RESPONDING TO SEARCH WARRANTS

The phone rings. Grim-faced law enforcement agents are at the front door of your office, factory or place of business. And they have a search warrant.

This scenario is becoming increasingly common. The government is eager to investigate allegations of corporate wrongdoing, either real or imagined. Currently, companies have never been under greater scrutiny. Even businesses that are not knowingly violating any laws need to be prepared for the possibility of a criminal investigation.

Womble Carlyle attorney Claire Rauscher has helped many businesses respond to federal and state investigations. Claire has prepared a practical, real-world checklist of steps that can greatly benefit a corporate leader and the company if served with a search warrant.

WOMBLE CARLYLE’S CHECKLIST

1. Obtain the name and agency of the law enforcement personnel serving the warrant, then immediately call your company’s response team leader.

2. 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, but do not consent to searches beyond those permitted by the warrant. Ask the agents to hold off the search for a brief period until outside counsel arrives. If this is not honored, request that the agent participate in a pre-search telephone conference with outside counsel.

3. If the agents refuse to participate in a conference call, 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.

4. Obtain copies of search warrants (and all attachments), subpoenas and business cards from all the agents on the premises. Asking for business cards is an easy way to record the identity of every agent involved in the search and the agency he/she is employed by.

5. Read the search warrant very carefully. It should be signed by a federal judge, magistrate or a state judge for the judicial district in which the premises to be searched is located. Make a note of who issued it.

6. Review the warrant to identify the 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 those areas that are specified. If the agents insist on entering areas not specified in the warrant, then the response team leader should object. Although this may not prevent entry, it will eliminate the government’s ability to argue at a later time that consent was given to an expansion of the search.

7. Alert the agents regarding privileged documents and files 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.
8. Ask to accompany the agents to direct them to areas described in the warrant. While doing this, monitor the execution of the warrant. Request to video and/or audio tape the execution of the warrant. Take extensive notes regarding places searched, employees questioned, statements made, time involved in each part of the search, and so on. The agents are not required to allow you to accompany them.

9. Computer records are invariably required to be produced pursuant to a search warrant. Be certain that experienced IT personnel are available to work under the direction of counsel to assist in the review of computers. 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.

10. Gather all non-essential employees in a central location separate from the search. Explain to them that they have a right not to be interviewed without an attorney. Then, send all non-essential employees home.

11. Ask for a copy of the affidavit that supports the warrant. If you are not permitted to review the affidavit, ask why the affidavit is not being provided to you (is it under seal?).

12. 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.

13. Maintain your own inventory of the documents seized. List box numbers for crucial documents. Request that a copy be made on the premises of all documents seized.

14. Before the agents leave the site with any seized documents, obtain a detailed inventory of all items to be taken. Ask the agents to confirm that the inventory is a complete list of everything seized. Do not sign a receipt for the inventory.

15. If the agents request to interview you, respond that you would like to discuss the issue with counsel. Do not volunteer information to the investigators. You do not have a legal obligation to submit to an interview by government agents. You are not required to authenticate documents seized or otherwise respond to any questions except as to the location of documents described in the warrant. Keep in mind that you will not be able to talk the agents out of performing the search or thinking that you have done something wrong. They already think this because they have the search warrant, and talking to the agents (other than as to the location of property) may only make things worse.

16. Do not do anything that may be interpreted as obstruction. Be courteous, cooperative, and quiet.

17. After the search is complete, summarize the search in a memorandum to counsel.