



What to Do When Federal or State Investigators Knock on Your Door

By: Steven John Fellman, Esquire

All trade association and professional societies can expect that one day an investigator from a Federal or State regulatory agency will show up at the organization's offices and politely but firmly request the opportunity to interview the Chief Staff Executive and/or other staff members and look at the organization's files. In most instances, the investigator will not have provided advance notice of the visit and will not have a warrant. The investigator will show his official ID and indicate that he expects you to answer questions and provide access to your files. Your organization should have a written policy advising staff how to deal with such situations. The policy should include the following guidelines.

1. All trade associations and professional societies should assign one staff member as primarily responsible to deal with Federal or State investigators. A back up staff member should be assigned with this responsibility in the event that the investigator shows up when primary responsible staff member is not in the office.

2. Pursuant to the policy, the organization receptionist should be instructed that if a Federal or State investigator shows up, the receptionist should ask the investigator to have a seat in the reception area and then the receptionist should call the staff person responsible for dealing with investigators. The receptionist should not answer questions.

3. The responsible staff person should go to the reception area and politely greet the investigator. He/she should ask the investigator for ID and copy down the name of the investigator and the name of the regulatory agency. He/she should ask the investigator to explain the purpose of the visit. He/she should make careful notes of what the investigator says.

4. The responsible staff person should then explain to the investigator that it is the policy of the organization to consult with legal counsel regarding all investigations. The investigator should be asked to wait in the reception area while the responsible person contacts legal counsel.

5. Legal counsel will advise you how to deal with the investigator. Some Federal and State regulatory agencies such as OSHA, have the power to make certain inspections and interview employees during normal working hours. Other regulatory agencies, do not have such powers unless they have obtained a Court ordered subpoena. Your counsel will advise you how to proceed once counsel knows the identity of the regulatory agency and the purpose of the visit.

As an example, the FBI generally conducts investigations on behalf of the Antitrust Division of the Department of Justice. If an FBI agent shows up at your door and says that he is investigating possible antitrust violations in the industry or profession represented by the organization, assuming that the investigator does not have a subpoena, counsel may advise you to tell the investigator that the organization certainly wants to cooperate with the Department of Justice and if the Antitrust Division would write you a letter and tell you what information they need, you will be glad to respond. You can then shake hands with the investigator and walk him to the door. There will be no interviews, no file examinations, no document turnovers.

6. There are certain rare instances where an investigator may show up with a subpoena and demand immediate access to books, records, employees and computers. You are entitled to a copy of the subpoena before providing access. In such a situation, there usually will be a team investigators and their initial objective will be to gain access to the hard drives of your computers. If the subpoena provides the right to immediate access, let them in and immediately call counsel for advice. Have the subpoena in hand when you call counsel.

7. Know your rights when dealing with an investigator and be ready to stand up for your rights. However, never lie to an investigator. If it can be shown that you lied when responding to the investigator, you could be charged with a crime.

If you are interested in learning more about “What to Do When Federal or State Investigators Knock on Your Door,” contact Steve Fellman, GKG Law, P.C. at 202.342.5294 or sfellman@gkglaw.com.