



What to do when police show up to your front door requesting information about one of your employees

You're minding your own business and then...law enforcement shows up at your business' front door.

What do you do? Before you go clearing out every file back for the last 7 years, take a pause. You don't need to do all that!

We had a conversation (we'll post a hyperlink to the video here) with a trusted colleague who has been practicing in the security industry for more than two decades and is the

***ASIS Regional Vice President for the state of Ohio and High-Risk Security Consultant, Phil Rizzo**, who shared with us valuable insights on how to handle these very intimidating situations with what he refers to as "CPR", courtesy, professionalism, and respect.

Rizzo, the owner and founder of **Rizzo's Protective Group** – a high risk security consultancy mentioned, "As an HR professional, many times you know going in that you are required at the very least to be a 'jack-of-all-trades', and a master of all. In this case, he recommends that you find the law governing your specific state and at least give it a cursory read. In crisis management and risk mitigation, an ounce of prevention is always worth more than a pound of cure. In Ohio, where Rizzo resides and where his Corporate Headquarters are located, in cases involving misdemeanors, a subpoena may be served within 100 miles of the geographical location where the court or magistrate is scheduled to sit and hear the case. In felony cases it may be served at any place within the state (ORC §2937.19)."

Rizzo strongly recommends that you briefly familiarize yourself with the criminal code for your state regarding this area of law or refer directly to your internal Legal Department or external Attorney.

For starters, you will want to obtain the badge number(s), business card(s), and name(s) of the officer(s) who arrive(s) on site. Officers need to be on duty at the time of the request.



Let's define and clarify the difference between a **Subpoena** and an **Arrest Warrant**:



Subpoena and Subpoena duces tecum:

A **subpoena** is an Order that is issued to require the attendance of a witness to testify at a particular time and place. A **subpoena duces tecum** is an Order that requires a witness to bring documents, books, files, or other items under their control so as to produce them to a court of law for official review. It must be clearly specified as to what the

person is expected to bring with them to court.

Law enforcement must physically hand you a subpoena that has been signed by a judge so you can review it, copy it, and place it in your active file regarding this specific issue.

Remember it is crucial in all instances to: Document, document, document your actions and keep in mind that "If you didn't document it....it never happened."

All of your actions are geared towards protecting and insulating the organization from being liable or exposed to legal action(s). Be cognizant and know the difference between what is **non-sensitive personally identifiable information** and **sensitive personally identifiable information** so you will be able to better distinguish as to what law enforcement is specifically asking for.

There can be legal implications and you can inadvertently open the door to liability and exposure for providing employee information without first checking with applicable state laws, making certain that written consent (from the employee) for disclosure of information is not first required by law before disclosing this information to a third party.

Non-Sensitive Personally Identifiable Information (PII):

Any information that permits the identity of an individual to be directly or indirectly inferred, including any other information that is linked or linkable to that individual regardless of whether the individual is a U.S. citizen, legal Permanent Resident or a visitor to the United States (e.g., information that might be contained on a business card, such as an individual's name, position, business address and telephone number).



Sensitive Personally Identifiable Information (SPII):

Any PII, which if lost, compromised or disclosed without authorization could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Some categories of PII, when maintained are sensitive as stand-alone data elements.

Examples of such SPII include: Social Security Numbers, Alien registration numbers or biometric identifiers. Other data elements such as Driver's License numbers, financial account numbers, citizenship or immigration statuses, or medical information, in conjunction with the identity of an individual (directly or indirectly inferred), are also considered SPII. In addition, the context of the PII may determine whether the PII is sensitive (e.g., a list of employee names with poor performance ratings).

It would be sound and best practices if there was one person who is designated to receive and evaluate requests for employee information requested by law enforcement, perhaps Legal Counsel or a member of Senior Management in conjunction with Risk Management. If there is no one else and the responsibility falls in your lap, the information in this article will prove to be helpful as a guide.

When law enforcement has a subpoena, the company will need to comply with the subpoena, or you or your Legal Counsel will need to immediately apply to the court to vacate or modify the subpoena. This is done in very rare occasions, if complying is determined to be not in your organization's best interest.

Always default to your company policies and procedures to serve as a roadmap on how to proceed forward. In crisis management, the best time to prepare for an emergency is before one happens, not during, nor after.

Keep in mind no employer shall discharge or terminate from employment, threaten to discharge or otherwise punish or penalize any employee because of lost time from regular employment as a result of the employee's attendance at any proceeding in a criminal case pursuant to a subpoena. This is codified in the Ohio Revised Code at ORC §2945.45.1. It would be best practice to check your local applicable state laws as well.



Arrest Warrants:



What do they consist of?

How does a police officer obtain one?

A sworn officer of the law must convince a neutral judge that, more likely than not, a crime has been committed and the subject of the warrant was involved. An Arrest Warrant is an official document, signed by a Judge (or Magistrate), which authorizes a police officer to arrest the person or people named in the warrant.

Typically, police need to have a specific person they are looking for, named within the warrant. Probable cause (or reasonable cause) needs to be established as well. If there is probable cause, it's best to comply. Warrants typically identify the crime for which an arrest has been authorized, and may restrict the manner in which an arrest may be made.

The concept of probable cause is a requirement found in the Fourth Amendment that must be met before police make an arrest, conduct a search, or receive a warrant.

Courts usually find probable cause when there is a reasonable basis for believing that a crime may have been committed (for an arrest) or when evidence of the crime is present in the place to be searched (for a search).

For example, a warrant may state that a suspect can be arrested "only between the hours of 6 a.m. and 6 p.m.". If the law enforcement officer doesn't have a warrant, you are not required by law to transact business with them until they provide one to you. As a Business Owner or organization, you don't automatically need to open your front doors. This is still private property, even if it's a public place because it's still the organization's property.

However, there is a concept in the law called "exigent circumstances" under which law enforcement can claim: Exigent circumstances are circumstances that would cause a reasonable person to believe that entry (or other relevant, prompt action) was necessary to prevent physical harm to the officer or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence, improperly frustrating legitimate law enforcement efforts.



Under exigent circumstances, probable cause can also justify a warrantless search or seizure. Persons being arrested without a warrant are required to be brought before a competent authority shortly after the arrest for a prompt judicial determination of probable cause.

So how does this relate to you and how you handle law enforcement showing up at the door?

Always err on the side of being courteous, professional, and respectful and anticipate that if you require or request additional paperwork from law enforcement, they won't be particularly happy with you, but also know that there are rights, rules, and procedures that the U.S. Constitution guarantees every citizen and requires of the police to comply with as well. The U.S. Constitution applies to law enforcement as well.

The police cannot break the law in order to enforce the law. The police are not above the law, although at times it can seem like whatever they say goes. This can be very intimidating to the everyday citizen.

Employers/ALL HR professionals: Remember it's still your house. Police have constraints on the width and breadth of what they can and cannot do. The warrant they come to serve has to specifically spell out "who, what, when, where, and how?".

These are urgent matters to prepare for. Have these conversations with your Legal Counsel today- don't wait.

"Breathe ... I'll say it again because of its importance, breathe...deliberately slow down, focus, and try your best to stay calm", says Rizzo.

We are confident that you will prepare ahead of time and function well if this situation enters your front doors.

*ASIS is an acronym for the American Society for Industrial Security, the largest professional security organization in the world, found online at www.asisonline.org.

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