

United States Postal Service

§ 230.1

**Inspection Service Requirements
PART 230—OFFICE OF INSPECTOR
GENERAL**

Subpart A—General Policy and Authority

Sec.

- 230.1 Establishment and authority.
- 230.2 Access to information and other responsibilities.
- 230.3 Cooperation with the Office of Inspector General.
- 230.4 Arrest and investigative powers of criminal investigators.
- 230.5 Release of information.

Subpart B—Rules Governing Compliance with Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

- 230.10 What do these rules govern?
- 230.11 What special definitions apply to these rules?
- 230.12 Can Office of Inspector General employees testify or produce documents that would assist me in my civil proceeding?
- 230.13 Why are restrictions on Office of Inspector General employees in civil proceedings necessary?
- 230.14 Who owns the written or recorded notes, memoranda, reports, and transcriptions made pursuant to an official investigation, audit, or review conducted by an employee of the Office of Inspector General?
- 230.15 What must an Office of Inspector General employee do if served with a demand requiring the production of documents or an appearance in court?
- 230.16 Is there a prohibition on presenting Office of Inspector General reports or records during an employee's testimony?
- 230.17 If an attempt is made to compel production of reports and records during the employee's testimony, what is an Office of Inspector General employee directed to do?
- 230.18 If authorization to testify or produce documents is not obtained by the employee, what is the employee directed to do?
- 230.19 What criteria will the authorizing official use to determine whether to authorize testimony or production of documents?
- 230.20 What records will not be released?
- 230.21 May the General Counsel to the Inspector General and/or a U.S. Department of Justice attorney represent the employee in any appearance?

- 230.22 May another employee be substituted for the employee requested to appear?.
- 230.23 May an Office of Inspector General employee testify as an expert or opinion witness?
- 230.24 How is a demand for employee documents or testimony made to the Office of Inspector General?
- 230.25 Who pays the costs incurred when the Office of Inspector General responds to a demand for documents or testimony?
- 230.26 Do these rules affect the service of process requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix)?
- 230.27 Do these rules create any right or benefit enforceable by a party against the Postal Service?

AUTHORITY: 5 U.S.C. App.3; 39 U.S.C. 401(2) and 1001.

SOURCE: 67 FR 16025, Apr. 4, 2002, unless otherwise noted.

Subpart A—General Policy and Authority

§ 230.1 Establishment and authority.

(a) There is established, pursuant to the Inspector General Act of 1978, as amended (5 U.S.C. App.3), and 39 U.S.C. 410, an independent Office of Inspector General.

(b) The Inspector General reports directly to the nine presidentially appointed Governors and shall not be supervised by, nor report to, the Postmaster General and/or any designee appointed by the Postmaster General.

(c) The Office of Inspector General includes an Inspector General, an Assistant Inspector General for Audit, and an Assistant Inspector General for Investigations. The Office of Inspector General maintains its own legal counsel independent of the Postal Service Law Department for matters that are within the jurisdiction of the Office.

(d) The Office of Inspector General is responsible for detecting and preventing fraud, waste, and abuse in the programs and operations of the Postal Service, and for reviewing existing and proposed legislation and regulations relating to the programs and operations of the Postal Service.

(e) The Inspector General has oversight responsibilities for all activities of the Postal Inspection Service. The Chief Postal Inspector must promptly

§ 230.2

report to the Inspector General significant activities and other information related to the Inspection Service as required by law.

(f) The Inspector General has sole responsibility for directing the Office of Inspector General, including the authority to select, appoint, and employ such officers and employees that the Inspector General deems necessary and appropriate to fulfill the mission of the Office. In addition, the Inspector General may delegate to such officers and employees of the Inspector General such powers, duties, and responsibilities, as the Inspector General deems necessary and appropriate for the proper functioning of the Office.

(g) All employees in the Office of Inspector General shall take and subscribe to the oath of office required of all Postal Service employees under 39 U.S.C. 1011, and the Inspector General, or designee, is authorized to administer such oath and affirmation.

