written request, or search warrant for that purpose. Generally, the federal agency must give you advance notice of its request for your records explaining why the information is being sought and telling you how to object in court. The federal agency must also send you copies of court documents to be prepared by you with instructions for filling them out. While these procedures will be kept as simple as possible, you may want to consult an attorney before making a challenge to a federal agency's request.

EXCEPTIONS: In some circumstances, a federal agency may obtain financial information about you without advance notice or your consent. In most of these cases, the federal agency will be required to go to court for permission to obtain your records without giving you advance notice. In these instances, the court will make the Government show that its investigation and request for your records are proper. When the reason for the delay of notice no longer exists, you will usually be notified that your records were obtained.

TRANSFER OF INFORMATION: Generally, a federal agency that obtains your financial records is prohibited from transferring them to another federal agency unless it certifies that the transfer is proper and sends a notice to you that your records have been sent to another agency.

PENALTIES: If the federal agency or financial institution violates the Right to Financial Privacy Act, you may sue for damages or seek compliance with the law. If you win, you may be repaid your attorney's fee and other costs.

ADDITIONAL INFORMATION: If you have any questions about your rights under this law, or about how to consent to release your financial records, please call the official whose name and telephone number appear below:

Special Agent:
Agency:
Address:
Phone:



INSTRUCTIONS FOR COMPLETING AND FILING THE ATTACHED MOTION AND SWORN STATEMENT

1. Except where signatures are required, the indicated information should be either typed or printed legibly in ink in the spaces provided on the attachment motion and sworn statement forms. The information required for each space is described in parentheses under each space to be completed.
2. The most important part of your motion is the space on the "sworn statement" form where you must state your reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated in the attached notice. You may also challenge the government's access to the financial records if there has not been substantial compliance with the Right to Privacy Act or for any other reasons allowed under the law. You should state the facts that are the basis for your challenge as specifically as you can.
3. To file your motion with the court, either mail or deliver the original and the proper number of copies, as well as any required filing fee, to the Clerk of the Court. The filing fee can be paid with cash, certified check, or money order. You are required to check with the Clerk of the Court for the district in which you intend to file to ascertain the correct filing fee and correct number of copies required for filing, as well as to ascertain any other local rules of court that may exist.
4. One copy of your challenge papers (motion and sworn statement) and Certificate of Service must be delivered or mailed (by registered or certified mail) to the government official whose name appears in item 3 of the customer notification letter.
5. If you have further questions, contact the government official whose name and telephone appear on the Customer Notice.



CUSTOMER’S MOTION TO CHALLENGE GOVERNMENT’S ACCESS TO FINANCIAL RECORDS IN THE UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF _____
(Name of District) (State In Which Court Is Located)

_____)	Miscellaneous No.
(Your Name))	(Will be filled in by
)	Court Clerk)
)	
Moveant)	
)	
V.)	MOTION FOR ORDER PURSUANT
)	TO CUSTOMER CHALLENGE
Department of Defense)	PROVISIONS OF THE RIGHT TO
)	FINANCIAL PRIVACY ACT
Respondent)	OF 1978.

_____ hereby move this Court pursuant to
(Your Name)

Section 3410 of the Right to Financial Privacy Act of 1978, 12 United States Code 3401, et seq. for an order preventing the Government from obtaining access to my financial records. The agency seeking, access is the Department of Defense.

My financial records are held by _____
(Name of Institution)

In support of this motion, the Court is respectfully referred to my sworn statement filed with this motion.

Respectfully submitted,

(Your Signature)

(Your Address)

(Your Telephone Number)

Right to Financial Privacy Act of 1978, Title 12 United States Code, Section 3410



CUSTOMER'S SWORN STATEMENT FOR FILING A CHALLENGE IN THE UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF _____
(Name of District) (State In Which Court Is Located)

(Customer's Name)) Miscellaneous No. _____
(Will be filled in by Court Clerk)

Moveant)

V.)

Department of Defense)

Respondent)

SWORN STATEMENT OF MOVEANT

FINANCIAL PRIVACY ACT OF 1978

I, _____, (am presently/was previously) a customer of
(Customer's Name) (Show One)

_____, and I am the customer whose records are
(Name of Financial Institution)

being requested by the Government.

