


Idaho Department of Correction 	Standard Operating Procedure Office of Professional Standards General Administration	Control Number: 145.01.01.001	Version: 1.0	Page Number: 1 of 8
		Title: Subpoenas: Administrative		Adopted: 7-1-2009 Reviewed: 7-1-2009

This document was approved by James Loucks, chief investigator of the Office of Professional Standards, on 7/1/09 (signature on file).

BOARD OF CORRECTION IDAPA RULE NUMBER

None

POLICY STATEMENT NUMBER 145

Subpoenas

POLICY DOCUMENT NUMBER 145

Subpoenas

DEFINITIONS

Standardized Definitions List

Department: The Idaho Department of Correction.

Director: The director of the Idaho Department of Correction.

Documents: Any writings, charts, records, recordings, electronic records or data, photographs, tangible things, drawings, or diagrams of any type or kind.

Investigation: The process of gathering, obtaining, collecting, compiling, and reporting all evidence surrounding an alleged incident of misconduct.

Investigative File: An Office of Professional Standards (OPS) file containing the Investigative Report and other documents such as interview summaries, witness statements, evidence logs, and supporting documents of an approved investigation.

Office of Professional Standards (OPS): The designated unit under the Director's Office with primary responsibility for conducting investigations of employee misconduct allegations and providing assessment and general investigative services for the Department.

PURPOSE

The purpose of this standard operating procedure (SOP) is to establish standard procedures for requesting, reviewing, processing, issuing, and serving subpoenas and recording relevant information.

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SCOPE

This SOP applies to all department employees and contractors.

RESPONSIBILITY

Office of Professional Standards (OPS) Chief Investigator

The chief investigator (or designee) of the OPS is responsible for overseeing the administrative subpoena process.

Department Investigators and Probation and Parole Officers (PPOs)

Department investigators and PPOs are responsible for practicing the procedures provided herein.

OPS Administrative Assistant

The OPS administrative assistant is responsible for tracking the issuance and compliance with the terms of the administrative subpoena.

Deputy Attorneys General (DAG)

The DAGs who represent the department are responsible for reviewing subpoena requests, preparing subpoenas, and providing legal assistance when the terms of the administrative subpoena have not been complied with.

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GENERAL REQUIREMENTS

1. Subpoena Authority

Pursuant to Idaho Code:

- The director has the authority to require, by way of an administrative subpoena, the production of all documents (as defined herein) that are necessary in the performance of the functions assigned by law; and
- Department investigators, conducting an authorized inquiry or investigation, may request an administrative subpoena be issued for documents.
- Department PPOs, assisting in the apprehension of parolees who have absconded and there is an arrest warrant, may request an administrative subpoena be issued for documents.

Note: Subpoena authority may not be used to obtain records on behalf of another agency, either federal or state.

2. Use of Subpoenas

Note: For the purposes of this SOP only, a subpoena shall be defined as a written legal order issued by the director of the Idaho Department Correction (IDOC) directing a person to produce specified documents.

Subpoenas should be used to obtain documents needed in inquiries and investigations for which the department has responsibility. Where appropriate, and prior to issuing a subpoena, documents should be sought:

- By voluntary production (i.e., the custodian should be asked to produce and voluntarily provide the documents); or
- Pursuant to contractual agreements, grant requirements, or regulatory obligations.

Where access to documents is refused, investigators may advise the custodian that the department has subpoena authority but should not threaten the use of such authority. If voluntary production does not occur or documents are not made available in a timely manner then see section 5.

Conditions for Issuance

- The subpoena must be related to the investigation functions delegated by law or as designated in department policy or SOP.
- The documents sought must be relevant to an approved inquiry or investigation.
- The demand contained in the subpoena must be reasonable and should not be unduly burdensome.

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3. Requesting the Issuance of a Subpoena

When a subpoena is deemed necessary for an investigation, the investigator shall begin the following process.

Note: Be sure to review section 2 and section 8 before beginning this process.

