



OREGON YOUTH AUTHORITY
Policy Statement
Part I – Administrative Services



Subject:

Response to Subpoenas

Section – Policy Number:

E: Information Management – 1.2

Supersedes:

**I-E-1.2 (9/16)
 I-E-1.2 (7/12)
 I-E-1.2 (3/08)
 I-E-1.2 (5/04)
 Information
 Letter (2/02)**

Effective Date:

01/30/2020

Date of Last

Review/Revision:
None

Related Standards and References:

- [ORS 136.555](#) (Subpoena defined)
- [ORS 136.580](#) through ORS136.595 (Subpoenas when books, papers or documents are required; how served)
- [Attachment A](#): Response to Subpoena Matrix
- [OYA policy](#): I-E-2.1 (Public Records Requests for Agency Records)
 I-E-2.3 (Requests for Youth Information and Records)
 I-E-2.6 (Second Look Hearings)

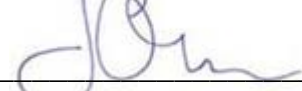
Related Procedures:

- None

Policy Owner:

Public Policy and Government Relations Manager

Approved:



 Joseph O'Leary, Director

I. PURPOSE:

This policy provides standards for OYA staff when responding to work-related subpoenas.

II. POLICY DEFINITIONS:

Agency subpoena coordinator: The designated staff in the Director's Office whose duties include acting as the agency liaison with the Attorney General's office when responding to subpoenas.

Local subpoena coordinator: A staff designated by the facility superintendent, camp director, or field supervisor to coordinate response to subpoenas for the field office or facility with the agency subpoena coordinator.

Service: Subpoena delivery by certified mail or in person to the person named in the subpoena.

Subpoena: A command to appear at a certain time and place to give testimony upon a matter. Sometimes a subpoena commands the production of books, papers, documents, or tangible things (*subpoena duces tecum*).

III. POLICY:

Subpoenas are important legal documents that must be addressed in a timely manner. Failure to respond to a subpoena may result in legal action against the person to whom the subpoena was issued, or the agency that person works for. OYA staff must never ignore a subpoena.

OYA will respond to subpoenas issued to gather information or compel appearance in matters involving staff or youth. Subpoenas are time sensitive and OYA's response (which includes sending documentation or appearing at a proceeding) will ensure:

- A. The response is timely, appropriate, and accurate;
- B. Confidentiality of agency records is maintained, according to federal and state laws;
- C. A proper legal objection is made when deemed appropriate by legal counsel; and
- D. Staff efforts are not duplicated.

[Attachment A](#) Response to Subpoena Matrix summarizes how OYA responds to different types of subpoenas.

IV. GENERAL STANDARDS:

A. Subpoena intake

Upon receipt of a subpoena, staff must immediately:

- 1. Notify their supervisor of the subpoena and any directions for appearance (work schedules and travel arrangements must be addressed by the staff's supervisor); and
- 2. Provide a copy of the complete subpoena and any other documents received to the local or agency subpoena coordinator. Also, provide information on how and when the subpoena was received.

B. Agency subpoena coordinator

A designated staff member in the OYA Director's Office serves as the agency subpoena coordinator.

The agency subpoena coordinator's duties include:

- 1. Acting as the liaison with the Attorney General's office when responding to subpoenas, including coordinating the release of any OYA records;
- 2. Assisting with records redaction;

3. Cross-checking subpoenas and tort claims. Notifying the appropriate OYA work unit, DAS Risk Management, or the Attorney General's Trial Division of potential litigation; and
4. Ensuring local subpoena coordinators receive a subpoena process orientation.

The orientation must include identifying subpoenas, matters of service, confidentiality, networking with stakeholders, and appropriate agency response.

C. Local subpoena coordinator

Each OYA superintendent, camp director, and field supervisor must designate a local subpoena coordinator for that facility or field office. The local subpoena coordinator duties include:

1. Acting as the facility or field office point of contact for subpoena service process and staff questions;
2. Working with the agency subpoena coordinator when responding to subpoenas;
3. Contacting the agency subpoena coordinator immediately upon receipt of the following:
 - a) A subpoena *duces tecum*, or court order for the release of OYA records; or
 - b) A subpoena requesting staff to testify.
4. Serving as a resource for staff questions about testimony and depositions; and
5. Ensuring subpoena activities are entered into JJIS case notes regarding youth who are the subjects of subpoenas.

D. Service of subpoenas

There are legal requirements under Oregon Rules of Criminal or Civil Procedure, Federal Rules of Criminal or Civil Procedure, or other state or federal laws, for the service of subpoenas. Most subpoenas must be served in person directly to the intended recipient.

