

- 2004.26 Restrictions that apply to testimony.
 2004.27 Restrictions that apply to released records.
 2004.28 Procedure in the event of an adverse ruling.
 2004.29 Fees.

Authority: Inspector General Act of 1978, as amended (5 U.S.C. app.) and 42 U.S.C. 3535(d).

Subpart A—General Requirements

§ 2004.1 Scope and purpose.

(a) This part sets forth the policy for service of a subpoena issued by the Office of Inspector General (OIG), and policies and procedures that you must follow when you submit a demand or request to an employee of the OIG to produce official records and information, or provide testimony relating to official information, in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of official records and information.

(b) The OIG intends these provisions to:

- (1) Promote economy and efficiency in its programs and operations;
 - (2) Minimize the possibility of involving OIG in controversial issues not related to OIG's functions;
 - (3) Maintain OIG's impartiality among private litigants where OIG is not a named party; and
 - (4) Protect sensitive, confidential information and the deliberative processes of OIG.
- (c) In providing for these requirements, OIG does not waive the sovereign immunity of the United States.
- (d) This part provides guidance for the internal operations of OIG. This part does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 2004.2 Applicability.

This subpart applies to demands and requests to employees for factual or expert testimony relating to official information, or for production of official records or information, in legal proceedings in which HUD or OIG is not a named party. However, this subpart does not apply to:

- (a) Demands upon or requests for an OIG employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of OIG;
- (b) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; and

(c) Congressional demands and Congressional requests for testimony or records.

§ 2004.3 Definitions.

Counsel means the Counsel to the Inspector General.

Demand means a subpoena, or an order or other command of a court or other competent authority, for the production, disclosure, or release of records or for the appearance and testimony of an OIG employee that is issued in a legal proceeding.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

OIG means the Office of Inspector General, U.S. Department of Housing and Urban Development.

OIG employee or employee means:

- (1) Any current or former officer or employee of OIG;
- (2) Any other individual hired through contractual agreement by or on behalf of OIG or who has performed or is performing services under such an agreement for OIG; and
- (3) Any individual who served or is serving in any consulting or advisory capacity to OIG, whether formal or informal.

Records or official records or information means:

- (1) All documents and materials that are OIG agency records under the Freedom of Information Act, 5 U.S.C. 552;
- (2) All other documents and materials contained in OIG files; and
- (3) All other information or materials acquired by an OIG employee in the performance of his or her official duties or because of his or her official status.

Request means any informal request, by whatever method, for the production of records and information or for testimony that has not been ordered by a court or other competent authority.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, recorded interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Office of Inspector General Subpoenas

§ 2004.10 Service of an Office of Inspector General subpoena.

Service of a subpoena issued by OIG may be accomplished as follows:

- (a) *Personal service.* Service may be made by delivering the subpoena to the

person to whom it is addressed. If the subpoena is addressed to a corporation or other business entity, it may be served upon an employee of the corporation or entity. Service made to an employee, agent, or legal representative of the addressee shall constitute service upon the addressee.

(b) *Service by mail.* Service may also be made by mailing the subpoena, certified mail—return receipt requested, to the addressee at his or her last known business or personal address.

Subpart C—Requests for Testimony and Production of Documents

§ 2004.20 General prohibition.

No employee may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior, written approval of the Inspector General or the Counsel.

§ 2004.21 Factors OIG will consider.

The Counsel or Inspector General, in their discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the Inspector General or the Counsel may consider in making this decision are whether:

- (a) The purposes of this part are met;
- (b) OIG has an interest in the decision that may be rendered in the legal proceeding;
- (c) Allowing such testimony or production of records would assist or hinder OIG in performing its statutory duties or use OIG resources where responding to the request will interfere with the ability of OIG employees to do their work;
- (d) The records or testimony can be obtained from other sources;

(e) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(f) Disclosure would violate or be inconsistent with a statute, Executive Order, or regulation;

(g) Disclosure would reveal confidential or privileged information, trade secrets, or similar, confidential commercial, or financial information;

(h) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceedings, or compromise constitutional rights;