



# COLORADO STATE UNIVERSITY SYSTEM

Colorado State University • Colorado State University - Pueblo • CSU Global Campus

MICHAEL D. NOSLER, GENERAL COUNSEL

## Governmental Inquiries and Investigations

### General

If you see government investigators on the premises or have received any contact from a government agent, immediately inform the Office of General Counsel for the Colorado State University System (“OGC”). Your response to an interview by a government investigator, an informal request for documents, a subpoena, or a search warrant should be coordinated and supervised by the OGC.

When you learn of a government investigation, stop your records destruction procedure regarding materials that might be relevant to the investigation. Further, you should initiate an internal investigation to determine the merits of the allegation. An internal investigation should be supervised by the OGC.

In general, you should keep confidential materials separate from other documents. In Colorado, communications concerning matters within the scope of the employee’s duties between counsel and personnel are privileged.

Federal law prohibits the making of a false statement, concealment of a material fact, or the use of any false writing “within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States.” You should avoid even the appearance that you are impairing an investigation, concealing facts or documents, influencing other witnesses, or making false statements.

### Interviews by Government Investigators

If a government investigator asks you to grant them an interview you are free to do so, *but you are under no legal obligation to grant an interview*. If you do grant an interview, please remember that anything you say can be used against you in a criminal prosecution or in a civil enforcement proceeding. This is true whether or not the officers give you any Miranda warnings.

You have the right to schedule the time of the interview and to be represented by counsel during the interview. It is the Colorado State University Systems’ preference that an attorney from the OGC be present at the interview. We will make counsel available for that purpose. Please notify us if this is the case. However, the OGC attorney represents Colorado State University System and not you, the employee. Therefore, you are entitled to the presence of your own independent counsel. If an interview must occur without the presence of an attorney, OGC will debrief you following the interview. Further, a strong effort should be made to either record the interview by audio or video tape.

## Obtaining Documents

Government investigators use two techniques to obtain documents.

### 1. Subpoenas

Upon receipt of a subpoena, ensure that no responsive documents are destroyed or overlooked. Immediately forward the subpoena to the OGC. Do not give the government agents access to any document without the approval of the OGC.

Do not destroy any documents that are asked for in the subpoena. Subpoenaed documents must be produced unless excused by a court. Failure to produce subpoenaed documents may constitute obstruction of justice. Allow the OGC to determine whether to object to a subpoena and whether any privileges apply.

### 2. Informal Requests for Documents

Upon receipt of an informal request for documents, ensure that no responsive documents are destroyed or overlooked. Immediately forward requests to counsel. Do not give the government agents access to any document without the approval of the OGC. Informal requests are not subject to judicial enforcement but should still be taken seriously. Incomplete or misleading responses can give rise to liability for obstruction of justice.

Do not destroy any documents that are asked for in the request. Allow the OGC to determine whether to object to a request for documents and whether any privileges apply.

## Search Warrants

A search warrant is a document signed by a judicial officer authorizing the search of a house, office, property, or person for items listed in the warrant. You must not obstruct the execution of a search warrant. When the government asserts that they have a right to search the premises. Please follow these steps:

1. Identify the lead officer or agent and ask for his or her credentials: identification and proof of authority.
2. Obtain a copy of the warrant. Note the precise areas that can be searched (listed in the warrant).
3. Request that the search be delayed in order to contact OGC.
4. Notify OGC immediately whether or not the request for delay was granted.
5. If you are asked to consent to the search, do not consent.
6. Note the arrival and departure time of the agents
7. Limit the search to the location described in the warrant.
8. If the agents go outside the listed places to search, object and take notes or photographs of the improper conduct.
9. Do not prevent the investigators from searching outside the scope of the warrant because such prevention could lead to an obstruction of justice charge.
10. Do not consent to a broader search without counsel.
11. If possible, videotape the search.
12. Direct the investigators to the subject matter listed in the warrant so that they do not have to search for it.
13. If you are asked where certain items can be found, write down all such questions.
14. Record the names of the agents and their agency
15. List all employees requested for an interview or actually interviewed by agents.
16. Request a detailed, specific, exhaustive inventory of the items seized. You are entitled to this inventory (not necessarily right then).