

DoD IG Subpoenas in Support of Non-Fraud Related Investigations

DOD NEXUS

Is there sufficient DoD nexus to the crime at issue to warrant the DoD IG's involvement in the investigation? Criteria: The Defense Criminal Investigation Organization (DCIO) submitting the request has investigative authority¹ for the crime(s) under investigation and, if the investigation is being conducted jointly with another law enforcement organization, the DCIO has also been designated as the "lead investigative organization" for that joint investigation.²

All requests for subpoenas in General Crimes cases will be reviewed for legal sufficiency, DoD nexus, materiality and the investigation's factual relationship to the programs or operations of the DoD IG.

DoD IG authority to issue subpoenas is specified in the IG Act and limited to investigations related to DoD programs and operations. Therefore, each subpoena request must articulate a relationship between the investigation and a DoD program or operation. In addition, each subpoena request must demonstrate that the documents or other information sought will lead to evidence that is reasonably likely to materially affect the outcome of the investigation.

An IG subpoena cannot be issued when the documents and information sought are in the possession of any Department or Agency of the U.S. government, and should not be requested where the documents and information is attainable through other means, such as a trial counsel subpoena under Article 46, UCMJ (10 USC 846).

¹ For the purpose of this memorandum, the phrase "has investigative authority" means the DCIO has the legal authority to conduct the investigation in question pursuant to its own regulations and investigative authority has not been specifically reserved to another agency or entity.

² For example, if a DCIO is supporting local police in an investigation wherein a Service member's car was allegedly stolen from his off-base residence, we would not issue a subpoena for records of the auto dealership where the car was purchased, but would defer to the local police as the "lead" investigative agency.

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PARTICULAR CRIMES

Is the particular crime at issue of such a nature and/or of such concern to DoD as to warrant the DoD IG's involvement in the investigation? Criteria: At least one of the crimes under investigation is an offense listed below.

| Offense | Citation |
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| Murder | 18 U.S.C. § 1111, UCMJ Article 118 |
| Attempts to Commit Murder or Manslaughter | 18 U.S.C. § 1113, UCMJ Article 80 |
| Manslaughter | 18 U.S.C. § 1112, UCMJ Article 119 |
| Negligent Homicide | UCMJ Article 134 |
| Kidnapping | 18 U.S.C. § 1201, § 875; UCMJ Articles 133, 134 (Kidnapping) |
| Peonage, Slavery and Trafficking in Persons | 18 U.S.C. Chapter 77, UCMJ Articles 133, 134 |
| Robbery | 18 U.S.C. § 2111, ³ UCMJ Article 119 |
| Bomb Threat or Hoax | 18 U.S.C. § 875; UCMJ Article 134 |
| Arson or Aggravated Arson | 18 U.S.C. § 81; UCMJ Article 126 |
| Unlawful Acts Involving a Firearm | 18 U.S.C. Chapter 44 |
| Maiming | 18 U.S.C. 114, UCMJ Article 124 |
| Riot | 18 U.S.C. 2101, UCMJ Article 116 |
| Assault with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking | 18 U.S.C. Chapter 7, UCMJ Articles 134 |
| Assault in which grievous bodily harm is intentionally inflicted | 18 U.S.C. Chapter 7, UCMJ Articles 128 |
| Firearm, discharging---willfully, under such circumstances as to endanger human life | UCMJ Articles 134 |
| Sexual assault, Abuse, or Exploitation | 18 U.S.C. Chapters 109A and 110, UCMJ Articles 120, 125, and 134 (Indecent Acts or liberties with a Child) |
| Terrorism | 18 U.S.C. Chapter 113B |
| Drugs – Unlawful manufacture of, importation of, or trafficking in, a controlled substance | 18 U.S.C. § 841 – 843, Chapter 7, UCMJ Articles 112 ⁴ |
| Attempts or conspiracy of the above offenses | 18 U.S.C. Chpt. 19, § 371 et seq. UCMJ Article 81 |

³ Only includes offenses where a firearm (as defined in the Commentary, Applicable Notes 1(e) to §1B1.1 of the Federal Sentencing Guidelines (18 U.S.C. Appendix §1B1.1) was used in the commission of the crime. Restrictions apply to both Title 18 and UCMJ offenses.

⁴ Only if the quantity of the controlled substance/drug (defined as a substance identified as a controlled substance in §2D1.1 of the Federal Sentencing Guidelines (18 U.S.C. Appendix §2D1.1) involved is, or is reasonably suspected to be, equal to or in excess of the drug quantity specified for Base Offense Level 16 or the Drug Quantity Table found at §2D1.1 f the Federal Sentencing Guidelines (18 U.S.C. Appendix §2D1.1c)). Restrictions apply to both Title 18 and UCMJ offenses.