

Administrative Subpoena Authority Held By Inspectors General of the Various Agencies

In order to fulfill their investigative responsibilities, Inspectors General are authorized to exercise certain administrative subpoena authority. 5 U.S.C. app. 3 §6(a)(4).

1. Description of the Source of Inspector General Administrative Subpoena Power and the Scope of Such Subpoena Authority.

Federal courts have generally stated that Inspectors General hold broad investigative authority⁹⁰ to carry out their responsibilities of promoting efficiency and preventing fraud, waste, abuse, and mismanagement in federal government programs. *See* Inspector General Act of 1978, § 1, 5 U.S.C. app. 3. Inspectors General are authorized to exercise administrative subpoena authority to obtain information required for administrative, civil and criminal investigation.⁹¹ *See* 5 U.S.C.A. app. 3 § 6.⁹² The Inspector General Act authorizes coordination between the Inspector General and other agencies. *See* 5 U.S.C. app. 3 §4(a)(4)(A), (B). An Inspector General is required by statute to report to the Attorney General any discovery of grounds to believe that a violation of federal law has occurred. 5 U.S.C. app. 3 § 4(d). Inspector General administrative subpoena authority has been upheld by federal courts even in situations where the Inspector General is cooperating with divisions of the Justice Department exercising criminal prosecutorial authority where there are reasonable grounds to believe a violation of federal criminal law has occurred.⁹³ Federal courts have also held that an Inspector General is authorized to continue using civil subpoena authority for civil and administrative investigative purposes even where he or she has referred a case to the Department of Justice for prosecution.⁹⁴

The Inspector General Act of 1978 authorizes “each Inspector General” to “require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by [the Act].” 5 U.S.C. app. 3 §6(a)(4). The Inspector General Act solely authorizes subpoena *duces tecum*, or documentary requests. In addition, the statute requires that “procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies.” 5 U.S.C. app. 3 §6(a)(4).

*2. Description of Applicable Subpoena Enforcement Mechanisms for Subpoenas under the Inspector General Act.*⁹⁵

Inspectors General may seek the enforcement of a subpoena “by order of any appropriate United States district court.” 5 U.S.C. app. 3 §6(a)(4). Inspector General subpoena enforcement proceedings are prosecuted by the Department of Justice, at the request of the relevant Inspector General, as part of the Department’s responsibility to conduct litigation in which the U.S. is interested. *See* 28 U.S.C. §§516-19. The Inspector General Act does not provide any specific sanctions for failure to comply with an Inspector General’s subpoena, so federal district courts are free to exercise discretion in applying general contempt sanctions for noncompliance with a court order enforcing an Inspector General subpoena. Federal courts have enforced Inspector General administrative subpoenas where 1) the subpoena is within the statutory authority of the agency; 2) the information sought is reasonably relevant to the inquiry;⁹⁶ and 3) the demand is not unreasonably broad or burdensome.⁹⁷ In addition, federal courts have held that an Inspector

General administrative subpoena is unenforceable if it is issued in “bad faith”⁹⁸ or if the petition for enforcement constitutes an abuse of the court’s process.

3. Description of Any Notification Provisions and Any Other Provisions Relating to Safeguarding Privacy Interests.

The Inspector General Act contains no internal privacy protections directed specifically at the subpoena authority provided in the Act. The Inspector General Act itself, however, does forbid an Inspector General to disclose an employee’s identity “after receipt of a complaint or information from an employee” except in circumstances where the “Inspector General determines such disclosure is unavoidable during the course of the investigation.” 5 U.S.C. app. 3 §7(b).⁹⁹

Inspector General subpoena authority is also subject to the same general statutory privacy-protective requirements applicable to other agency subpoena authorities. These privacy-protective statutes are listed and described *supra* in section II.A.3, which discusses agency subpoena authorities other than the authority provided under the Inspector General Act. Agency guidelines implementing these privacy-protective statutes are generally applicable to the Inspector General subpoena authority as well as other subpoena authorities exercised by an agency.¹⁰⁰ The Right to Financial Privacy Act of 1978 (RFPA), for instance, subjects an agency to certain notification requirements when issuing a subpoena subject to the RFPA. 12 U.S.C. §§ 3405.¹⁰¹ RFPA also limits an agency’s subpoena authority, including the authority held by Inspectors General, by allowing a government authority to access financial records only in situations where there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry.¹⁰² Individual agencies have promulgated Inspector General policies specifically to comply with the requirements of the RFPA¹⁰³ and other privacy-protective statutes.

4. Description of the Standards Governing the Issuance of Administrative Subpoenas.

Federal courts have held that the enforceability of an Inspector General administrative subpoena authority is subject to many of the limitations imposed on other administrative subpoena authorities, including the requirements that such a subpoena: (1) be issued for a lawful purpose within the statutory authority of the Inspector General Act, (2) be reasonably relevant to that purpose, and (3) not be unduly burdensome.¹⁰⁴ Inspectors General must carefully comply with these requirements in order to ensure that a subpoena will be enforceable by a federal district court. In addition to these generally applicable requirements, the Offices of Inspector General in specific agencies have established and published specific intra-agency policies governing requests for and issuance of Inspector General administrative subpoenas.¹⁰⁵

[Excerpted from U.S. Department of Justice, Office of Legal Policy, Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities, Pursuant to P.L. 106-544, Section 7]