

ILLINOIS STATE POLICE DIRECTIVE

OPS-006, SUBPOENAS AND EXTERNAL RECORDS REQUESTS RECEIVED

RESCINDS: OPS-006, 2023-144, revised 02-24-2023.	REVISED: 08-21-2023 2023-168
RELATED DOCUMENTS: ADM-007, ADM-025, ADM-102, ADM-137, ADM-140, OPS-007	RELATED CALEA STANDARDS (6th Edition): 74.1.1, 74.1.3, 74.2.1, 82.2.4, 82.2.5

I. POLICY

- I.A. The Illinois State Police (ISP) will comply with legal requests for records and testimony or, if a legal objection exists, seek to present a motion to quash or modify a subpoena.
- I.B. ISP will fulfill external records requests from an outside governmental agency if such requests are found to be valid and seeking records for a legitimate law enforcement purpose.

II. DEFINITIONS

- II.A. Subpoena - a legal document commanding the production of records and/or testimony.
- II.B. External records request - a request from an outside governmental agency (local law enforcement agency, state's attorney, Department of Children and Family Services, National Guard, etc.) seeking records for law enforcement purposes.

III. PROCEDURES

III.A. Satisfying an external records request

- III.A.1. The work unit receiving an external records request is responsible for fulfilling or forwarding to the appropriate unit. It is the responsibility of each work unit to establish and enforce safeguards to validate external records requests before providing unredacted responsive records directly to the requester.
- III.A.2. If records are requested that are the subject of active criminal proceedings, do not send any record without first receiving approval from the ISP Legal Office.
- III.A.3. Safeguards to ensure an external records request is legitimate may include, but are not limited to:
 - III.A.3.a. Contacting the requester to inquire further regarding the reasons for the request;
 - III.A.3.b. Confirming in writing that the requester is acting in an official business capacity for law enforcement purposes or under similar statutory authority and not requesting records for personal purposes (i.e., request is on official letterhead, signed by requester in their official capacity, acknowledging that the request is for business/law enforcement purposes, citing appropriate statutory authority to access records, if appropriate); and
 - III.A.3.c. Ensuring the responsive records will not be disseminated to other agencies or any unnecessary employees within their own agency.
- III.A.4. Once the requester has confirmed the validity of the external records request pursuant to the appropriate safeguards implemented by the work unit, then the work unit will release the responsive records directly to the requester.
- III.A.5. If it is determined that a request is not a valid external records request, forward the request to the ISP Freedom of Information Act (FOIA) office and advise that the request should be handled as a FOIA request.

III.B. Satisfying a subpoena

- III.B.1. The work unit receiving a subpoena is responsible for complying or forwarding to the appropriate unit. The appropriate work unit will coordinate a thorough response and advise the issuing party of activity taken to comply.
- III.B.2. If a subpoena for a former employee is received, the appropriate work unit will either notify the issuing attorney that the individual is no longer an ISP employee (civil subpoenas) or work with the Office of Human Resources (OHR) to obtain the last known address and forward the subpoena to the former employee with instructions to contact the issuing attorney (criminal subpoenas).
- III.B.3. The response to a criminal subpoena should be sent to the presiding judge, if listed, at the address on the subpoena or to the Office of the Circuit Clerk of the county issuing the subpoena. Formal notification of compliance with the subpoena should be made to the State's Attorney's Office and the defendant's attorney, if known, by providing the cover letter and subpoena only (not the documents sent in response to the subpoena) by email, facsimile, or by another approved mechanism.
- III.B.4. The response to a civil subpoena should be sent only to the attorney issuing the subpoena unless the subpoena directs the response to be sent to the circuit clerk of the judge assigned to the case.

III.C. Department compliance/subpoena validity

- III.C.1. When an employee receives a subpoena against the Department's interest, he/she will notify his/her Supervisor/Commander, and the Supervisor/Commander will notify the ISP Legal Office in accordance with Section III.C.2 below. The following are examples of subpoenas against the Department's interest:
 - III.C.1.a. When there is reason to object to compliance with the subpoena (e.g., the requested information would reveal a confidential source or matter occurring before a grand jury, the investigation is not completed, the subpoena requires reproduction of an unduly burdensome number of documents, an unreasonable timeframe of compliance, a civil subpoena where the criminal case has not been adjudicated, the request is for juvenile or sexual assault victim information, etc.).
 - III.C.1.b. When an employee is subpoenaed to testify against the Department's interests for the defense in any criminal or quasi-criminal trial or hearing.
 - III.C.1.c. When an employee is subpoenaed to testify in a matter and the Department or another agency of the state of Illinois is a party to the action.
 - III.C.1.d. When an employee is subpoenaed to testify in a matter that may lead to controversy or conflict between another law enforcement agency and the Department or the employee.
- III.C.2. When there is reason to question the validity of a subpoena, the subpoenaed employee will notify his or her Supervisor/Commander. If the Supervisor/Commander is unable to establish the validity of the questioned subpoena, the Supervisor/Commander will contact the Legal Office for direction in accordance with this subsection.
 - III.C.2.a. Any request for the Legal Office to review a subpoena for a legal objection or other appropriate reasons must be submitted to the Legal Office with a Subpoena Review Cover Sheet, ISP 1-275(1/20), as soon as possible and no later than three business days prior to the subpoena due date.
 - III.C.2.b. The original subpoena shall be maintained by the appropriate work unit in accordance with Section III.H below.
 - III.C.2.c. An electronic copy of the subpoena shall be forwarded to the Legal Office with the Subpoena Review Cover Sheet. The Subpoena Review Cover Sheet and copy of the subpoena must be sent to the Legal Office via the Subpoena Inbox at ISP.Subpoenas@Illinois.gov.