(h) The Inspector General has the authority to enter into contracts or other arrangements with public agencies and with private entities, and to make such payments as may be necessary to carry out the duties and responsibilities of the Office of Inspector General.

(i) The Inspector General may hire and retain the services of expert consultants and other personnel as necessary to fulfill the duties and responsibilities of the Office.

(j) Except as required by law, the Governors may not transfer to the Inspector General responsibility for performing any of the program activities of the Postal Service.

§ 230.2 Access to information and other responsibilities.

(a) The Inspector General has authority to have access to all postal records, reports, audits, reviews, documents, papers, information, and other material relating to any matter related to the responsibilities of the Inspector General;

(b) The Inspector General shall be the Investigating Official for purposes of the Program Fraud Civil Remedies Act.

39 CFR Ch. I (7-1-06 Edition)

§ 230.3 Cooperation with the Office of Inspector General.

(a) All Postal Service employees shall cooperate with all audits, reviews, and investigations conducted by the Office of Inspector General. Deliberately submitting information known to be false or misleading to the Office of Inspector General or failing to cooperate with all audits, reviews, and investigations conducted by the Office of Inspector General may be grounds for disciplinary or other legal action.

(b) Any employee who has authority to take, direct another to take, recommend or approve any personnel action shall not retaliate against any employee as a reprisal for cooperating and assisting with any Office of Inspector General audit, review, or investigation (including reporting facts or information to the Office of Inspector General that leads to any audit, review, or investigation).

§ 230.4 Arrest and investigative powers of criminal investigators.

(a) Under the authority of 18 U.S.C. 3061, criminal investigators employed by the Office of Inspector General are authorized to perform the following functions in connection with their official duties:

(1) Serve warrants and subpoenas issued under the authority of the United States;

(2) Make arrests without warrant for offenses against the United States committed in their presence;

(3) Make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;

(4) Carry firearms; and

(5) Make seizures of property as provided by law.

(b) Administrative subpoenas may be served by delivering a copy to a person or by mailing a copy to the person's last known address. For the purposes of this provision, delivery of a copy includes handing it to the party or leaving it at the party's office or residence with a person of suitable age and discretion employed or residing therein.

United States Postal Service

§ 230.10

Service by mail is complete upon mailing.

[67 FR 16025, Apr. 4, 2002, as amended at 71 FR 12285, Mar. 10, 2006]

§ 230.5 Release of information.

(a) The Office of Inspector General is responsible for maintaining and storing its own records and for assuring compliance with applicable records management, retention, and disclosure requirements.

(b) The Inspector General or a designee serves as the official custodian of the records and documents of the Office of Inspector General and is responsible for administering the rules and regulations relating to public availability of Postal Service Office of Inspector General records insofar as the information is subject to the provisions of the Freedom of Information Act, contained in Section 552 of Title 5 of the U.S. Code and 39 U.S.C. 410 (c), and/or the Privacy Act, Section 552a of Title 5 of the U.S. Code.

(c) Requests for records and information under the Freedom of Information Act or Privacy Act should be submitted in writing to the Office of Inspector General, Freedom of Information/Privacy Act Officer, located at 1735 N. Lynn Street, Arlington, Virginia, 22209-2020.

(d) The Office of Inspector General shall comply with and adhere to the procedures governing the release of information maintained by the U.S. Postal Service as set forth in Part 265 and related provisions of these regulations to the extent such procedures do not conflict with any provision in this part.

(e) Appeals from the denial of any request for information should be directed to the General Counsel for the Office of Inspector General, who is responsible for deciding any timely appeals authorized under this section.

(f) Postal Service records in the custody of the Office of Inspector General that contain proprietary information will not be released by the Inspector General without consultation with the appropriate Postal Service official responsible for the record.

Subpart B—Rules Governing Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

SOURCE: 68 FR 57372, Oct. 3, 2003, unless otherwise noted.

