

## § 230.15

General, are the property of the Office of Inspector General.

### **§ 230.15 What must an Office of Inspector General employee do if served with a demand requiring the production of documents or an appearance in court?**

If an Office of Inspector General employee is served with a demand requiring the production of documents or an appearance in court, the employee must promptly inform the authorizing official of the nature of the documents or testimony sought and all relevant facts and circumstances. Office of Inspector General employees are directed to appear as the subpoena or summons may require, but may not testify or produce documents unless authorized.

### **§ 230.16 Is there a prohibition on presenting Office of Inspector General reports or records during an employee's testimony?**

Yes, Office of Inspector General reports or records will not be presented during an employee's testimony, unless authorized by an authorizing official.

### **§ 230.17 If an attempt is made to compel production of reports and records during the employee's testimony, what is an Office of Inspector General employee directed to do?**

If an attempt is made to compel production of reports and records during the employee's testimony, the employee is directed to decline to produce the item or information and to state that the material cannot be disclosed or produced without the approval of the authorizing official. All such requests, and any other requests for documents in judicial or administrative proceedings in which the United States is not a party, shall be deemed to be a request for records under the Freedom of Information Act and shall be handled pursuant to 39 CFR 230.5.

### **§ 230.18 If authorization to testify or produce documents is not obtained by the employee, what is the employee directed to do?**

Absent written authorization from the authorizing official, the employee must respectfully decline to produce the requested documents, testify, or otherwise disclose the requested infor-

## 39 CFR Ch. I (7-1-07 Edition)

mation. If the authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this section, and respectfully decline to testify or produce any document on the basis of the regulations in this section.

### **§ 230.19 What criteria will the authorizing official use to determine whether to authorize testimony or production of documents?**

(a) The authorizing official will determine whether testimony or the production of documents will be authorized according to the following criteria:

(1) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(2) Relevant legal standards for disclosure of nonpublic information and documents;

(3) Office of Inspector General rules and regulations;

(4) The public interest;

(5) Minimizing or preventing expenditures of Office of Inspector General and Postal Service time and resources solely for private purposes.

(6) Minimizing the appearance of improperly favoring one litigant over another;

(7) Minimizing the possibility that the public will misconstrue variances between personal opinions of Office of Inspector General employees and agency policy; and

(8) Preserving the integrity of the administrative process.

(b) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in section 230.24 of this part or to such matters as deemed appropriate by the authorizing official. If the authorizing official allows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or receipt of documents by the method least disruptive to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

## United States Postal Service

## § 230.24

(c) Upon issuance of an unfavorable final determination by the authorizing official, the party or the party's counsel seeking testimony or documents may consult or negotiate with the authorizing official to refine and limit the demand.

(d) The Office of Inspector General will offer all possible assistance to the courts, but the question of disclosing information for which an exemption may be claimed is a matter of discretion that rests with the authorizing official. If in the opinion of the authorizing official the documents should not be released or testimony should not be furnished, that determination will be final.

### § 230.20 What records will not be released?

Generally, any record demanded by a subpoena duces tecum or appropriate court order can be released by a properly authorized Office of Inspector General employee, except for the following:

(a) Records required to remain confidential by the Freedom of Information Act, the Privacy Act, and parts 230 and 262 of this chapter,

(b) Records containing information relating to an employee's security or loyalty;

(c) Original records;

(d) Office of Inspector General criminal investigative reports, unless there is specific authorization by an authorizing official, after consulting with General Counsel to the Inspector General; and

(e) The Office of Inspector General Manual and other operating instructions issued to Office of Inspector General employees, unless there is specific authorization by an authorizing official, after consultation with the General Counsel to the Inspector General. If the requested information relates to confidential investigative techniques, confidential sources of information, or information that must be kept confidential under the Inspector General Act, 5 U.S.C. app. 3, because release of the information would adversely affect the duties and obligations or law enforcement mission of the Office of Inspector General, the subpoenaed official, through the Inspector General, or an authorizing official, may request an

in camera, ex parte conference to determine the necessity for the release of the information.

### § 230.21 May the General Counsel to the Inspector General and/or a U.S. Department of Justice attorney represent the employee in any appearance?

At the option of the Attorney General, or an authorizing official, an Office of Inspector General legal counsel may represent and assist the employee. The authorizing official designated by the Inspector General may also request assistance from the U.S. Department of Justice in representing and assisting the employee in any appearance.

### § 230.22 May another employee be substituted for the employee requested to appear?

The Inspector General or designee may, where appropriate, designate another Office of Inspector General employee to respond to a request for an appearance.

### § 230.23 May an Office of Inspector General employee testify as an expert or opinion witness?

No, an Office of Inspector General employee may not testify as an expert or opinion witness with regard to any matter arising out of the employee's duties or functions at the Office of Inspector General for any party other than the United States, except that in extraordinary circumstances, and where the anticipated testimony will not be adverse to the interest of the United States, the authorizing official may approve such testimony in private litigation. A litigant must first obtain the permission of an authorizing official designated by the Inspector General before designating an Office of Inspector General employee as an expert or opinion witness.

### § 230.24 How is a demand for employee documents or testimony made to the Office of Inspector General?

(a) All demands for the production of nonpublic documents or testimony of Office of Inspector General employees concerning matters relating to their official duties and subject to the conditions set forth in §230.10(b) shall be