

Protect Your Company from the Unexpected: Preparing for and Responding to a Search Warrant Raid

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Training for emergencies that require immediate and coordinated responses should be second-nature. When you board a plane, you know what to do in the unlikely event of a crash landing; if there is a fire, you know where to find the fire exit and rally point. Preparation for the execution of a search warrant is just as critical for your company, yet most businesses never train to handle this emergency. In failing to plan for the unthinkable, companies risk missing key opportunities to minimize liability, improve legal defenses, and maintain uninterrupted business operations.

Search Warrant Primer

A search warrant is a court order authorizing law enforcement to search a particular location and seize particular categories of things. It is issued by a judicial officer after a finding of probable cause—meaning there is a reasonable basis to believe that a crime has been committed and that evidence of that crime will be found at the location to be searched. Search warrants are executed by law enforcement without any notice to the target or time to prepare a response. Execution of a search warrant is often a company's first indication that it is the subject or target of a criminal investigation. Alternatively, the Government may believe the company merely possesses evidence of criminal conduct by some other individual or entity.

Below are steps companies should take proactively to minimize corporate risk in the event of a search warrant. Experienced counsel can tailor these plans to your business to best protect both your company and its employees.

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Preparing for a Search Warrant Raid

- **Establish Appropriate Procedures.** Develop a search warrant response protocol consistent with this guidance. Consult with experienced white-collar counsel to tailor this plan to your company's size, scope, and particular needs.
- **Identify Key Company Personnel.** Form a search warrant response team at each facility. Designate a response team leader. This should be either a senior manager or corporate compliance officer. This leader and other appropriate company officials should be responsible for coordinating a response to a search warrant.
- **Identify Privileged Information.** Privileged documents should be segregated and clearly marked as "privileged" *before* a search warrant is executed to reduce the odds of inadvertent seizure. Prepare and maintain a list of in-house and outside counsel whose communications might fall under attorney-client privilege.
- **Duplicate Records.** Maintain a copy of essential business records at an off-site location. Periodically update this set of records. Agents will seize original business records and the company may not receive copies of seized records during the investigation.

Managing Logistics During a Search Warrant Raid

You should educate your search warrant response team on the following procedures:

- **Call Response Team Leader.** Agents' first contact is often a receptionist or security officer at the entrance to the facility/office. This individual should *politely* (1) advise the agent that they do not have authority to accept legal process on behalf of the company; (2) request permission to contact someone with this authority before the agents continue; and (3) immediately notify the response team leader that agents are on the premises with a search warrant and the response team should assemble immediately.
- **Call Outside Counsel.** The response team leader should immediately contact outside counsel. Contact information for Wiley Rein White Collar Defense & Government Investigations attorneys is listed below. Notify your counsel as soon as agents arrive with a search warrant and speak to the Government only through your counsel.
- **Control Information Flow.** Tell the Government that it is company policy to cooperate with the search and that all questions should be directed to the designated response team leader. Upon arrival, outside counsel should serve as the main liaison with the agents, prosecutors, and issuing court.
- **Negotiate Reasonable Procedures.** Ask the agents to hold off the search for a brief period until outside counsel arrives. If this request is not honored, request that the agents participate in a pre-search telephone conference with outside counsel. If the agents refuse, seek to negotiate some ground rules for the search, including making copies of seized documents, computer data, and crucial business information such as personnel records, payables, receivables, customer lists, sales information, and billing records.

