



Loyola University of Chicago Office of the General Counsel
Updated Guidance Regarding Subpoenas, Warrants, and Other Requests for Information

The Office of the General Counsel of Loyola University of Chicago (“Loyola” or the “University”) frequently receives inquiries regarding the appropriate response to subpoenas, warrants, and other requests for faculty or staff employment records, student education or health records, and/or other business records. As set forth in more detail below, this memorandum is intended to provide general guidance for Loyola’s response to such requests:

- For routine Non-Adversarial Subpoenas you may respond directly to the sender in accordance with the steps outlined in this memorandum;
- For Adversarial Subpoenas, a subpoena for which you cannot determine if it is an Adversarial Subpoena or a Non-Adversarial Subpoena for records, a subpoena for testimony at a deposition, trial, hearing or other type of judicial proceeding, or a subpoena for which you question its validity, please immediately contact the Office of the General Counsel at (312) 915-6200; and
- Regardless of whether a subpoena is an Adversarial or Non-Adversarial Subpoena, if it relates *in any way* to 1) undocumented students at Loyola, including, but not limited to Deferred Action for Childhood Arrivals (“DACA”) students, or 2) an immigration enforcement action you must immediately notify the Office of the General Counsel at (312) 915-6200.

In addition to the general guidance summarized below, please be advised that if you are served with a *warrant of any kind*, the only action you should take is to politely ask the law enforcement officials serving the warrant (*e.g.* U.S. Immigration and Customs Enforcement (“ICE”), FBI, IRS, Chicago Police Department) to wait in the office while you immediately contact Thomas K. Murray, Chief of Police and Director of Campus Safety, at (773) 508-6039 and Katherine Kenny, Assistant General Counsel, in the Office of the General Counsel, at (312) 915-6200 for instructions. Our University guidelines stipulate that faculty, staff, administrators, and students do not otherwise engage with law enforcement officials.

Preliminary Steps Upon Receipt of Subpoena

1. Review the subpoena carefully to determine the following:
 - (a) Whether it is, in fact, a subpoena for records. Generally, a subpoena may require an individual to do any or all of the following:
 - (i) Produce specified documents or records, including papers, files, stored electronic information, data or other tangible items;

(ii) Testify at a deposition before trial (usually at an attorney’s office). A subpoena for a deposition may or may not be coupled with a request to produce records (see *Step 2(a) below*); or

(iii) Testify at a trial, hearing, or other type of judicial proceeding. A subpoena for trial testimony will occasionally also include a request to produce records (see *Step 2(a) below*).

(b) The nature of the matter in which the subpoena for records was issued – a Non-Adversarial Subpoena or an Adversarial Subpoena.

(i) A “**Non-Adversarial Subpoena**” arises in a civil lawsuit or investigation in which Loyola does not have an interest.

Except as provided in *Steps 1(c), 1(d) and 2(a) below*, you should generally respond directly to the sender of a Non-Adversarial Subpoena for records relating to faculty, staff, and students, and need not involve the Office of the General Counsel.

(ii) An “**Adversarial Subpoena**” arises in a lawsuit or investigation directed at Loyola activities, or one that has potential criminal or quasi-criminal implications, or that otherwise involves investigations with serious potential results for Loyola or members of the Loyola community. Prior to taking any action on an Adversarial Subpoena for records (or if you are unable to determine whether a subpoena is an Adversarial Subpoena or a Non-Adversarial Subpoena in the first instance), please contact our office for guidance. For example, certain subpoenas relating to criminal investigations or other law enforcement activities, including grand jury subpoenas, may include a court order precluding Loyola from notifying the subject of the subpoena about its existence.

(c) **Exception for Undocumented Students and Immigration Enforcement Action.** Please be advised that regardless of whether a subpoena is an Adversarial or Non-Adversarial Subpoena, if it relates *in any way* to 1) undocumented students at Loyola, including, but not limited to DACA students, or 2) an immigration enforcement action you must immediately notify the Office of the General Counsel at (312) 915-6200. This includes, but is not limited to, subpoenas related to education records of undocumented students, information regarding Loyola’s policies or procedures pertaining to undocumented students, and/or criminal investigations or other law enforcement activities related to undocumented students at Loyola.

