

A LEGAL PERSPECTIVE

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What to Do When the Police Show Up

Long before September 11, 2001, as an industry, you have faced the issue of law enforcement officials appearing unexpectedly at your rental office for various reasons. Generally, a police officer or member of a Federal law enforcement agency walks into your office, flips open a leather badge case with what purports to be a police ID card with a photo and badge, and flips it shut before you are ever able to recognize or read either one of the items in the case. They then start asking you questions.

It seemed, most frequently, that police were interested in your facilities for storage of drugs or drug manufacturing paraphernalia like a methamphetamine lab, storage of stolen property, storage of property that is in dispute between two people, such as in a divorce situation or, as crazy it may sound, storage of stolen mail. Since September 11, however, Self-Storage facilities have become the target of more and more investigations from these law enforcement agencies as well as from members of the Joint Terrorism Task Force or other type of terrorism interception organizations looking for the above, but also for more deadly items. The situation tends to scare or intimidate the managers or staff who have had no training on how to handle these types of actions, and is exasperated by the fact that the law enforcement officer will normally challenge the employee's patriotism or law abiding emotions to get the information that they need.

The fact is that law enforcement can have all the information that they need or want, but there are proper ways to ask for or receive that information, whether or not you wish to turn it over to them. This article addresses when you have to turn over information, what type of information you have to turn over, and what to ask for before you turn over information.

First, the basics. Sometimes law enforcement officials are trying to gather information to figure out whether or not they can build a case against a person. Thus, they come to

you as a Self-Storage facility operator just to see if some of their hunches turn out to be correct. You, on the other hand have a tenant file in which your tenant has, hopefully, provided you names, addresses, additional contact or emergency contact information, a copy of a photo I.D., and maybe you have even gone so far as to ask for bank references, taken credit card numbers for auto-debit of the rent and/or pulled a credit report on the prospective tenant. Please do not take anything in my article to imply that I am suggesting that you not cooperate with law enforcement. However, providing this information without the proper documentation from the officer can result in liability to the operator. There is a right and wrong time and way to provide this information.

The law enforcement officer either (a) wants to see a tenant file or (b) wants to open a unit. Your first question should be, in the case of the tenant file, does the law enforcement officer have a subpoena or search warrant to see the file, or in the case of opening the unit, does the officer have a search warrant. If the officer has the subpoena or warrant, all bets are off and generally you have to make the information available, or give access stated in the search warrant, to the officer. You have a right to see the search warrant and take a copy of the search warrant for your files and I strongly recommend you do both. You also have a right to ask the officer to provide you a moment to look at the badge and identification card that they showed you earlier, although the police officer does not have to allow you to make a photocopy or write information down from the identification. You can at least ask for a last name, badge number, and the department with which the officer is affiliated. Before taking any action on a warrant or subpoena, or even talking to the officer, you can and should call the department to verify his/her identification and purpose. All good law enforcement agencies will at least provide you validation if you say "Officer X is in front of me, can you give me a description of what he/she is supposed to look like." They will at least do that for you.

You have to make certain that the search warrant allows the officer to do what the law enforcement officer says he/she wants to do. That is, if the search warrant says that the officer has the right to search Unit 48A, then all you can do is give the officer access to Unit 48A, but not other units rented by the same tenant. You do not have to assist the officer in the lock cut, lock pick or otherwise gaining access. However, it is my general experience that if you do not assist the officer in this opening of the lock that they will do a terrible job of doing it themselves and will probably do more damage to your facility than you want. Therefore, if you are presented with a valid search warrant, especially if you have cylinder locks, I recommend that, at that point, you assist in the

picking, drilling or removing of the lock. Once you have assisted with giving the officer access to the unit, you should not stick around. However, when the officer has completed his or her search, you should ask if it is acceptable for you to then overlock or relock the premises.

If the search warrant or subpoena commands presentment of documents at that point, you are obligated to give the law enforcement officer copies of the documents. **NEVER PART WITH YOUR ORIGINALS.**

There is one exception to the document rule: If you have pulled a consumer credit report on your tenant from one of the credit reporting services such as TransUnion, Experian or Equifax, and you do not have a release from the tenant to allow you to provide that credit report to law enforcement agencies, then you may not give the law enforcement agent a copy of the credit report, or even allow them to view it. There are special privacy laws which apply to individual credit profiles and you must protect those credit profiles or reports carefully. This is normally not a problem, however, because all police agencies have agreements with the credit reporting services to allow the officer, in legitimate circumstances, to obtain copies of an individual's credit reports when necessary for a criminal investigation. Therefore, you simply say, "I can not, by law, give you the credit report, but of course you can obtain your own copy". There are few instances where a law enforcement agent will give you any hassle about refusing to turn over a credit report because they have access to them. Most of the time, they are looking more for information from the application or the lease as to names that the tenant has given you, the photo identification the tenant used to rent the space, banking references, emergency contact names, numbers, etc., and all they will want is a copy of the application/lease and any other information you have in the file other than the credit report or sometimes the officer may simply need the unit number or numbers rented to get a proper search warrant and will go away happy.