1. Subpoenas may be accepted by mail if:
 - a) The subpoena commands the production of records or documents only (subpoena *duces tecum*), and not testimony. The subpoena must not include a command to appear at a trial, hearing or deposition.; or
 - b) An attorney issuing the subpoena (or their staff) –

- (1) Has had personal or telephone contact with the OYA staff, and the OYA staff indicated a willingness to appear at trial if subpoenaed;
 - (2) Has made provision for payment of witness and mileage fees; and
 - (3) Has mailed the subpoena to the OYA staff more than 10 days prior to trial by certified mail or another receipt-type mail.
2. Service of a subpoena on a youth may be served on the custodian (OYA) of the youth, and only upon order of the court.
 3. If someone presents a subpoena for service intended for someone who is not available, OYA staff may state that they can receive a copy for the unavailable person, but their action is not considered acceptance of service.

E. Preparation of records or documents responsive to a subpoena

1. The local subpoena coordinator must send complete, accurate copies of any records requested in the subpoena to the agency subpoena coordinator.
2. The agency subpoena coordinator may coordinate with the Attorney General's office before releasing the records to the court.

F. Providing testimony responsive to a subpoena

Staff may be subpoenaed to testify in proceedings involving youth as defendants, victims, or plaintiffs.

1. Staff must appear as directed and testify truthfully and to the best of their ability regarding information for which they have personal knowledge (e.g., a youth's reformation progress while in custody).
2. Staff must not make recommendations as to whether youth are suitable for:
 - a) Second Look Conditional Release;
 - b) Sex offender registration or relief from sex offender registration; or
 - c) Issues that are beyond the staff's classification, job duties, or qualifications (e.g., a group life coordinator may not make statements to the court regarding a youth's risk for reoffending).
3. If staff are asked to testify about any of the non-disclosable information and the youth has not signed a release authorizing the

staff to disclose the information requested, under Oregon law, the Public Officer Privilege protects that information.

- a) The Public Officer Privilege provides “A public officer shall not be examined as to public records determined to be exempt from disclosure under ORS 192.501 to 192.505.” ORS 40.270.
- b) In these situations, staff must read the below citation and then be ordered by the court to testify about non-disclosable information:

“Your Honor, as required by the applicable state statutes that govern the privilege and disclosure of information relating to a youth’s history and prognosis, and as permitted by the Public Officer Privilege set forth in ORS 40.270, I must respectfully decline to answer counsel’s question unless I am ordered to do so by this Court. ORS 419A.257 prohibits an Oregon Youth Authority employee from disclosing information contained in reports and other materials pertaining to that youth’s history and prognosis, absent a request from the youth or consent of the juvenile court that adjudicated the youth.

“I am advised by the Attorney General’s office that pursuant to ORS 40.270, I may not be examined regarding this privileged information to the extent that this court determines that the information is exempt from disclosure under Oregon’s Public Records Law. And, that absent a proper written authorization for release of the information signed by the youth, or an order consenting to the disclosure by the juvenile court that adjudicated the youth, the information is exempt from disclosure under ORS 192.502(9).

“I respectfully request that the court determine and direct whether I am required to answer counsel’s questions regarding this youth.”

V. LOCAL OPERATING PROTOCOL REQUIRED: NO

Attachment A: Response to Subpoena Matrix

Type of case	Appropriate staff response
Second Look hearing	<p>Records: Staff must work with the OYA Second Look coordinator. See OYA policy I-E-2.6 Second Look Hearings for details.</p> <p>Appearance: If staff are subpoenaed to appear, the staff's supervisor or Human Resources will arrange court fee handling and the staff's work schedule.</p>
Case involving a youth	<p>Records: Local subpoena coordinators work with the agency subpoena coordinator and ensure a case note is entered into JJIS regarding the youth's subpoena activity.</p>
Case involving a youth as a subject of dependency, divorce, custody, support proceedings, or termination of parental rights.	<p>Appearance: The local subpoena coordinator works with management staff for the youth's appearance. Contact DOC if DOC youth. Contact the youth's attorney, if applicable.</p>
Case involving a youth with staff appearance in court	<p>The local subpoena coordinator will coordinate the staff member's appearance and brief the staff member on courtroom protocol.</p> <p>Staff, with appropriate release or court order, will limit testimony to personal knowledge and to activities known or services directly provided by the staff member within the scope of his/her job responsibilities. Staff will not make <i>recommendations</i> about the outcomes of the proceeding.</p> <p>If staff are subpoenaed to appear, the staff's supervisor will arrange the staff's work schedule.</p> <p>Any witness fees or provision of payments should be directed to the agency subpoena coordinator.</p>
Criminal case against an OYA staff member	<p>The agency subpoena coordinator is the primary subpoena coordinator for records and appearance requests in criminal cases against OYA or OYA staff.</p> <p>The local subpoena coordinator immediately contacts the agency subpoena coordinator.</p> <p>No records may be released, or appearances made, without the Director's Office authorization.</p> <p>The agency subpoena coordinator will contact the Attorney General's office and DAS Risk Management, as necessary.</p>