Functional Roles and Responsibilities	Step	Tasks CIS steps are in bold
Investigator or PPO (as applicable)	1	<ul style="list-style-type: none"> Draft a memorandum to submit to the chief investigator that provides the following information: <ul style="list-style-type: none"> The investigation case number (if applicable); A brief description of the investigation or situation regarding the absconder; The name of the agency or business whose records are sought; A description of the documents to be subpoenaed and a brief statement why the specific documents are necessary for the investigation; A description of the efforts made to obtain the documents or the reason the documents can't be obtained through different means; The name and address of the records custodian; and The reason the subpoena is being requested. <p>For example: if a subpoena for telephone records is being requested, the memorandum shall contain the telephone number for which the records are being requested, the complete name and address of the telephone company servicing the number, and the time frame the records should cover.</p>
		<p>Note: Contact information for many businesses associated with investigative records can be found at 'SEARCH', which is an online resource for justice and public safety decision makers. See the reference section for the Internet address/Uniform Resource Locator (URL) to 'SEARCH.'</p>
		<ul style="list-style-type: none"> Forward the memorandum to the chief investigator. (Note: Probation and parole officers [PPOs] must staff with their district manager prior to forwarding memo.)
Chief Investigator	2	<p>Review the memorandum, and if</p> <ul style="list-style-type: none"> <u>Approving</u> – submit it to the deputy attorneys general (DAGs) who represent the department. Also submit a copy to the director (or designee). <u>Disapproving</u> – inform the investigator. (The process ends here.)

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Functional Roles and Responsibilities	Step	Tasks CIS steps are in bold
Deputy Attorneys General (DAG)	3	Review the memorandum for completeness, validity, and legal sufficiency, and if <ul style="list-style-type: none">Recommending Approval – consult with the director (or designee) and if in agreement, draft two (2) duplicate administrative subpoenas, and forward them to the director (or designee) for signature. (Note: Administrative subpoenas will be prepared using a standardized format. See appendix A, <i>Subpoena Duces Tecum</i>, for an example of the standardized format.)Recommending Disapproval – consult with the chief investigator to determine the next course of action. (Note: An agreement may be made to end the process here.)
Director (or designee)	4	Review the administrative subpoena, and if <ul style="list-style-type: none">Approving – sign and return to the chief investigator.Disapproving – consult with the chief investigator and/or the DAG to determine the next course of action. (Note: An agreement may be made to end the process here.)
Chief Investigator	5	Ensure investigator receives the signed administrative subpoena.
Investigator or PPO (as applicable)	6	<ul style="list-style-type: none">Serve the administrative subpoena (see section 4)
		Note: If necessary, coordinate service with the DAGs.
		<ul style="list-style-type: none">Complete appendix B, <i>Affidavit of Service, Subpoena Duces Tecum</i>, (see section 4), attach it to the original copy of the subpoena, and file both in the investigative file.Provide the Office of Professional Standards' (OPS') administrative assistant with information to be recorded on appendix C, <i>Subpoena Register</i>.Await the delivery of the documents requested (see section 5), and when received, notify the OPS' administrative assistant and advise whether or not the subpoenaed documents are useful in furthering the investigation.PPO's only—If the subpoena was sought due to a parolee who absconded, document all pertinent information in the Corrections Integrated System (CIS) as a case update.
Note: For issues of non-compliance, see section 6.		

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Functional Roles and Responsibilities	Step	Tasks CIS steps are in bold
OPS' Administrative Assistant	7	<ul style="list-style-type: none"> Record the information provided by the investigator on appendix C, <i>Subpoena Register</i>. Maintain the <i>Subpoena Register</i> in accordance with standard operating procedure (SOP) 227.01.01.002, <i>Record Keeping: Administrative Investigations</i>.

4. Service of Subpoenas

Normally, the investigator will personally serve the administrative subpoena at the principal place of business or residence of the person being served. A 'duplicate original' (i.e., a second copy with original signatures) shall be left with the business or person being served.

Note: Service shall take place during normal business hours. When appropriate, service may be made via mail, electronic mail (e-mail), fax, or if the business or person being served has a registered agent or legal counsel, the registered agent or legal counsel may be served. (Idaho Rules of Civil Procedure.)