The financial records sought by the Department of Defense are not relevant to the legitimate law
enforcement inquiry stated in the Customer Notice that was sent to me because _____

_____, or should not be disclosed because
there has not been substantial compliance with the Right to Financial Privacy Act of 1978 in that _____

or should not be disclosed on the following other legal basis: _____

I declare under penalty of perjury that the foregoing is true and correct.

_____, _____
(Month) (Day) (Year)

(Customer's Signature)

Right to Financial Privacy Act, Title 12 United States Code, Section 3410



CERTIFICATE OF SERVICE

I have mailed or delivered a copy of this motion and the attached sworn statement to

_____ on _____, _____.
(name of the office listed in item 2 of customer notice) (month, day) (year)

(your signature)

Right to Financial Privacy Act of 1978, Title 12 United States Code, Section 3410



(Agency Letterhead)

(Your Name)
(Your Address)
(Your City, State, Zip Code)

(Name of Financial Institution)
(Address of Financial Institution)
(City, State, Zip Code of Financial Institution)
(ATTN: Point of Contact at Financial Institution if known)

CERTIFICATE OF COMPLIANCE WITH THE RIGHT TO FINANCIAL PRIVACY ACT

I certify, pursuant to Section 3403(b) of the Right to Financial Privacy Act of 1978, Title 12 United States Code, Sections 3401 et seq., that the applicable provisions of that statute have been complied with as to the Department of Defense (DoD) Inspector General subpoena number _____ presented on _____, _____, for the financial records of _____.

Pursuant to Section 3417(c) of the Right to Financial Privacy Act of 1978, good faith reliance upon this certificate relieves your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of these financial records.

(Your signature block)



FORMAT FOR CUSTOMER NOTIFICATION UNDER THE ECPA FOR OBTAINING CONTENTS OF ELECTRONIC COMMUNICATIONS



(Agency Letterhead)

SAMPLE ECPA CUSTOMER NOTICE

Mr. John Jones
1234 Main Street
Anywhere, MD 12345

Dear Mr. Jones:

Pursuant to the Electronic Communication Privacy Act (18 U.S.C. §2701, et seq.) notice is provided that on or after _____, the United States Army Criminal Investigation Command (USACIDC) will serve a Department of Defense Inspector General Subpoena on Yahoo Incorporated for records relating to: (a) basic subscriber information, (b) the contents of any wire or electronic communications held by a provider of remote computing service on behalf of a subscriber or customer of such remote computing service and (c) the contents of any wire or electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days. These records are being sought in connection with a legitimate law enforcement investigation being conducted pursuant to the Inspector General Act of 1978, as amended, (5 U.S.C. Appendix 3).

If you have any questions regarding this notice, please contact Special Agent John Smith, Maryland Fraud Resident Agency, Major Procurement Fraud Unit, USACIDC, 5115 Pistol Road, Aberdeen Proving Ground, MD 21005

Sincerely,

XXXXXX XXXXXX
Special Agent in Charge



FORMAT FOR ADVERSE RESULT LETTER FOR DELAY OF CUSTOMER NOTIFICATION UNDER THE ECPA



(Agency Letterhead)

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR POLICY AND
OVERSIGHT, ATTN: SUBPOENA PROGRAM OFFICE

SUBJECT: Certification of Adverse Result without Delayed Notice for Subpoena to
XXXXXX, Inc. for E-mail Account Information (“xxxxxxxx@xxxx.com”)

1. Pursuant to 18 USC § 2705, I certify that there is reason to believe that the notification required by 18 USC § 2703(b)(1)(B) of the existence of the subpoena requesting e-mail, subscriber and transaction information for the Yahoo!, Inc. e-mail account “xxxxxxxx@xxxx.com” and any other e-mail accounts held by the same individual would have an adverse result for the ongoing investigation into an intrusion into and damage of an XXXX computer. Should notice of this subpoena be provided to the owner of this or other related accounts, the account holder could easily: [choose the applicable reason(s)]

- Endanger life or safety;
- Flee from prosecution;
- Destroy/tamper with evidence;
- Intimidate witnesses; and/or
- Otherwise seriously jeopardize an investigation or unduly delay trial.

2. I understand that this delay may not exceed ninety days but that an extension of that time period may be obtained by an additional certification.