- III.C.3. The Legal Office will determine if there is cause to quash, modify, or deny the request.
 - III.C.4. All subpoenas for confidential source (CS) files should be forwarded to the CS Specialist for appropriate handling in conjunction with the case agent, his/her supervisor, and the Legal Office.
 - III.C.5. If the unit receiving a subpoena submits an inquiry to the Legal Office concerning the legality of a subpoena, the work unit must continue working towards obtaining the documents to satisfy the subpoena unless the Legal Office directs otherwise.
- III.D. Fees
- Various fees apply to some types of subpoenas served on the ISP.
- III.D.1. Civil subpoenas
 - III.D.1.a. A fee is required for processing a subpoena in a civil case. See 705 ILCS 35/4.3. The fee for producing subpoenaed records in Illinois civil cases is \$20 for the first 80 pages, and \$0.25 cents per page for each page after the first 80 pages. The subpoena fee for producing a department employee to appear in person in court for a civil case or deposition is \$20 for each day of attendance and \$0.20 per mile of necessary travel, both to and from the location identified in the subpoena. If a subpoena in a civil case requires both an appearance and the production of documents, the appropriate fee is as follows: (i) \$20 for each day of attendance, which also covers the production of up to 80 pages of documents at the appearance, (ii) \$0.20 per mile of travel, and (iii) \$0.25 per page for each page of documents after the first 80.
 - III.D.1.b. In a federal civil case, the appropriate document production fee is \$20 for up to 80 pages of documents and \$0.25 per page for each page of documents after the first 80. If the federal subpoena compels a witness to appear at a trial, deposition, or other hearing, the witness fee and appearance fee is \$40 for each day of attendance and \$0.655 per mile, respectively, unless the subpoena is issued by the U.S. Government. See 28 U.S.C. § 1821(b).
 - III.D.1.c. In those cases where a remittance is not provided with the subpoena, the subpoena may be complied with, but the law firm/attorney shall be apprised of the fee requirement and requested to pay.
 - III.D.1.d. Questions relating to the amount of fee required for a particular subpoena should be addressed to the Legal Office.
 - III.D.1.e. If the production of materials in compliance with a subpoena in a civil case would require special expenses beyond photocopying or the production of the documents in electronic format, and the responding division does not have a fee schedule in place for the materials, the Legal Office should be contacted to determine the appropriate method of obtaining reasonable reimbursement from the party serving the subpoena.
 - III.D.2. No fee is assessed for records or a personal appearance subpoenaed in a criminal proceeding.
 - III.D.3. In the event the party issuing the subpoena objects to payment of reasonable subpoena expenses, contact the Legal Office.
 - III.D.4. All fees received in conjunction with a subpoena (whether document or personal appearance subpoena) will be processed by the cost center producing the records and forwarded to the Office of Finance. (Troop 15 is exempt from this requirement.)
- III.E. Subpoenas for copies of photographs/video recording
- III.E.1. All subpoenas for copies of photographs will be processed by the Division of Forensic Services (DFS).

- III.E.2. The DFS will process all civil subpoenas requesting video recordings of crime scenes or investigations.
- III.E.3. The Troop will handle and process all requests regarding in-car video recordings.
- III.F. Division of Patrol (DOP) and Division of Criminal Investigation (DCI)
 - III.F.1. If a subpoena requires records only and the documents required are solely troop, bureau, zone, or officer documents and are maintained at the receiving location, the Troop, Bureau, Zone or officer should respond directly.
 - III.F.2. If a subpoena requires records only and the specified records are no longer located at the receiving location but are maintained at the Patrol and Investigative Records Section (PIRS), Division of Justice Services (DJS), the original subpoena and the fee remittance will be forwarded to the PIRS for processing.
 - III.F.3. If a subpoena requires a personal appearance or deposition and the officer needs records only available from the PIRS, the officer will request such records via email at ISP.Records.Subpoenas@illinois.gov.
 - III.F.4. The receiving unit will notify all interested parties of the receipt of the subpoena (e.g., chain-of-command, other units, other agencies, respective state's attorney/U.S. Attorney, etc.).
 - III.F.5. Subpoenas hand delivered, and not applying to the named work unit, will be accepted and forwarded to the appropriate unit.
 - III.F.6. Subpoenas requesting personal appearances will be verified by the individual subpoenaed as to the actual time and if an appearance is actually required due to changes in court scheduling or subpoena requirements.
- III.G. Other Divisions
 - III.G.1. Subpoenas received

When a subpoena requesting records is received by divisions other than DOP or DCI, a determination should be made whether the receiving unit can physically comply.
 - III.G.2. Receiving unit

If the subpoena can be satisfied by the work unit receiving the order, that work unit will comply unless division policy states otherwise.
 - III.G.3. When PIRS is the original recipient of the subpoena, they will be responsible for providing documents maintained by PIRS, and also forwarding the subpoena to the appropriate division or work unit for their compliance.
- III.H. Subpoena file retention
 - III.H.1. Each troop, unit, or section shall appoint a Subpoena File Custodian responsible for retention of subpoenas. This may be the Troop Court Officer.

NOTE: For the DFS Forensic Sciences Command, each laboratory will ensure a process is in place by which all subpoenas will be maintained in the master file and subject to the retention period of that case.
 - III.H.2. Subpoenas will be retained by the receiving work unit for five years from the date the criminal case or civil litigation is closed, if known.

- III.H.3. Prior to destroying the subpoena file, the Subpoena File Custodian will contact the Agency Records Retention Coordinator, Logistics Bureau, DJS, for instructions in completing the proper form(s).

| Indicates new or revised items.

-End of Directive-