



Responding to Third-Party Discovery Requests

Litigation and Dispute Resolution



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Responding to third-party discovery requests, more formally known as a subpoena duces tecum, might be considered a right of passage for in-house counsel. While typically viewed as a nuisance in the best cases or a sign to begin preparations for litigation in the worst, responding to third-party discovery requests can be a positive experience for the responsive counsel if the right steps are taken.

For novice or experienced counsel, responding to third-party requests provides a chance to develop — or hone and streamline — internal processes to catalogue, retain, and protect company information.

1. Initial assessment

- Review the request and get a thorough understanding of the nature and scope of the request, the relevance of the information requested, and what providing the requested information might mean for your company.
- Determine the feasibility of complying with the request and identify any potential issues that might arise from producing the requested information.
- Contrary to popular belief, it's generally a good idea to reach out to the counsel requesting discovery and have a candid conversation about the parameters of the information can be produced and any potential issues that may arise from producing such information.

2. Internal coordination

- Notify relevant internal parties, including the information technology, human resources, procurement, sales, and any other departments that may have information pertinent to the matter.
- Issue litigation holds to identified relevant parties to preserve all information and halt the destruction of any data related to the matter discovery request.

3. Collection

- Depending on the nature and scope of the request, this process may take up a significant amount of time and resources. If a conversation with the requesting party has not taken place at this time, now would be a great time to discuss and narrow the scope of the information requested.
- Once the scope of discovery has been narrowed to relevant and reasonable information, establish systems to filter out and protect privileged and irrelevant information from disclosure using a chain, including the use of proper [chain-of-custody](#) measures.
- Establish a team to conduct thorough reviews to identify and protect privileged and confidential information; redactions and privilege logs may be necessary.

4. Production

- Organize and compile the responsive documents according to the specifications of the request.
- Keep detailed records of all documents and information produced.
- If more time is needed to produce the requested documents, communicate with the requesting party to obtain an extension.
- Include affidavits or certifications as necessary.

5. Compliance

- The possibility of additional discovery requests will exist for the duration of the litigation so continue to monitor the preservation of any documents or information relevant to the matter; adjust legal holds if necessary.
- Discuss the production process with senior management and identify potential risks or areas of concern in future situations.
- Debrief the team and identify areas of improvement.
- Establish a process for preserving and producing discovery in the future.

It should go without saying that ignoring requests for discovery is not an option and communicating with the requesting counsel will solve a majority of issues.

Responding to these requests provides an opportunity to gain insight on the way your company obtains, classifies, retains, and disposes of information. If you treat every request as a chance to refine your discovery processes, not only will your response time be reduced, your company will be more prepared in the event it is directly named or involved in litigation.

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