

DCTC Policy 4.35 Guide to Releasing Not Public Information in Response to Search Warrants, Subpoenas/Court Orders and Other Requests

Part 1. Policy Statement.

The following are general guidelines for responding to an official demand for information. Name, title and phone no. of employee has been designated at: DCTC to coordinate responses. Consultation with AGO or Minnesota State OGC (651) 282-5519 is always available and may be advisable prior to responding. In general, the same standards apply to the release of not public data in any format, including electronic.

The AGO or OGC should always be consulted if presented with an order to assist with a wiretap, internet surveillance, pen register or trap and trace device.

Search Warrants – signed by judicial officer, directs specific law enforcement entity to search specified premises, for described information; typically without notice. Usually executed immediately with no right to challenge.

Steps to take:

- Designate one individual to coordinate on site response, if possible;
- Review ID of law enforcement official in charge of executing;
- Ask for copy of warrant and read carefully;
- Call AGO or OGC to inform (but prior consultation not required);
- Monitor search and take notes but do not interfere;
- Obtain detailed receipt for all evidence seized taken;
- Ask to copy any documents seized;
- Don't disclose not public information not included in search warrant;
- Direct any inquiries (e.g., press) to designated campus spokesperson.

Subpoena duces tecum – an order directing the production of documents; may be issued by a court, government agency, grand jury, or an attorney for a party in a legal proceeding. Usually issued with advance notice to allow opportunity to object.

A. Steps to take: If subpoena includes private educational data and issuing authority does not want student to have prior notice:

- Refer to campus designee;
- Inform designee exactly when subpoena was received, by whom, and how (e.g., by mail, fax, personal delivery, and if so, by whom);
- Designee may consult AGO or OGC to determine:
 - Whether jurisdictional (especially important if issued by authority outside Minnesota);
 - Properly served (usually requires personal service on school or AGO);

- Meets standard for appropriate purpose:

federal grand jury subpoena must be accompanied by court order under 20 USC 1232g(b)(J)(i) stating that for good cause shown the existence or contents of the subpoena or any information furnished in response to the subpoena shall not be disclosed to the student; for *law enforcement purposes*, subpoena must state on its face or be accompanied by court order under 20 USC 1232g(b)(J)(ii) stating that for good cause shown the existence or contents of the subpoena or any information furnished in response to the subpoena shall not be disclosed to the student;

- May begin to assemble subpoenaed documents as soon as request received, but do not comply until designee approves; non-disclosure to student requests not honored unless subpoena is for one of the above purposes and includes the cited language;
 - Check documents and redact not public data that is not covered by the subpoena (e.g., data on other students or employees);
 - No notice to student, and no records of response need be kept.
- B. Steps to take if subpoena is for *private educational data* for a purpose *other than* federal grand jury or law enforcement (e.g., a private legal matter), or is for *other not public data*:
- Refer to designee to determine validity of jurisdiction and service (especially if issued by authority outside Minnesota);
 - Determine notice requirements:
 - Generally, do not honor request to not notify student unless subpoena is for federal grand jury or for law enforcement purposes (see above; if requester insists, consult with AGO/OGC to obtain court order);
 - Notify student (ideally, 10-14 days prior to disclosure) of intent to comply;
 - Inform issuing party of student's notice;
 - If student challenges subpoena, wait for judicial determination before complying;
 - Notice to subjects other than student optional
 - Copy requested documents; redact out not public data not covered by order (e.g., private information about another employee or student);
 - Maintain copy of documents provided for student's file;
 - Maintain copy of other documents provided as required by retention policy.

Orders issued under USA PATRIOT ACT – order signed by judge *ex parte* (without notice to subject); to authorize release of education records must be issued under 20 USC 1232g(j), and certify there are specific and articulable facts giving reason to believe the education records contain information relevant to investigation or prosecution of an offense under 18 USC 2332b(g)(5)(B) or 2331 (terrorism-related). No subpoena required; fax plus mailed copy generally sufficient service.

Steps to Take:

- Contact campus response designee;
- Designee contacts AGO/OGC to determine validity;
- No notice to subject generally required;

- Copy requested documents, redacting out non-public data not ordered disclosed;
- Generally not required to maintain copies of documents produced but clarify with AGO/OGC).

Health or Safety Emergency – In general, private student or personnel data may be disclosed if conduct poses imminent threat of harm to subject or others – *strictly construed*. Observations or personal knowledge not recorded as government data may be disclosed at discretion of school official.

New laws allow voluntary disclosure to law enforcement about a *suspected electronic network trespasser*, i.e., an individual using or attempting to access a network *without authority*. This disclosure should be strictly limited as there is *no express immunity* for mistaken disclosures under this provision.

Steps to take:

- Gather facts to objectively assess situation;
- Consider seriousness of threat to health or safety, need for information to deal with situation, need for immediate action, identity of those who need/are in position to use information to act;
- Consult with AGO/OGC, or other professionals if appropriate and feasible;
- If emergency exists, limit disclosure to what is required to meet emergency;
- Disclosure of *education records* permitted to “appropriate parties;”
- Disclosure of *personnel data* permitted to: a person who may be harmed and his/her attorney relevant to obtaining restraining order (who may use or release only to extent necessary to protect person from harm); prepetition screening team pursuant to Minn. Stat 253B.07, subd. 1; or to a court, law enforcement agency, or prosecuting authority;
- Limit disclosure to time to actual emergency;
- Maintain copy of records disclosed – mandatory for education records; follow policy for other records.

Responding to Requests Without Accompanying Subpoena In limited circumstances, certain government agencies are authorized by law to obtain specific not public information without a subpoena or judicial order; examples include: information about students to military recruiters, information on employees to state child support enforcement officials, and information on F, J, or M student visa holders to the BCIS (f.k.a. INS). When confronted by such a request, it is important to ensure that the disclosure does not exceed what the law specifically authorizes.

Steps to take:

- Refer to appropriate campus resource (e.g., Registrar for military recruiters or International Student Advisor for BCIS inquiries);
- If requester appears in person seeking immediate compliance, ask for ID and copy of request;

- Request issuing agency to cite specific law authorizing disclosure of not public data, if not provided;
- Ascertain that any data disclosed is specifically authorized by law – review elements and context (e.g., law authorizing disclosure of data on employees does not authorize disclosure of private educational data); if unclear, refer to campus Data Practices Compliance Official, AGO or OGC;
- Inform requesting agency that a subpoena must be obtained to disclose not public data that is not specifically authorized by law

Part 2. Definitions. (if any, otherwise remove this section)

At end:

Related Documents:

- DCTC Procedure <# - Name>
- State & Minnesota State Policies and Procedures
- Federal & State Laws and Regulations
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Responsible Administrator: <Administrator's Title>

Policy History:

Date of Adoption:

Last Revision Date: 05/30/2017

Date most recent policy revisions go into effect: 05/30/2017

Date and Subject of Revisions:

05/30/2017 - Updated title and history. Changed MNSCU reference to Minnesota State