

Complying with Federal Subpoenas and Orders

The USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism) and the FISA (Foreign Intelligence Surveillance Act) section of that act give the Justice Department new and extensive powers to obtain records. FISA also provides for "gag" orders, making it unlawful for employees to share information about the order. For example, a US Federal Marshall or INS Agent could serve these subpoenas.

FISA "gag" orders prohibit the person served from contacting anyone about how to respond to the subpoena, **including a supervisor**. A concern is that the person served may not know how to respond to the subpoena or have access to the information requested therein, yet lack the ability to call a superior for assistance.

To help ensure that **all** law enforcement requests are promptly addressed by personnel who possess the ability to access and supply the information requested, the WSU AG's office advises each college or administrative area designate one employee (the "designees") who will handle all law enforcement requests for that area. For Cooperative Extension, that designee is the Associate Dean and Director.

If presented a federal subpoena, all Extension employees should:

- a. Ask for identification of law enforcement agents; and
- b. Refer the agent to the Associate Dean and Director, who is designated to handle search requests. Note: the employee should not indicate that s/he must talk to the designee before providing assistance; s/he should refer the agent directly to the Associate Dean and Director.

We anticipate that agents will honor the request and serve the subpoena upon the designee will be better able to comply with the request for information. If that does not occur, and if a law enforcement agent is present and requesting an immediate response, we advise that the served employee:

- i. Immediately call the Attorney General's Office (509-335-2636). Note that we advise this even if the subpoena contains a FISA "gag" order.*
- ii. Immediately use his/her best efforts to comply with the subpoena/warrant. That is, you should attempt to comply with the subpoena even if you have been unable to reach an assistant attorney general.

*We have opined that the University always has the right to the assistance of counsel. Accordingly, an employee who receives process in his/her capacity as an agent or employee of the University may contact the Attorney General's Office for advice regarding interpretation of the order, what information must be provided, or whether it has been validly issued.

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