3. The original of this certification will be maintained in the case file.

4. If you have questions on this matter, please call me at (XXX) XXX-XXXX or e-mail me at xxxxxxx.xxxxx@xxxx.mil.

XXXXX XXXXX
Supervisory Special Agent



RESOURCES



1. Business Identification Number Cross-Reference System (BINCS)

The Business Identification Number Cross-Reference System (BINCS) is a search engine of manufacturers and suppliers. Information on this system is cross-referenced to permit inquiry by CAGE, DUNS, company name, phone number, SIC Code and zip code.

Website Address: <https://www.bpn.gov/bincs/>

2. U.S. District Court Links

The site provides information on U.S. District Courts such as address, phone number and Internet Web Site. The site is searchable by state, city, county, circuit, zip code and area code.

Website Address: <http://www.uscourts.gov/courtlinks/>

3. Internet Service Provider (ISP) Listing

SEARCH.org is an on-line resource for justice and public safety officials. It contains listings of Internet Service Providers (ISPs), contacts at legal departments for law enforcement service of subpoenas, court orders and search warrants.

Website Address: <http://www.search.org/programs/hightech/isp/>

4. Central Contractor Registration

Central Contractor Registration (CCR) is the primary registrant database for the U.S. Federal Government. CCR collects, validates, stores, and disseminates data in support of agency acquisition missions, including Federal agency contract and assistance awards.

Website Address: <https://www.bpn.gov/CCRSearch/Search.aspx>

5. Fraud Investigator's Toolkit

Several links helpful in the investigation of fraud matters can be found in the "Fraud Investigator's Toolkit" on the DoD IG, Investigative Policy and Oversight, website.

Website Address: <http://www.dodig.mil/Inspections/>



ADMINISTRATIVE REMINDERS



ADMINISTRATIVE REMINDERS

- **When listing businesses and corporations, be sure to use the complete legal corporate name.**
- **Include mobile cellular phone number of case agent.**
- **When providing addresses, do not use post office boxes, a physical address must be listed.**
- **Zip codes must match the physical address.**
- **If the investigation is being conducted jointly with other law enforcement agencies, identify the lead investigative agency.**
- **There must be a physical address for the return of service, i.e., the DCIO office address.**
- **Be sure to include the SUBJECT'S full information such as rank, active duty status (Active, Guard, Reserve) and Social Security number.**
- **When listing the statutes, provide the full UCMJ or USC Section and Title, i.e., UCMJ Article 132, Frauds against the U.S. Government.**
- **Make sure the violation/crime falls within the Statute of Limitations.**
- **If previous DoD IG Subpoenas have been issued, identify the subpoena recipient and the DoD IG subpoena Unique Identification Number. If this request is for the same recipient, explain how these requested records differ from those previously obtained/requested.**
- **When describing records, focus on the DoD nexus and why the documents are relevant to the investigation.**
- **Provide the name of the prosecutor (SJA, AUSA), their concurrence with requesting a subpoena in this matter, whether they believe a crime has been committed, what the crime is, and if they are prepared to prosecute the crime.)**
- **When sending request package and forms, if you are sending the documents in pdf. format, please also include identical documents in Microsoft Word® version.**



SUBPOENA REQUEST CHECKLIST



DOD INSPECTOR GENERAL SUBPOENA REQUEST CHECKLIST

STANDARD SUBPOENA REQUEST

√	FORM	REFERENCE
	Inspector General Subpoena Request Memo	A-4, Pages 44-51
	Subpoena Cover Letter (Memo to Custodian of Records / Subpoena Recipient)	A-5, Pages 44-51
	Notice Pursuant to Privacy Act of 1974	A-6, Pages 44-51
	Certificate of Compliance (completed by Custodian of Records / Subpoena Recipient)	A-7, Pages 44-51
	Appendix (if required)	A-3, Pages 40-43

