

## **§ 2004.10**

statements made by an individual in connection with a legal proceeding.

### **Subpart B—Office of Inspector General Subpoenas**

#### **§ 2004.10 Service of an Office of Inspector General subpoena.**

Service of a subpoena issued by OIG may be accomplished as follows:

(a) *Personal service.* Service may be made by delivering the subpoena to the person to whom it is addressed. If the subpoena is addressed to a corporation or other business entity, it may be served upon an employee of the corporation or entity. Service made to an employee, agent, or legal representative of the addressee shall constitute service upon the addressee.

(b) *Service by mail.* Service may also be made by mailing the subpoena, certified mail—return receipt requested, to the addressee at his or her last known business or personal address.

### **Subpart C—Requests for Testimony and Production of Documents**

#### **§ 2004.20 General prohibition.**

No employee may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior, written approval of the Inspector General or the Counsel.

#### **§ 2004.21 Factors OIG will consider.**

The Counsel or Inspector General, in their discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the Inspector General or the Counsel may consider in making this decision are whether:

- (a) The purposes of this part are met;
- (b) OIG has an interest in the decision that may be rendered in the legal proceeding;
- (c) Allowing such testimony or production of records would assist or hinder OIG in performing its statutory duties or use OIG resources where responding to the request will interfere

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with the ability of OIG employees to do their work;

(d) The records or testimony can be obtained from other sources;

(e) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(f) Disclosure would violate or be inconsistent with a statute, Executive Order, or regulation;

(g) Disclosure would reveal confidential or privileged information, trade secrets, or similar, confidential commercial, or financial information;

(h) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceedings, or compromise constitutional rights;

(i) Disclosure would result in OIG appearing to favor one litigant over another;

(j) Disclosure relates to documents that were produced by another agency;

(k) The demand or request is in conformance with all other applicable rules;

(l) The demand or request is sufficiently specific to be answered; and

(m) For any other good cause.

#### **§ 2004.22 Filing requirements for demands or requests for documents or testimony.**

You must comply with the following requirements whenever you issue demands or requests to an OIG employee for official records and information or testimony.

(a) Your request must be in writing and must be submitted to the Counsel. If you serve a subpoena on OIG or on an OIG employee before submitting a written request and receiving a final determination from the Counsel, OIG will oppose the subpoena on grounds that your request was not submitted in accordance with this subpart.

(b) Your written request must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document sufficient to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on OIG to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an OIG employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require with each OIG employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The OIG reserves the right to require additional information to complete your request where appropriate.

(d) Your request should be submitted at least 30 days before the date that records or testimony are required. Requests submitted less than 30 days before records or testimony are required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the Counsel to make an informed decision may serve as the basis for a determination not to comply with your request.

#### **§ 2004.23 Service of subpoenas or requests.**

Subpoenas or requests for official records or information or testimony must be served on the Counsel to the Inspector General, Office of Inspector General, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8260, Washington, DC 20410-4500.

#### **§ 2004.24 Processing demands or requests.**

(a) After service of a demand or request to testify, the Counsel will review the demand or request and, in accordance with the provisions of this subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or to produce official records and information.

(b) The OIG will process requests in the order in which they are received. Absent exigent or unusual circumstances, OIG will respond within 30 days from the date that we receive all information necessary to the evaluation of the demand or request. The time for response will depend upon the scope of the request.

(c) The Counsel may grant a waiver of any procedure described in this subpart where a waiver is considered necessary to promote a significant interest of OIG, HUD, and the United States, or for other good cause.

#### **§ 2004.25 Final determination.**

The Counsel makes the final determination on demands and requests to employees for production of official records and information or testimony. All final determinations are within the sole discretion of the Counsel. The Counsel will notify the requester of the final determination, the reasons for the grant or denial of the demand or request, and any conditions that the Counsel may impose on the release of records or information, or on the testimony of an OIG employee.

#### **§ 2004.26 Restrictions that apply to testimony.**

(a) The Counsel may impose conditions or restrictions on the testimony of OIG employees including, for example, limiting the areas of testimony or