Proof of Service

As proof that the business or person has been served with the administrative subpoena, the investigator shall complete appendix B, *Affidavit of Service, Subpoena Duces Tecum*. The investigator shall then attach the completed affidavit to the original subpoena and file both in the investigative file. A copy of the subpoena and affidavit should be scanned into portable document format (PDF) and saved into OPS' electronic shared file system (see SOP 227.01.01.002, *Record Keeping: Administrative Investigations*).

After successfully executing service on the business or person, the investigator shall notify the OPS' administrative assistant so that the subpoena service may be recorded on appendix C, *Subpoena Register*. (See section 7.)

5. Timeline for the Production of Documents

The business or person service was successfully executed on, should be allowed reasonable time (usually 10 to 30 calendar days) to produce the documents listed in the administrative subpoena. Factors to be considered when determining what is reasonable includes:

- The type and volume of documents requested and
- The possibility of documents being removed or destroyed.

Note: The DAGs will be consulted regarding instances requiring an unusually short return time (e.g., periods less than seven [7] days).

The investigator may, at his discretion, extend the return date (must be in writing) for a limited period of time. All written extensions shall be filed with the original administrative subpoena.

Note: Extensions that involve special circumstances or longer periods of time should be coordinated with the DAGs.

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6. Compliance vs. Non-compliance with Subpoena

Compliance

When the subpoenaed documents are received and the terms of the subpoena appear to have been satisfied, the recipient investigator should notify (in writing) the OPS' administrative assistant attesting to this fact. The administrative assistant will file the written notification in the investigative file and record (on appendix C, *Subpoena Register*) receipt of the documents subpoenaed.

Non-compliance

If the business or person subpoenaed to produce documents does not comply with the administrative subpoena, the investigator will promptly advise the DAGs, via memorandum, describing the relevant circumstances. The DAGs will advise the investigator **and** the director as to whether to compel production of the documents via court action and if so, develop a strategy and procedures to compel compliance.

7. Subpoena Register

The OPS' administrative assistant will maintain a *Subpoena Register* (appendix C). The register will be used to log all subpoenas and relevant information, including the expected date of return. All completed registers will be maintained in accordance with SOP 227.01.01.002, *Record Keeping: Administrative Investigations*.

8. Reimbursement

Generally, subpoenaed businesses or persons are entitled to reimbursement of reasonable costs associated with searching for, assembling, and copying subpoenaed documents. (Idaho Rules of Civil Procedure.)

Financial institutions, as defined in the 12 USC 35, *Right to Financial Privacy Act (RFPA)*, may seek reimbursement for the costs of providing a customer's financial records.

Pursuant to 18 USC 2706, telecommunication carriers are authorized to charge a reasonable fee to cover the costs of searching for and providing information responsive to a subpoena. Some agency subpoenas are an exception from this rule but only to the extent that they seek "records or other information maintained by a common carrier that relate to telephone toll records and telephone listings." Investigators are cautioned that telecommunication carriers may interpret virtually any request that does not use the words "telephone toll records" as being subject to reimbursement. The term "telephone toll records" generally includes records of outgoing long distance calls made from a landline and records of all incoming and outgoing calls made to/from a cellular phone. With respect to landlines specifically, the cost of searching for records of incoming local calls is reimbursable, and the cost of searching for records of incoming long distance calls may also be reimbursable.

Note: Investigators will contact financial institutions and telecommunication carriers prior to initiating a request (see section 3) to ascertain the type of documents available and the associate costs to obtain them, if any. This will help ensure that documents are requested in the most cost-effective manner.

Upon receipt of an invoice for documents provided by any business or person, the investigator will forward the invoice to the chief investigator. The chief investigator will consult with the DAGs to determine if reimbursement is required. When reimbursement is

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approved, invoices will be paid by the respective department division, using appropriate funding codes.