§ 230.10 What do these rules govern?

(a) Subpart B governs those situations where an employee of the Office of Inspector General has been summoned, subpoenaed, or given a court order in connection with any federal, state, local court, administrative, or legislative proceeding.

(b) The rules in Subpart B do not apply to:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is named as a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Employees serving as expert witnesses in connection with professional and consultative services under Title 5, Code of Federal Regulations, Part 7001, provided they state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(4) Employees making appearances in their private capacities in proceedings that do not relate to their Postal Service employment, such as traffic accidents or domestic relations matters; and do not involve professional or consultative services;

(5) Situations where the Inspector General or an official designated by the Inspector General determines that the best interests of the public or the Office of Inspector General would be served by an exemption from the regulations.

(c) These rules should be read together with the Freedom of Information Act (FOIA), which provides additional information about access to records.

§ 230.11

39 CFR Ch. I (7–1–06 Edition)

§ 230.11 What special definitions apply to these rules?

The following definitions apply to Subpart B:

(a) Authorizing official means the Inspector General or an official designated by the Inspector General to authorize release of documents or permission to testify.

(b) Case or matter means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the United States, the Postal Service, or another federal agency is not a named party.

(c) Demand includes any request, order, or subpoena for testimony or the production of documents.

(d) Document means all records, papers, or official files, including, but not limited to, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analyses, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, computer discs, and sound or mechanical reproductions.

(e) Employee or Office of Inspector General employee, for the purpose of this subpart only, means a Postal Service employee currently or formerly assigned to the Postal Service Office of Inspector General, student interns, contractors, and employees of contractors who have access to Office of Inspector General information and records.

(f) General Counsel to the Inspector General means the General Counsel of the Office of Inspector General, or a person authorized by the Inspector General to give legal advice to Office of Inspector General employees. General Counsel to the Inspector General does not mean the General Counsel of the Postal Service.

(g) Nonpublic includes any material or information not subject to mandatory public disclosure under § 265.6(b) or which must be kept confidential under the Inspector General Act, 5 U.S.C. App. 3.

(h) Office of Inspector General means the organizational unit within the

Postal Service as outlined in part 221 of this chapter.

(i) Office of Inspector General Manual is the document containing the standard operating procedures for criminal investigators, evaluators, and other employees of the Office of Inspector General.

(j) Reports include all written reports, letters, recordings, or other memorizations made in conjunction with the duties of an Office of Inspector General employee.

(k) Testify or testimony includes both in-person oral statements before any body conducting a judicial or administrative proceeding and statements made in depositions, answers to interrogatories, declarations, affidavits, or other similar documents.

§ 230.12 Can Office of Inspector General employees testify or produce documents that would assist me in my civil proceeding?

No current or former employee within the Office of Inspector General may testify or produce documents concerning information acquired in the course of employment or as a result of his or her relationship with the Postal Service in any proceeding to which this subpart applies (see § 230.10), unless authorized to do so by an authorizing official.

§ 230.13 Why are restrictions on Office of Inspector General employees in civil proceedings necessary?

The restrictions are intended to reduce the risk of inappropriate disclosures that might affect the operations of the Office of Inspector General; prevent the expenditure of Office of Inspector General or Postal Service resources for private purposes; and ensure that employee time is serving the best interests of the public.

§ 230.14 Who owns the written or recorded notes, memoranda, reports, and transcriptions made pursuant to an official investigation, audit, or review conducted by an employee of the Office of Inspector General?

Notes, memoranda, reports, and transcriptions, whether written or recorded and made pursuant to an official investigation, audit, or review conducted by an employee of the Office of Inspector

United States Postal Service

§ 230.19

General, are the property of the Office of Inspector General.

§ 230.15 What must an Office of Inspector General employee do if served with a demand requiring the production of documents or an appearance in court?

If an Office of Inspector General employee is served with a demand requiring the production of documents or an appearance in court, the employee must promptly inform the authorizing official of the nature of the documents or testimony sought and all relevant facts and circumstances. Office of Inspector General employees are directed to appear as the subpoena or summons may require, but may not testify or produce documents unless authorized.

