



# POLICY

## SUBPOENAS

Date:

August 30, 2021

By Direction Of:

Lucas M. Miller, State Inspector General

### A. Purpose & Scope.

To establish the Office of State Inspector General's (OSIG) policy and procedures by which the Bureau of Special Investigations (BSI), Bureau of Fraud Prevention and Prosecution (BFPP), Bureau of Law Enforcement Oversight (BLEO) and OSIG Legal staff request and issue subpoenas during the course of an investigation. Failure to abide by this policy may result in disciplinary action up to and including termination.

### B. Policy.

Under 71 P.S. Section 215, the OSIG has the authority to issue subpoenas during the course of its investigations. OSIG subpoenas can be used to request documents (subpoena duces tecum) or to compel a person to appear for an interview.

BSI, BFPP and BLEO sworn law enforcement staff must follow all relevant procedures outlined below when requesting and issuing subpoenas.

### C. Procedures.

Prior to requesting a subpoena, BSI, BFPP and BLEO sworn law enforcement staff are required to have made reasonable efforts to obtain the requested information/documentation or interview through documented phone and/or written/email contacts. If these attempts were unsuccessful, sworn law enforcement staff may request use of a subpoena.

After consultation with chain of command and/or assigned OSIG legal staff, BSI and BLEO sworn law enforcement staff will complete a memo requesting to use a subpoena and a draft subpoena and submit them through their chain-of-command for review. The memo should include the reason for requesting the subpoena and any efforts to otherwise obtain the information. BFPP sworn law enforcement staff will request a subpoena via OSIG Avoidance and Recovery System (OARS), uploading the draft subpoena to the case. If the request is approved, it will be forwarded to OSIG's Chief Counsel or his/her designee for legal review. Final approval for all subpoenas will be made by the State Inspector General or his/her

designee. If the request is disapproved at any level, the request will be returned to the investigator with instructions on what actions he/she should take.

Once all approvals have been received, the subpoena can be served. Prior to serving the subpoena, the subpoena documents must be scanned and uploaded to the investigative file. Service of the subpoena can be accomplished using one of the following methods: In person, either by OSIG staff or by staff from the local sheriff or constable's office, regular first-class mail, certified mail return receipt, or e-mail with read receipt. If an agreement was made as to how the subpoena was to be served prior to service, it must be documented in the investigative file. Once the subpoena is served, the individual has 10 calendar days to comply.

When serving a subpoena in person, staff must identify themselves as OSIG employees, advise that they have a subpoena issued by the OSIG, must ascertain that the individual is an adult, read the subpoena to the individual (if possible), and leave it at the location (if possible). Any refusal of service by an individual must be documented in detail in memo format with all pertinent information regarding the refusal (date, time, location, etc.). After a refusal of service, staff must also follow up with the local sheriff or constable's office for service of the subpoena. All documentation regarding refusal of service must be kept as part of the investigative file so it can be referenced by the chain-of-command and OSIG Legal. It is required that two OSIG employees be present when servicing a subpoena in person, unless circumstances allow only one employee to do so.

Immediately after serving the subpoena, BSI, BFPP and BLEO sworn law enforcement staff must complete the "Return of Service" and a memo detailing the service of the subpoena. Once completed, the "Return of Service" and memo must be scanned and uploaded to the investigative file within two business days.

Following service of the subpoena, BSI, BFPP and BLEO sworn law enforcement staff who requested the subpoena must keep track of the 10-day time-frame outlined in the subpoena to ensure compliance. Once the 10-day period has passed, BSI, BFPP and BLEO sworn law enforcement staff must consult with their chain of command who will consult with OSIG Legal to determine the next course of action.

All information obtained as a result of a subpoena must be date stamped, scanned and uploaded and stored as part of the investigative file. This includes, but is not limited to, documentation requested via the subpoena, notice from the individual questioning the enforceability of the subpoena, or the individual's notice that they will not comply with the subpoena.

OSIG Legal will assist in cases where the individual does not respond to the subpoena, responds stating that they will not comply with the subpoena, and when the individual questions the enforceability of the subpoena. BSI, BFPP and BLEO sworn law enforcement staff will work with OSIG Legal to prepare and present the OSIG's case in the court of appropriate jurisdiction. The BSI, BFPP or BLEO sworn law enforcement staff who served or attempted to serve the subpoena should be prepared to testify in court during this court proceeding.

#### **D. Fees.**

When the OSIG issues subpoenas to interview an individual, 71 P.S. Section 215 specifically states that “Witnesses subpoenaed under this section shall be compensated under [42 Pa.C.S. § 5903](#) (relating to compensation and expenses of witnesses).” As such, the OSIG must compensate individuals who are subpoenaed for interview. Interviewees must provide documentation on travel expenses, which will then be used to complete the [OSIG 405](#) (Witness Expense Form). The interviewee and the assigned attorney must sign the [OSIG 405](#), which is then forwarded to the Bureau of Administration, Policy and Training for processing and reimbursement.

#### **E. Additional Information.**

Any questions concerning this policy should be directed to your supervisor.

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