

## ADVICE TO EMPLOYERS REGARDING SEARCH BY GOVERNMENT AGENTS

The material contained herein is a summary that O'Melveny & Myers LLP has provided to clients in the past. It is not meant as advice, legal or otherwise, to the reader or as a substitute for legal consultation in any particular case.

### ASK FOR IDENTIFICATION

1. Should state or federal authorities enter your facility with a search warrant, first ask for the following information:

a. Ask for their identification.

b. Ask for a copy of the Warrant authorizing the search, and any accompanying affidavit. (You are entitled to a copy of the Warrant at the time of the search; you are not entitled to a copy of the affidavit.)

c. Give them a designated attorney's number and ask that the agents wait until lawyers arrive before they conduct the search. They have no obligation to wait, but you should request this in any event.

### CALL ATTORNEYS

2. Immediately call your attorney

### DISMISS NON-ESSENTIAL EMPLOYEES

3. Dismiss all non-essential employees for the day or, if possible, the length of the search. Obviously, discretion must be exercised here, to ensure that the facility continues to operate at an acceptable level.

### DO NOT CONSENT

4. DON'T CONSENT TO THE SEARCH. The authorities may ask you to consent to the search and to sign a form acknowledging your consent. Don't do it. You may jeopardize the ability of your attorneys to challenge the legality of the search at a later time.

## READ WARRANT

5. READ THE WARRANT. The Warrant will describe, often in detail, the areas of the facility that the investigators have been authorized to search and the items (documents and the like) that they are authorized to seize. Give them access to those areas in the order in which they wish to see them. If the officers want to inspect an area of the facility not covered by the Warrant or seize a document or object not covered by the Warrant, you cannot prevent them from doing so, and you should not argue with them about the scope of the Warrant. However, state to the agent that in your view the documents or areas are not covered by the Warrant, and that you are permitting them to search under protest. If the search exceeds the scope of the Warrant, the attorneys for the company may later challenge the legality of the search.

## ANSWER QUESTIONS

6. You have no obligation to assist the agents in conducting the search. Should the agents inquire about the location of documents and ask where certain documents are located, answer their questions truthfully, but again, don't sign any "Consent" and don't state that you are "agreeing" to voluntarily provide anything. It is one thing to unlock a file cabinet upon request, but you should not take the agents on a tour of the facility, explain your operations, or the documents they have been authorized to seize. It is their obligation to specify the documents sought, and it is your obligation not to obstruct their access to such documents. Simply provide them with the documents or objects they demand.

## PRIVILEGED DOCUMENTS

7. SHOULD THE AGENTS WISH TO SEE "PRIVILEGED DOCUMENTS" — DOCUMENTS GOING TO AND FROM ATTORNEYS — TELL THEM THOSE DOCUMENTS ARE PRIVILEGED AND ASK THEM TO WAIT UNTIL YOUR ATTORNEYS ARRIVE TO SPEAK WITH THEM ABOUT THIS ISSUE.

## MONITOR SEARCH

8. MONITOR THE SEARCH. Make a detailed list of the documents removed and ask to copy the documents before they are removed. You do not have the right to stop the search; however, you have the right to observe the search at all times and to make a record of everything they do and everything they look at. At least one employee should accompany the agents at all times. As the agents begin reviewing or removing documents, make a record of everything they do and every location searched. If you have access to a video recorder, record the search as best you can without interfering with the agents.

## INFORM EMPLOYEES ABOUT INTERVIEWS

9. All employees should be advised that during the search, questions may be asked of them regarding not only the documents that are seized by the government, but also their and others' duties and responsibilities within the facility. Employees should be advised that the search warrant only authorizes the agents to search for and to seize evidence, not to conduct interviews or speak with employees. The employees are under no obligation to talk to the agents during the execution of the search warrant. Moreover, anything that the employees say to the agents can be used against them, and possibly the company, in later criminal or civil proceedings, even if the agents have not advised the employees of their Miranda rights. All general requests for interviews that the agents make should be referred to, and be handled by, legal counsel. You can inform employees that the company will provide them with legal counsel if they wish. Do not instruct employees not to speak with law enforcement agents. This could be interpreted as obstruction of justice. (See the accompanying memorandum regarding advice to employees regarding government interviews.)

**OBTAIN INVENTORY OF RECORDS  
SEIZED**

10. At the conclusion of the search, THE AGENTS ARE OBLIGATED TO PROVIDE YOU WITH AN INVENTORY OF ALL DOCUMENTS SEIZED. Such an inventory should immediately be faxed to the lawyer you may have spoken with in connection with the search. Again, however, you should also take notes yourself during the search, and provide that inventory to your lawyers. Identify any seized records that are necessary to continue operation of your business so that copies can be obtained expeditiously – keeping the list short will increase the speed with which copies can be obtained.

**MEDIA INQUIRIES**

11. BE PREPARED FOR POSSIBLE MEDIA COVERAGE. Before speaking with the media, confer first with your Legal Department, Public Affairs or your attorney.