The more difficult situation, however, is when the police officer does not have a search warrant or subpoena, but wants to start talking to you or asking for copies of information from your tenant file. This is a tough call. You have already asked the law enforcement officer for a copy of a subpoena or search warrant and they have told you they do not have one. You know you can not simply turn everything over to the officer. However, as stated above, sometimes in criminal investigations, law enforcement officers have to follow hunches. They may not always have enough information to ask a judge for a search warrant or subpoena and they need a little more information

to show that there is some sort of link or they have a valid hunch. As a law abiding business owner do not want to interfere with these types of investigations. On the other hand, turning over your tenant files without a subpoena or search warrant can expose you to potential liability for violation of privacy. Therefore, the best recommendation that I can make is that you explain to the officer that while you are not able to turn over copies or allow them to examine the records without a search warrant or subpoena, you would be happy to try to answer as many questions as possible, orally, so that there is no record of turning documents over to the police. Therefore, if the police simply want to know who the emergency contact information was on a specific tenant or the unit number rented by a suspect, you can open the tenant file and tell them the information. If the law enforcement officer wants to know banking or credit card numbers or what social security number the tenant gave you and if you are sure they have presented to you a legitimate badge and identification, you can, if you choose, provide them the information. However, do not provide officers copies, and explain to them that hopefully, with this information, they will be able to go back, get a search warrant or subpoena and at that time you would be pleased to turn over a full copy of the application/lease or other information that they desire and which is stated in the warrant or subpoena.

This is a fine line, I know. First, police officers do not like to be told that they can not have something they want, and they may even try to, in a nice way, coerce or cajole you into releasing these records without the necessity of a search warrant. However, all good police officers know that there are proper ways to obtain information. The danger in turning over the information to anyone who flashes you a badge are several. Most importantly, varying from state to state, there are certain consumer privacy laws. Also, federally, there is a consumer privacy law that pertains to the individual's credit profile, which you may or may not have pulled from one of the credit reporting services. If you simply turn over the information to any governmental authority who seeks to have this information, you may be violating a privacy right of one of your tenants and may be subject to a lawsuit.

Second, you want your tenants to be completely and accurately candid with you in your application process so that you have all the valid information you need in order to meet the obligations imposed on you by the various Self-Storage statutes, including information about alternate contacts, lien holders, etc., which is required by various state statutes around the country. If your tenants recognize, realize or understand that you may turn this information over without

proper authority to other people, our tenants may not be honest. You need tenant's information to be 100% accurate so that you have the information you need to properly operate your business and conduct your lien processes, if necessary.

Third, although it is regrettable to say, there are some police officers who use their badge for the purposes of conducting their own personal business. It is not just Dennis Franz on NYPD Blue who occasionally goes out to see if his best friend's wife is squirreling away assets in anticipation of leaving the husband and hiding them in a Self-Storage facility. Unfortunately, police officers do help themselves, their friends, and relatives to certain information under the guise of having a badge and pretending to have a police investigation proceeding. If you were to fall victim to a police officer who is simply helping out a friend, who is not conducting an official police investigation, and you provided this tenant information, you would be liable to your tenant if you turned over the information and the tenant determined that you were the source of the information. Additionally, there is always a question of the validity of the identification and badge until you verify it.

There are a few things that police can do, generally, which you should welcome at your Self-Storage facility. One, you can ask the police, if they are willing, to drive through the facility on occasion, especially at night. Driving through and observing potential criminal activity for which the officer can proceed without management's involvement is a blessing to any facility. Second, we strongly encourage you to allow police to use your facility for drug/bomb dog training, that is, you can admit the police to your property to allow the dogs to sniff the locked doors of the units. If the dog reacts positively to drugs, explosives or other items which the dog may be trained, the officer can easily get a search warrant, at which point your participation in helping them enter the premises, assuming the search warrant is properly worded, shields you from liability to your tenant.

Naturally, every Self-Storage facility owner and operator wants to have a good relationship with law enforcement. You want the facility to be patrolled, even if not from the interior by the local police department. You want to make sure that the police are not "angry" at you so that they do not hassle you or a city does not hassle you with zoning violations or other minor issues. You also want to make certain that when you call on law enforcement that they will be responsive to your concerns about strange behavior, fights or other problems at the facility. However, privacy

laws in various states dictate that you can not simply be a law enforcement stool pigeon. The police and all law enforcement, up to and including prosecutors, have clear standards which they must follow in order to make a prosecution stick to verdict. The worst that law enforcement can have happen is that their charge will not become a conviction, because evidence will be thrown out. You, on the other hand, as a small business operator, face the threat of a civil lawsuit if you violated a tenant's privacy. You have to be prepared to explain this concept to the law enforcement agents, despite the fact that they may pretend not to understand. They will respect your willingness to give them certain information verbally, and understand that they will have to go back and obtain the right paperwork if they want to enter a unit to view or make copies of an actual tenant file.

Jeffrey Greenberger is a Partner with the law firm of Katz Greenberger & Norton LLP in Cincinnati, Ohio and is licensed to practice in the states of Ohio and Kentucky. This column is for the purpose of providing general legal insight into the Self-Storage field and should not be substituted for the advice of your own attorney.

Mr. Greenberger's practice focuses primarily on representing the owners and operators of commercial real estate including self-storage owners and operators.

Mr. Greenberger is the legal counsel for the Ohio Self-Storage Owners Society, Inc., and the Kentucky Self-Storage Association, Inc., as well as a regular presenter at Inside Self-Storage Trade Shows. You can send your questions, comments, or suggestions for future topics to Jeffrey Greenberger at jig@kgnlaw.com, or mail them to Jeffrey Greenberger c/o Katz Greenberger & Norton LLP, 105 E. Fourth Street, Suite 400, Cincinnati, Ohio 45202 or you can reach Mr. Greenberger at (513) 721-5151.