FINANCIAL RECORDS SUBPOENA REQUEST

√	FORM	REFERENCE
	Standard Subpoena Request Documents (see above)	Pages 40-51
	Customer Notice Letter	A-9, Pages 58-68
	Statement of Customer Rights under the Right to Financial Privacy Act (RFPA)	A-10, Pages 58-68
	Instructions for Completing and Filing a Motion and Sworn Statement	A-11, Pages 58-68
	Blank Motion Form	A-12, Pages 58-68
	Blank Statement Form	A-13, Pages 59-68
	Certificate of Service (completed by Customer and forwarded to DoD IG Subpoena Program Office)	A-14, Pages 59-68Page XXX
	Certificate of Compliance with RFPA (completed by Special Agent and provided to financial institution that is receiving the subpoena)	A-15, Pages 59-68

ELECTRONIC RECORDS SUBPOENA REQUEST

√	FORM	REFERENCE
	Standard Subpoena Request Documents (see above)	Pages 40-51
	Customer Notice Letter (provided to customer when requesting stored opened contents and unopened contents stored over 180 days under the Electronic Communications Privacy Act)	A-16, Page 69
	Adverse Results Letter for 90 Day Customer Notice Delay	A-17, Page 71



DOD INSPECTOR GENERAL SUBPOENA REQUEST CHECKLIST

ADMINISTRATIVE

√	TOPIC	REFERENCE
	After service of subpoena, complete Certificate of Return of Service (back of subpoena), scan it, and forward to DoD IG Subpoena Program Office.	Section 1-5, Page 7; A-2, Page 39
	Ensure copy of case updates are provided to DoD IG Subpoena Program Office every 90 days.	Section 4-1, Page 32
	If you encounter any problems with the service of the subpoena or determine that a challenge has been filed under the RFPA, immediately notify the DoD IG Subpoena Program Office.	Section 1-6, Page 7; Sections 4-4 thru 4-5, Pages 24-24
	If you receive an invoice from a financial institution or electronic communications provider requesting reimbursement of costs for providing documents, contact the DoD IG Subpoena Program Office.	Section 2-10, Page 15



SAMPLE SUBPOENA REQUEST MEMO



(Agency Letterhead)

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MEMORANDUM FOR DIRECTOR FOR INVESTIGATIVE POLICY AND
OVERSIGHT DEPARTMENT OF DEFENSE

SUBJECT: Request for Inspector General Subpoena REVISE FORM WITH NEW
INTERROGATORIES

1. Case agent's name: **Special Agent John Smith**
2. Case agent's office phone number, mobile cellular phone number and fax number: **(703) 604-8700; (703) 604-8720; (703) 604-8701**
3. Case agent's electronic email address: **john.smith@usmil.com**
4. Case agent's street address: **Maryland Fraud Resident Agency, Major Procurement Fraud Unit, US Army Criminal Investigation Division, 5115 Pistol Road, Aberdeen Proving Ground, MD 21005**
5. Case file number: **0000-2006-CID000-000**
6. (FOUO-LES) Subject(s) of the investigation: (Provide complete information on Subject such as rank, title, active duty/reserve status, and Social Security number): **ACME International, Inc., 1234 Box Hill Corporate Center, Suite B, Somewhere, MD 21001-1234**
7. Date investigation opened: **May 21, 2004**
8. Name of case agent's supervisor who has read this request and approves: **John Doe, Resident Agent in Charge, (410) 832-4510**
9. Is this a substantive investigation? (Note: DoD IG subpoenas are not issued for developmental investigations or preliminary inquiries) **Yes. This is a substantive investigation.**
10. List investigative agencies participating jointly in this investigation. **None.**
11. Statute(s) or UCMJ article(s) believed to be violated: (Provide the full UCMJ or USC Section and title, i.e., UCMJ Article, Fraud against the U.S. Government) **18 U.S.C. §287, False Claims and 18 U.S.C. §1001, False Statements**
 - a. Does the violation/crime fall within the Statute of Limitations? **Yes**

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12. (FOUO-LES) Source and reliability of initial information: **Dr. Joe Stevens, President of Tri Tech Services Inc., 1234 Woodbridge Way, Edgewood, MD 22232, a sub contractor to ACME International, Inc., on contract DAAD00-03-D-11221. Dr. Stevens is considered reliable due to his unique knowledge of the contract (he was the prime on the previous contract for the same services) and his knowledge of the employee's qualifications (many of ACME's employees were previously employed by Tri Tech.**