§ 230.16 Is there a prohibition on presenting Office of Inspector General reports or records during an employee's testimony?

Yes, Office of Inspector General reports or records will not be presented during an employee's testimony, unless authorized by an authorizing official.

§ 230.17 If an attempt is made to compel production of reports and records during the employee's testimony, what is an Office of Inspector General employee directed to do?

If an attempt is made to compel production of reports and records during the employee's testimony, the employee is directed to decline to produce the item or information and to state that the material cannot be disclosed or produced without the approval of the authorizing official. All such requests, and any other requests for documents in judicial or administrative proceedings in which the United States is not a party, shall be deemed to be a request for records under the Freedom of Information Act and shall be handled pursuant to 39 CFR 230.5.

§ 230.18 If authorization to testify or produce documents is not obtained by the employee, what is the employee directed to do?

Absent written authorization from the authorizing official, the employee must respectfully decline to produce the requested documents, testify, or otherwise disclose the requested infor-

mation. If the authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this section, and respectfully decline to testify or produce any document on the basis of the regulations in this section.

§ 230.19 What criteria will the authorizing official use to determine whether to authorize testimony or production of documents?

(a) The authorizing official will determine whether testimony or the production of documents will be authorized according to the following criteria:

(1) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(2) Relevant legal standards for disclosure of nonpublic information and documents;

(3) Office of Inspector General rules and regulations;

(4) The public interest;

(5) Minimizing or preventing expenditures of Office of Inspector General and Postal Service time and resources solely for private purposes.

(6) Minimizing the appearance of improperly favoring one litigant over another;

(7) Minimizing the possibility that the public will misconstrue variances between personal opinions of Office of Inspector General employees and agency policy; and

(8) Preserving the integrity of the administrative process.

(b) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in section 230.24 of this part or to such matters as deemed appropriate by the authorizing official. If the authorizing official allows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or receipt of documents by the method least disruptive to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

§ 230.20

(c) Upon issuance of an unfavorable final determination by the authorizing official, the party or the party's counsel seeking testimony or documents may consult or negotiate with the authorizing official to refine and limit the demand.

(d) The Office of Inspector General will offer all possible assistance to the courts, but the question of disclosing information for which an exemption may be claimed is a matter of discretion that rests with the authorizing official. If in the opinion of the authorizing official the documents should not be released or testimony should not be furnished, that determination will be final.

§ 230.20 What records will not be released?

Generally, any record demanded by a subpoena duces tecum or appropriate court order can be released by a properly authorized Office of Inspector General employee, except for the following:

(a) Records required to remain confidential by the Freedom of Information Act, the Privacy Act, and parts 230 and 262 of this chapter.

(b) Records containing information relating to an employee's security or loyalty;

(c) Original records;

(d) Office of Inspector General criminal investigative reports, unless there is specific authorization by an authorizing official, after consulting with General Counsel to the Inspector General; and

(e) The Office of Inspector General Manual and other operating instructions issued to Office of Inspector General employees, unless there is specific authorization by an authorizing official, after consultation with the General Counsel to the Inspector General. If the requested information relates to confidential investigative techniques, confidential sources of information, or information that must be kept confidential under the Inspector General Act, 5 U.S.C. app. 3, because release of the information would adversely affect the duties and obligations or law enforcement mission of the Office of Inspector General, the subpoenaed official, through the Inspector General, or an authorizing official, may request an

39 CFR Ch. I (7-1-06 Edition)

in camera, ex parte conference to determine the necessity for the release of the information.

§ 230.21 May the General Counsel to the Inspector General and/or a U.S. Department of Justice attorney represent the employee in any appearance?

At the option of the Attorney General, or an authorizing official, an Office of Inspector General legal counsel may represent and assist the employee. The authorizing official designated by the Inspector General may also request assistance from the U.S. Department of Justice in representing and assisting the employee in any appearance.