REFERENCES

Appendix A, *Subpoena Duces Tecum*

Appendix B, *Affidavit of Service, Subpoena Duces Tecum*

Appendix C, *Subpoena Register*

Department Policy [145](#), *Subpoenas: Administrative*

Idaho Code, Title 20, Chapter 2, Section 20-209G, *Authority to Investigate and Issue Subpoenas*

Idaho Code, Title 20, Chapter 2, Section 20-228A, *Parole Subpoena to Assist in Apprehending Parole Absconders*

Idaho State Court, *Rules of Civil Procedure (IRCP)*, Sections 4 (c) (1) thru 4 (c) (3), Sections 4 (d) (2) thru 4 (d) (6), Section 4 (e) (2), and Section 4 (g)

Idaho State Court, *Rules of Civil Procedure (IRCP)*, Section 45 (b) (2), Subpoena for Production or Inspection of Documents, Electronically Stored Information or Tangible Things, or Inspection of Premises

Idaho State Court, *Rules of Civil Procedure (IRCP)*, Section 45 (e) (2), Service of Subpoena

United States Code, Title 12, Chapter 35, Section 3401, *Definitions*

United States Code, Title 18, Part I, Chapter 121, Section 2706, *Cost of Reimbursement*

WWW.Search.Org (Specific URL for investigator's use: www.search.org/program/hightech/isp/)

– End of Document –



IDAHO DEPARTMENT OF CORRECTION
Special Investigations Unit
Subpoena Duces Tecum

Note: This document reflects the standard format that will be used when creating the Subpoena Duces Tecum. THIS APPENDIX IS A SAMPLE THAT THE DAGS FOLLOW WHEN DEVELOPING THE SUBPOENA.

Henry Atencio, Director
Idaho Department of Correction
1299 N. Orchard, Suite 110
Boise, ID 83706
Telephone: 208-658-2000
Fax: 208-327-7433

BEFORE THE DIRECTOR OF THE DEPARTMENT OF CORRECTION

STATE OF IDAHO

In the Matter of:)
)
) **SUBPOENADUCES TECUM**
)
) Investigation No.
_____)

The Director of the Department of Correction of the State of Idaho to:

YOU ARE COMMANDED to produce or permit inspection and copying of the following documents or objects, including any writings, charts, records, recordings, electronic records or data, photographs, tangible things, drawings or diagrams or any sort whatsoever, at the place, date and time specified.

DOCUMENTS OR OBJECTS:

PLACE, DATE AND TIME: Please deliver to:

Attention: (Name of Chief Investigator)
Idaho Department of Correction
1299 N. Orchard, Suite 110
Boise, ID 83706

No later than

NOTICE is hereby given that if you fail to produce or permit inspection and copying as specified above, that the Director of the Idaho Department of Correction may petition the district court for an order to show cause compelling production of the requested documents.

Dated this _____ day of _____, 20__

By order of the Director pursuant to Idaho Code §20-209G or §20-228A.

IDAHO DEPARTMENT OF CORRECTION

Henry Atencio
Director



IDAHO DEPARTMENT OF CORRECTION
Special Investigations Unit

**Affidavit of Service
Subpoena Duces Tecum**

Case No.: _____

STATE OF IDAHO)
) ss.
COUNTY OF _____)

_____ being duly sworn upon his oath, deposes and
(name)
say as follows:

That I am over the age of eighteen (18) years and that I am employed by the
Idaho Department of Correction as _____.
(title)

This Subpoena Duces Tecum for _____
(name and title, if any)
was received by me on _____, and a copy was served as follows:
(date)

- ☐ I personally served the subpoena on the individual.
- ☐ I left the subpoena at the individual's residence or usual place of abode with
_____, a person over the age of eighteen (18) years
(name)
and who resides therein.

☐ I served the subpoena on _____, who is an officer,
(name and title, if any)
managing or general agent, or an agent authorized by appointment or by statute to
accept service of process on behalf of _____.
(name of organization)

Address where served: _____

Date and Time of delivery: _____

- ☐ Other
(specify): _____; or
- ☐ I returned the subpoena unexecuted because: _____.

Further your affiant sayeth naught.

DATED this ____ day of _____, 20____.

(name)

SUBSCRIBED AND SWORN TO before me this ____ day of _____,
20____.

NOTARY PUBLIC FOR IDAHO
COMMISSION EXPIRES:_____



Appendix C
145.01.01.001 v1.0
(Appendix last updated 7/1/09)