

LAW WEEK

COLORADO

In-House Search Warrant Checklist

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AT 8:00 A.M. on a Monday morning, government agents stand at the reception desk demanding access to your company's emails, files and proprietary data. With warrant in hand, the agents have a plan to execute. You should too.

In fact, what you have already done to prepare for a dawn raid may be just as important as what you will do next to protect your company. The steps set forth below are intended to prepare in-house counsel for managing the execution of a search warrant.

Preparing for the worst

A raid may result in confusion and concern among your employees. To ensure that chaos does not accompany the agents to your door:

- **Plan:** Regardless of how far-fetched the likelihood of a search warrant seems to your business, you should work with competent criminal counsel to draft or improve a protocol that identifies steps your company will take if faced with a government search.
- **Designate:** It is important to designate an on-site company contact person who should be prepared and authorized to speak on your company's behalf, if necessary.

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- **Train:** Long before the raid, you must train relevant employees about your company's raid protocol. You also should consider circulating to all employees your protocol and informing them about their individual rights and the potential impact of any statement made to a government official.
- **Back up:** Because agents may seize computers and original hard copies during the raid, you should ensure your company backs up essential data, preferably off-site, so that your company



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can operate in the raid's aftermath with minimal disruption.

Upon learning of the raid

The moments after you learn of a search are critical. This is the time to rally resources and begin to develop information that your company will need to respond to the investigation. To mitigate the legal risks and business disruption associated with a search:

- **Contact Counsel:** Immediately

upon learning that the government has executed a search warrant at your business, you should contact outside criminal counsel to help guide you and your organization through the process. Ordinarily, only counsel or the company contact person should interact with the government agents.

- **Delay:** Ask that the agent-in-charge delay the search until criminal counsel arrives (to facilitate a proper and efficient search). Remember that statements you make may be attributed to



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the organization, so listen more than you speak.

- **Communicate:** The company contact person should gather basic, preliminary information about the search's rationale, the agent-in-charge's identity, the agents' names, employing agencies and the investigation's lead prosecutor. Communicate this information to criminal counsel as soon as possible.
- **Obtain and analyze:** Obtain a copy of the search warrant and the accompanying affidavit, if possible, analyze its terms and better understand the scope of the search.
- **Coordinate:** It is critical not only to establish an on-site communications center to organize your company's response to the search, but also to gather your company's compliance, legal and public relations personnel to prepare a public response and determine whether the raid triggers any disclosure obligations.
- **Protect:** Identify and safeguard privileged documents in the office. Also, identify any proprietary or trade secret materials.
- **Inventory:** Request the opportunity to copy all records before they are taken off-site and, in any case, log the items seized to create a record of information in the government's possession.

After the agents leave



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As the onslaught subsides, you must become the investigator. What brought the government to your company's door? What information did the agents gather? How will your company respond? This is the time to:

- **Debrief:** Confer with on-site employees about the search and their discussions with the agents. Employees should not, however, discuss the search with each other because these conversations may not be privileged.
- **Assess:** Your legal team should assess the legality of the search and appropriate remedies for any impropriety, your company's status in the investigation, the government's theory, the information obtained by the government and possible legal exposure.
- **Preserve:** If you believe that your company may be the subject or target of an investigation, you must circulate a document preservation notice.

The steps set forth above should help you control that which can be controlled during a search. Cooperation is critical during the execution of a search warrant, but you must still safeguard your company's rights and minimize the damage to ongoing business operations and legal strategy.

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