§ 230.22 May another employee be substituted for the employee requested to appear?

The Inspector General or designee may, where appropriate, designate another Office of Inspector General employee to respond to a request for an appearance.

§ 230.23 May an Office of Inspector General employee testify as an expert or opinion witness?

No, an Office of Inspector General employee may not testify as an expert or opinion witness with regard to any matter arising out of the employee's duties or functions at the Office of Inspector General for any party other than the United States, except that in extraordinary circumstances, and where the anticipated testimony will not be adverse to the interest of the United States, the authorizing official may approve such testimony in private litigation. A litigant must first obtain the permission of an authorizing official designated by the Inspector General before designating an Office of Inspector General employee as an expert or opinion witness.

§ 230.24 How is a demand for employee documents or testimony made to the Office of Inspector General?

(a) All demands for the production of nonpublic documents or testimony of Office of Inspector General employees concerning matters relating to their official duties and subject to the conditions set forth in § 230.10(b) shall be

United States Postal Service

§ 231.1

made in writing and conform to the requirements outlined in paragraph (b) of this section.

(b) Before or simultaneously with service of a demand, the requesting party shall serve on the General Counsel to the Inspector General at the Office of Inspector General, 1735 North Lynn Street, Arlington, VA 22209-2020, a summons or subpoena issued in accordance with the appropriate rules of civil procedure along with an affidavit or sworn declaration containing the following information:

- (1) The title of the case and the forum where it will be heard;
- (2) The party's interest in the case;
- (3) The reasons for the demand;
- (4) A showing that the requested information is available, by law, to a party outside the Postal Service;
- (5) If testimony is sought, a detailed summary of the anticipated testimony;
- (6) If testimony is sought, a showing that Office of Inspector General records could not be provided and used in place of the requested testimony;
- (7) The intended use of the documents or testimony; and
- (8) An affirmative statement that the documents or testimony is necessary for defending or prosecuting the case at issue.

[68 FR 57372, Oct. 3, 2003, as amended at 71 FR 11161, Mar. 6, 2006]

§ 230.25 Who pays the costs incurred when the Office of Inspector General responds to a demand for documents or testimony?

(a) Unless determined by 28 U.S.C. 1821 or other applicable statute, the costs of providing testimony, including the cost of transcripts, shall be borne by the requesting party. Furthermore, unless limited by statute, such costs shall also include reimbursement to the Office of Inspector General for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges, and any necessary travel expenses as follows:

(1) The Office of Inspector General is authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reim-

burse the Office of Inspector General for the cost of responding to a demand, may include the costs of time expended by Office of Inspector General employees, including attorneys, to process and respond to the demand; attorney time for reviewing the demand and for legal work in connection with the demand; expenses generated by equipment used to search for, produce, and copy the requested information; and travel costs of the employee and the agency attorney or other representative, including lodging and per diem. Such fees shall be assessed at the rates and in the manner specified in 39 CFR 265.9.

(2) At the discretion of the Office of Inspector General where appropriate, fees and costs may be estimated and collected before testimony is given.

(b) The provisions of Subpart B do not affect rights and procedures governing public access to official documents pursuant to the Freedom of Information Act, 5 U.S.C. 552a.

§ 230.26 Do these rules affect the service of process requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix)?

No, the rules in subpart B in no way modify the requirements of the Federal Rules of Civil Procedure regarding service of process.

§ 230.27 Do these rules create any right or benefit enforceable by a party against the Postal Service?

No, subpart B is intended to provide instructions to Office of Inspector General employees and members of the public. It does not create any right or benefit, substantive or procedural, enforceable by any party against the Office of Inspector General or the Postal Service.

PART 231—PROTECTION OF POST OFFICES

Sec.

231.1 Responsibility.

231.2 Security Control Officer.

§ 231.1 Responsibility.

(a) The protection of mail, postal funds, and property is a responsibility of every postal employee.