13. (FOUO-LES) Summary of information obtained/evidence collected to date suggesting statutes were/are being violated (Include sufficient detail to understand the who, what, where, when, how, etc.): **This investigation was initiated based on information received from Dr. Joe Stevens, President, Tri Tech Services, Inc., (Tri Tech), 1234 Woodbridge Way, Edgewood, MD 22232.**

On 15 Jun 03, the U.S. Army Solder and Biological Chemical Command (SBCCOM), now the research development and engineering command (RDECOM), awarded ACME International, Inc. (ACME) an indefinite quantity/indefinite delivery contract with time and materials task orders for environmental sciences support, contract number DAAD00-03-D-11221, with a five year performance period, valued at \$20,000,000.00. ACME subsequently subcontracted a portion of the work to Tri Tech.

Dr. Stevens alleged ACME made false claims by billing the government for labor categories their employees were not qualified for under the terms of the contract. The amount or percentage of the labor mischarging has not yet been determined.

14. Coordination with prosecutor? Results? (Provide the name of the prosecutor (SJA, AUSA), their concurrence with requesting a subpoena in this matter, whether they believe a crime has been committed, what the crime is, and if they are prepared to prosecute the crime) **This investigation was coordinated with AUSA Bob Smith, AUSA Office, Baltimore, MD, who concurred with the request for a DoD IG subpoena to obtain the necessary records and documents.**

15. Have IG subpoenas been issued previously in this investigation? If so, please explain. (Please provide the identity of the subpoena recipient and the DoD IG subpoena number) **No subpoenas have been previously issued.**

16. What is the DoD nexus to the records being sought (e.g., they pertain to a DoD contract, a DoD employee of military service member)? **The records being sought are related to ACME's contract, DAAD00-03-D-11221, with the U.S. Army.**

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17. What is the time period for the records sought (specific beginning and ending dates)? How are these dates relevant to your investigation? **From 15 Jun 2003 to present, ACME has submitted numerous invoices to the government and has been paid about \$2.4 million for those invoices. It is believed those invoices included fraudulent billings for labor costs.**

18. If the case pertains to a contract, which organization was the contracting authority, what is (are) the contract number(s), what is (are) the period(s) of performance, and what goods or services are/were procured? **Ms. Patricia Jones, Contracting Officer, Robert Ames Acquisition Center – Edgewood Branch, APG, MD 22232; 15 Jun 2003 through 14 Jun 2008; Environmental Services Support.**

19. What is (are) the proper legal name(s) of the subpoena recipient(s), to include the type of business entity (sole proprietorship, partnership, corporation) if applicable? **ACME International, Incorporated.**

20. What is the street address of the subpoena recipient? (you must list a physical address. Post office boxes cannot be listed) **1234 Box Hill Corporate Center, Suite B, Somewhere, MD 21001-1234.**

21. Why do you believe the subpoena recipient has the records you request? **These records are required by the contract to be maintained by the contractor. These are normal business records that would be maintained by any normal business.**

22. Is the subpoena recipient a bank, credit union, savings and loan, or credit card issuer? If so, what is the full name and Social Security number of the account holder; or, what account number(s) is (are) involved? **Not Applicable.**

23. If the subpoena recipient is not a financial institution, is there another account number or numbers involved? Please list. **Not Applicable.**

24. Are the records sought already in the possession of a Federal government agency? If yes, identify the Federal agency and the rationale for issuing a subpoena for records we (the government) already have. **These records are not believed to be in the possession of any other federal agency.**

25. Have the records sought already been obtained through a search warrant or grand jury subpoena? Has a grand jury been involved? Explain if necessary. **No.**

26. Do you have any reason to believe this subpoena will be challenged? Explain. **No.**

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27. How will the records sought assist in this investigation? **The records will show which employees were billed against which labor categories as well as that employee's qualifications. This will quantify the over-billed amount.**
28. Will copies suffice, or do you require original records? **Certified copies will suffice.**
29. Include any other information you believe is important.
30. Individually describe the records, or classes of records you require (subpoena appendix items). **Certified payroll documents pertaining to all invoices submitted under contract DAAD00-03-D-11221; complete resumes for all employees who have had hours billed to contract DAAD00-03-D-11221; all documents used to substantiate labor hours and labor categories on invoices submitted under contract DAAD00-03-D-11221.**

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