

Warrants

A warrant is a serious matter. Typically, a warrant will only be sought after approval at senior levels within a regulator and may only be issued by a Magistrate or Justice of the Peace after considering the evidence relating to the commission of an alleged offence.

A regulator acting upon a warrant will do so without notice and is a very clear signal that the regulator is concerned about a serious matter.

A notice that is part of (or accompanies) the warrant will set out the documents and equipment that are the subject of the search and will identify the offence that the regulator believes may have occurred. The warrant may allow for interviews with company officers and staff.

Those that attend your premises with a warrant will have a depth of experience in doing the job. You can expect them to be efficient, well briefed and accompanied by their own IT. Police may be in attendance. They will invade computers, sift through documents – both physical and digital, interview staff and put material into containers for removal.

In general terms, a corporation needs to do its best to comply with the warrant, however, there are legal grounds to challenge what they do. This is why your first step should be to call an external lawyer who has experience in the area.

WARRANT RESPONSE CHECKLIST - A STEP-BY-STEP GUIDELINE TO FOLLOW IF RESPONDING TO A WARRANT

UPON ARRIVAL OF OFFICERS

| | | |
|-------------------------|--|--|
| Reception | Call management and in-house counsel (or emergency contact, eg external counsel). | Ask officers to wait in reception area. |
| Management | Call in-house counsel (if no in-house counsel available, call external counsel). | Ask officers to wait for counsel (but don't refuse entry). |
| In-house counsel | <p>Verify identifications and obtain business cards of all officers.</p> <p>Call external counsel.</p> <p>Seek to delay execution of warrant until arrival of external counsel.</p> <p>Review the search warrant carefully.</p> <p>Obtain external advice regarding validity (eg correct entity, outline of offence, satisfaction of prerequisites), scope and possible court challenge.</p> | <p>Organise in-house Response Team and allocate responsibilities including a key contact to deal with the regulator.</p> <p>Contact other senior management/ company premises, if necessary.</p> |

DURING INSPECTION

| | | |
|--|---|---|
| Management In-house counsel | <p>Ensure that officers are never left alone and instruct all employees not to discuss the investigation beyond relevant personnel within the organisation.</p> <p>Provide reasonable assistance to the officers.</p> | <p>Do not destroy any documents or delete any electronic data.</p> <p>Do not obstruct the inspection, eg refusing access to documents or electronic equipment or hiding things.</p> |
| Response Team | <p>Officers request access to documents</p> <p>Ensure that officers do not gain access to legally privileged documents or seize documents which are outside the scope of the search warrant.</p> <p>If dispute over privilege, agree with officers to follow the Guidelines for Privilege Claims (see following page).</p> <p>Take copies of all documents seized, copied or seen by officers.</p> <p>Keep note of any objection to the officers seizing documents outside the scope of the search warrant.</p> <p>Officers ask questions about documents</p> <p>Ensure that counsel is present.</p> <p>Respond only to questions about documents.</p> <p>Do not volunteer information, speculate or give opinions.</p> <p>Keep notes of questions asked and answers given.</p> <p>If necessary, record dialogue, advising participants of recording.</p> | <p>Officers request on the spot interview</p> <p>Limit assistance to questions about access to material under warrant.</p> <p>Respond to questions only in the presence of counsel, preferably by subsequent appointment.</p> <p>Keep notes of questions asked and answers given.</p> <p>If necessary, record dialogue, advising participants of recording.</p> <p>Officers request to search computers, download and print electronic files</p> <p>Ensure that counsel is present.</p> <p>Assist officers – do not obstruct.</p> <p>Call in-house IT department to assist, if necessary.</p> <p>Ensure that extra copies are retained for record.</p> <p>Keep note of all items seized (USB keys, tablets, laptops, mobile phones, hard drives, DVDs, etc).</p> <p>Make general privilege claim for electronic material.</p> |

AT CONCLUSION OF INSPECTION

| | | |
|--|--|--|
| Response Team | <p>Ensure you have a detailed inventory of everything seized and minutes of the inspection (persons questioned, offices visited, questions asked and answers given, etc).</p> <p>Ask the officer to sign the inventory.</p> | <p>Claim confidentiality over all documents seized</p> <p>If any locations of evidentiary interest have been sealed, instruct employees not to break the seal under any circumstances.</p> |
| In-house counsel External counsel | <p>Review documents copied and information provided and rectify any incorrect information given.</p> <p>Determine whether to challenge the warrant or conduct of the search including urgent consideration of any court application.</p> | <p>Commence an internal investigation into the alleged contraventions.</p> |