- **Gather Basic Information.** Obtain copies of search warrants (and all attachments), supporting affidavits, and subpoenas. If you are not permitted to review a document, ask why it is not being provided to you. Ask for business cards from all agents on the premises. This is an easy way to record the identity of all agents involved in the search and their respective agencies. Ask questions about the purpose of the search, the nature of the investigation, whether the company is a target, whether any employee is a target, and so on.
- **Review the Search Warrant Carefully.** The search warrant will describe the premises and establish parameters for the authorized search. Confirm the premises description includes your address (in the unlikely event agents have the incorrect address). Identify time limitations for the execution of the search and the specific areas the agents are authorized to enter. The warrant may not necessarily provide the agents access to all parts of the facility. If it does not, then the agents should be confined to only the specified areas. If the agents insist on entering areas not specified in the warrant, then the response team leader should *politely* object. Although this may not prevent entry, it will eliminate the Government's ability to later argue that consent was given to expand the search. Take detailed notes or photographs of the agent's conduct.
- **Protect Privileged Materials.** Generally, search warrants do not authorize the seizure of privileged materials. Alert the agents regarding privileged documents on site. Request that these materials not be reviewed or taken. If they are taken, ask that they be sealed. Be sure to note an objection if the agents fail to comply with these requests.
- **Document Communications and Search Activities.** Ask to accompany the agents to direct them to areas described in the warrant. Take extensive notes regarding places searched, employees questioned, questions asked, statements made, time involved in each part of the search, and so on. Questions about certain items' locations contain valuable information about the Government's sources of information and possible investigative focus. The agents are not required to allow you to accompany them.
- **Utilize IT Personnel.** Search warrants invariably require the production of computer records. If possible, company IT personnel should ensure that the search does not extend beyond permissible areas and should facilitate the imaging of computers and peripherals so that they remain available for the ongoing operations of the business.
- **Manage Employees.** Gather all non-essential employees in a central location separate from the search. Inform them of their rights and obligations, set forth in the attached Employee Advice Checklist. After educating employees, send all non-essential employees home. Otherwise, agents will likely seek to interview key employees during the search. If the agents request to interview employees, respond that you would like to discuss the issue with counsel. If agents proceed with interviews, request that outside counsel be present.
- **Maintain Your Own Inventory.** As agents search the premises, maintain a detailed inventory of the materials seized. List box numbers for crucial documents. Request that a copy be made on the premises of all documents seized.

- **Obtain the Agents' Inventory.** You are entitled to a complete and accurate inventory of all items seized. Ask the agents to confirm that the inventory provided is a complete list of everything seized. Do not sign a receipt for the inventory.
- **Cooperate.** Be courteous, cooperative, and quiet.

Actions to Avoid During a Search Warrant Raid

Do not interfere with the Government's investigation. Specifically, your company and employees:

- **Must Not Interfere with the Search.** Do not do anything that may be interpreted as obstruction. Do not destroy, modify, remove, or conceal records or other materials. Do not intentionally make false statements to any federal agent.
- **Must Not Volunteer Information.** Do not volunteer any information without appropriate company authorization informed by counsel's advice. Your employees do not have a legal obligation to submit to an interview by government agents. Neither the company nor your employees are required to authenticate documents seized or otherwise respond to any questions.
- **Must Not Expand the Scope.** Sometimes, agents may ask for consent to expand the search beyond the scope the search warrant permits. Do not consent to additional searches that the warrant does not authorize without consulting counsel about potential consequences. The company has no obligation to consent to this expansion. It does not have to decide immediately whether to voluntarily produce documents to the Government. The company can always agree to cooperate and voluntarily provide requested documents after the search after consulting with counsel. Often, execution of the search warrant will be accompanied by service of a grand jury subpoena for documents. Counsel can work with the Government to negotiate the scope and timing of any additional productions.
- **Must Not Prohibit Employees from Speaking to Government Agents.** Inform employees of their rights and obligations, including the right not to speak with law enforcement, then send all non-essential employees home.
- **Should Not Consent to Voluntary Interviews Without Counsel.** Request that outside counsel be present during any employee interviews.
- **Must Not Waive Privilege.** Do not communicate about privileged matters in a way that may waive the privilege.

Employee Advice Checklist

1. Agents have a legal right to search the premises and seize evidence designated in the warrant.
2. Employees should not obstruct the search.
3. Employees have no legal obligation to participate in an interview with agents.
4. Anything employees say can be used against them in a criminal prosecution or civil enforcement proceeding regardless of whether agents warn them.
5. Only give truthful, non-misleading answers.

6. If employees grant interviews they have a right to have an attorney present.
7. The company requests employees notify the company's counsel before interviewing so that the company's counsel can be present.
8. If employees are questioned outside the company counsel's presence, employees have a right to tell the company about the substance of their interviews.
9. Company counsel represents the company, not its employees.