



Responding to a Government Investigation

What Directors and Management Should Do in the First Hours and Days

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THE FIRST RULE

**Preserve everything. Alter nothing.
Route every government contact
through counsel.**

01 How Investigations Begin

The first moments shape everything that follows

FORMS OF GOVERNMENT CONTACT

- A grand jury or SEC subpoena for documents or testimony
- A search warrant at company premises
- Agent interviews of employees, often unannounced
- Civil investigative demands and voluntary requests

THE FIRST PRIORITY

- Preserve all potentially relevant records
- Suspend routine document destruction
- Never alter, delete, or discard anything
- Route all contact to counsel

02 The First 48 Hours

Move quickly to preserve evidence, protect people, and hold privilege

IMMEDIATE ACTIONS

- Notify the general counsel and outside counsel
- Issue a litigation hold across custodians
- Identify the scope and the agency
- Preserve devices, email, and backups

EMPLOYEES AND PRIVILEGE

- Advise employees of their rights
- Deliver Upjohn warnings before interviews
- Keep investigative work privileged
- Avoid anything that looks like obstruction

03 A Parallel Internal Investigation

Understand the facts before the government does

PURPOSE AND STRUCTURE

- Learn the facts early and independently
- Use independent counsel where warranted
- Preserve privilege while gathering facts
- Keep the audit or special committee informed

COOPERATION DECISIONS

- Weigh voluntary self-disclosure
- Remediate promptly and document it
- Be ready to identify responsible individuals
- Understand the cooperation trade-offs

04 The Board's Role

Directors oversee the response without compromising its independence

OVERSIGHT WITHOUT INTERFERENCE

- Ensure an independent, credible investigation
- Avoid undermining independence
- Confirm preservation and privilege
- Receive regular, documented updates

PROTECTING THE INSTITUTION

- Separate individual and company interests
- Consider a special committee for senior conduct
- Manage disclosure with counsel
- Address remediation and control failures

The First-Response Checklist

Five moves in the opening days of an investigation

1

Preserve Freeze destruction and issue a litigation hold at once.

2

Engage Counsel Route all government contact through legal first.

3

Protect Privilege Give Upjohn warnings; keep the review privileged.

4

Get the Facts Run an independent internal investigation.

5

Decide Cooperation Weigh disclosure, remediation, and accountability.