

§ 105-60.603 Acceptance of service of a subpoena duces tecum or other legal demand on behalf of the General Services Administration.

(a) The Administrator of General Services Administration and the following officials are the only GSA personnel authorized to accept service of a subpoena or other legal demand on behalf of GSA: The GSA General Counsel and Associate General Counsel(s) and, with respect to material or information that is the responsibility of a regional office, the Regional Administrator and the Regional Counsel. The Inspector General and Counsel to the Inspector General, as well as the Chairman and Vice Chairman of the Board of Contract Appeals, are authorized to accept service for material or information which is the responsibility of their respective organizations.

(b) A present or former GSA employee not authorized to accept service of a subpoena or other demand for material, information or testimony obtained in an official capacity shall respectfully inform the process server that he or she is not authorized to accept service on behalf of GSA and refer the process server to an appropriate official listed in paragraph (a) of this section.

(c) A Regional Administrator or Regional Counsel shall notify the General Counsel of a demand that may raise policy concerns or affect multiple regions.

§ 105-60.604 Production or disclosure prohibited unless approved by the Appropriate Authority.

No current or former GSA employee shall, in response to a demand, produce any material or disclose, through testimony or other means, any information covered by this subpart, without prior approval of the Appropriate Authority.

§ 105-60.605 Procedure in the event of a demand for production or disclosure.

(a) Whenever service of demand is attempted in person or via mail upon a current or former GSA employee for the production of material or the disclosure of information covered by this subpart, the employee or former employee shall immediately notify the

Appropriate Authority through his or her supervisor or his or her former service, staff, or regional office. The supervisor shall notify the Appropriate Authority. For current or former employees of the Office of Inspector General located in regional offices, Counsel to the Inspector General shall be notified through the immediate supervisor or former employing field office.

(b) The Appropriate Authority shall require that the party seeking material or testimony provide the Appropriate Authority with an affidavit, declaration, statement, and/or a plan as described in paragraphs (c)(1), (2) and (3) of this section if not included with or described in the demand. The Appropriate Authority may in his or her discretion waive this requirement for a demand arising out of proceedings to which GSA or the United States is a party and in proceedings in which the United States or GSA is not a party but has an interest such as so-called Qui Tam proceedings, or where the Appropriate Authority has independent knowledge of facts relevant to the matter upon which an informed determination can be made. Any waiver will be coordinated with the United States Department of Justice (DOJ) in proceedings in which GSA, its current or former employees, or the United States are represented by DOJ.

(c)(1) *Oral testimony.* If oral testimony is sought by a demand, the Appropriate Authority shall require the party seeking the testimony or the party's attorney to provide, by affidavit or other statement, a detailed summary of the testimony sought and its relevance to the proceedings. Any authorization for the testimony of a current or former GSA employee shall be limited to the scope of the demand as summarized in such statement or affidavit.

(2) *Production of material.* When information other than oral testimony is sought by a demand, the Appropriate Authority shall require the party seeking production or the party's attorney to provide a detailed summary, by affidavit or other statement, of the information sought and its relevance to the proceeding.

(3) The Appropriate Authority may require a plan or other information from the party seeking testimony or

production of material of all demands reasonably foreseeable, including, but not limited to, names of all current and former GSA and employees from whom testimony or production is or will likely be sought, areas of inquiry, for current employees the length of time away from duty anticipated, and identification of documents to be used in each deposition or other testimony, where appropriate.

(d) The Appropriate Authority will notify the current or former employee, the appropriate supervisor, and such other persons as circumstances may warrant, whether disclosure or production is authorized, and of any conditions or limitations to disclosure or production.

(e) Factors to be considered by the Appropriate Authority in responding to demands:

(1) Whether disclosure or production is appropriate under rules of procedure governing the proceeding out of which the demand arose;

(2) The relevance of the testimony or documents to the proceedings;

(3) The impact of the relevant substantive law concerning applicable privileges recognized by statute, common law; judicial interpretation or similar authority;

(4) The information provided by the issuer of the demand in response to requests by the Appropriate Authority pursuant to paragraphs (b) and (c) of this section;

(5) The steps taken by the issuer of the demand to minimize the burden of disclosure or production on GSA, including but not limited to willingness to accept authenticated copies of material in lieu of personal appearance by GSA employees;

(6) The impact on pending or potential litigation involving GSA or the United States as a party;

(7) In consultation with the head of the GSA organizational component affected, the burden to GSA that disclosure or production would entail; and

(8) Any additional factors unique to a particular demand or proceeding.

(f) Examples of situations in which authority for production will likely be denied by the Appropriate Authority are those in which production would:

(1) Violate a statute or a specific regulation;

(2) Reveal classified information, unless appropriately declassified by the originating agency;

(3) Reveal a confidential source or informant, unless the investigative agency and the source or informant consent;

(4) Reveal records or information compiled for law enforcement purposes that would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would be impaired;

(5) Reveal trade secrets or commercial or financial information that is privileged or confidential without prior consultation with the person from whom it was obtained; or

(6) Be contrary to a recognized privilege.

(g) The Appropriate Authority's determination, including any reasons for denial or limitations on disclosure or production, shall be made as expeditiously as possible and shall be communicated in writing to the issuer of the demand and appropriate current or former GSA employee(s). In proceedings in which GSA, its current or former employees, or the United States are represented by DOJ the determination shall be coordinated with DOJ, which may respond to the issuer of the subpoenas or demand in lieu of the Appropriate Authority.

§ 105-60.606 Procedure where response to demand is required prior to receiving instructions.

(a) If a response to a demand is required before the Appropriate Authority's decision is issued, a GSA attorney designated by the Appropriate Authority for the purpose shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the judicial or other authority with a copy of the instructions contained in this subpart. The attorney shall inform the court or other authority that the demand has been or is being referred for the prompt consideration by the Appropriate Authority. The attorney shall respectfully request the judicial or administrative authority to stay the demand pending receipt of the requested instructions.