

# What To Do When You Are Served With a Subpoena

## Digital Media and Data Privacy Law Blog

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A sheriff's deputy has arrived in your newsroom, with what you now are sure is a subpoena. In fact, let's be more specific.

You spent six months investigating an in-depth enterprise piece on the influx of undocumented workers in a neighboring county. Your story follows one particular worker, whose identity you do not reveal, as he navigates his way through life, a life which includes using a false Social Security number and driving with no insurance.

Two weeks after the story appears, a deputy from that county's Sheriff's Department shows up at with a subpoena in hand that commands you to disclose the name and contact information of the worker in the story to local law enforcement and the district attorney.

What should you do?

First, don't panic and don't say anything substantive to the deputy.

Second, talk to your news director, editor, or publisher, who will undoubtedly contact the station's or the paper's attorney. It is important to take this step immediately, because in many states you must make any objections to the subpoena within a short period of time after being served with it. In North Carolina, for example, if you want to object to the subpoena, you must do so in writing within ten days. You may also within that same time period file a motion in court seeking an order declaring the subpoena to be invalid or without effect, which is called "quashing" the subpoena.

Third, gather and secure whatever evidence you have been asked to produce. It is important to preserve any documents or other materials that might be responsive to the subpoena. Destroying responsive information, even as part of the ordinary course of business, can subject the station or newspaper to sanctions by a court. Thus, even if the decision is made to fight the subpoena, a court may still in the end require you disclose some or all of the material called for by the subpoena. You need to ensure that it is not erased or discarded in the meantime.

Fourth, clam up. There is nothing to be gained from talking to your colleagues, neighbors, or friends about the subpoena. There are cautionary tales in this regard. It is especially important that you not disclose the sought-after information to anyone else, as they may find themselves served with a subpoena as well.

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Of course, this same scenario could also result in someone from a federal agency serving your newsroom with a subpoena. For the most part, the steps you take are the same. One significant difference is that your response to the subpoena will be governed by federal, not state, rules of procedure. For example, under federal law you have fourteen days to object to or move to quash a subpoena.

Under both federal and state rules of civil procedure, you may have a range of bases for objecting to a subpoena. The first is that complying with the subpoena would impose “undue burden or expense.” So, for example, if the subpoena would require you to search and then copy hundreds and hundreds of hours of videotapes, a court may agree that the subpoena is too broad. Most likely, however, the court would simply order the person seeking the information to narrow the request. Similarly, if the subpoena does not give you enough time to comply, asks for information protected by a legally recognized privilege, or was procedurally defective, the subpoena may be narrowed or quashed.

None of these objections constitutes a permanent “get-out-of-subpoena-free card.” To avoid testifying completely or disclosing any information, you have two options. The first, in state court, is to invoke the protection of a reporter's shield law--if your state has one--that creates for reporters a legally recognized privilege against testifying or disclosing source materials. The second, available both in state and federal court, is far harder to make and relies on arguing for protection under the First Amendment to the U.S. Constitution. We discussed the limitations on this approach in a prior post.