(d) The issuing authority (state court, federal court or administrative agency) and validity of the subpoena.

Generally, for a state court subpoena to be valid, it must be served in a case pending in Illinois. For example, the case caption at the top of the subpoena may state “In the Circuit Court of _____ County, Illinois.” In federal civil cases, for a federal subpoena to be valid, it must (i) be served from the district court where the case is pending; and (ii) command compliance with the subpoena at a place within 100 miles of the location where the subpoenaed party resides, is employed, or regularly transacts business in person. In federal criminal cases,

there are no jurisdictional restrictions on compliance with the subpoena. Many administrative agencies are authorized to issue subpoenas; please contact our office if you have questions about the subpoena authority of a particular administrative agency.

Generally, a valid subpoena will also (i) state the name of the court or administrative body that issued it; (ii) state the caption/title of the case name along with the case number; and (iii) provide sufficient information to allow for an adequate response, including a reasonable description of the information to be provided and a reasonable date, time and location for the documents to be provided (the deadline to respond can often be negotiated with the sender of the subpoena).

Please contact the Office of the General Counsel immediately if you receive:

- An Adversarial or Non-Adversarial Subpoena for records relating *in any way* to 1) undocumented students at Loyola, including, but not limited to DACA students, or 2) an immigration enforcement action;
- an Adversarial Subpoena for records (see *Step 1(b)(ii) above*);
- a subpoena for which you cannot determine if it is an Adversarial Subpoena or a Non-Adversarial Subpoena for records (see *Step 1(b) above*); a subpoena for testimony at a deposition, trial, hearing or other type of judicial proceeding (see *Step 1(a)(ii or iii) above and Step 2(a) below*); or a subpoena for which you question its validity (see *Step 1(d) above*).

Steps for Responding to Non-Adversarial Subpoenas for Records

2. For a Non-Adversarial Subpoena (a lawsuit or investigation in which Loyola does not have an interest) requesting faculty or staff employment records, or student education records, please take the following steps:

(a) Except as provided in *Step 1(c)* (pertaining to records related in any way to undocumented students or an immigration enforcement action) *and (d)* (a subpoena for which you question its validity) *above* for which our Office of General Counsel should immediately be notified, please respond directly to the sender. Frequently, subpoenas for records will indicate that your appearance for deposition or in court is not required if you furnish records prior to the date specified on the subpoena. If the subpoena indicates that your appearance is required, call the law firm or agency issuing the subpoena and ask if your appearance is necessary as long as the documents are provided. Your appearance often will be waived. Be sure to write down the name and title of the person with whom you speak. If your appearance is necessary, we would be happy to discuss the possibility of sending counsel to deposition or court with you, as needed.

(b) Check the date specified on the subpoena for return of the documents. You will want to ensure that you have adequate time to gather and review the documents and to provide adequate notice that would give the faculty, staff or student sufficient time (likely at least 5-10 business days) to object to the subpoena in court before you provide the requested documents to the sender. You may be able to negotiate a different response time with the sender if you feel you will need more time to comply.

(c) For subpoenas requesting faculty or staff employment records, pursuant to Loyola policy, unless the subpoena says not to, you should immediately provide a copy of the subpoena that Loyola received to currently employed faculty or staff members. See Attachment 1 for a sample letter that can be used when notifying faculty or staff. Retain a copy of the letter to the faculty or staff member. The Illinois Personnel Record Review Act also requires an employer to provide written notice to current or former employees by first class-mail on or before the date of disclosure when releasing any disciplinary reports, letters of reprimand, or evidence of other disciplinary action *unless* a court or arbitrator has ordered the release of the records in a legal action or arbitration (through a court order, rather than solely through a subpoena) or the disclosure is requested by a government agency involved in a claim or a complaint by an employee or a criminal investigation.

Please note that law enforcement and grand jury subpoenas frequently will specify that the employee should not be notified. If you receive such a subpoena, omit this step, and see *Step 4 below*.

(d) For subpoenas requesting current or former student education records, you must comply with the requirements of the Family Educational Rights and Privacy Act of 1974 (“FERPA”). This means, unless the subpoena says not to notify the student, making a reasonable effort to provide written notice to the student of the subpoena sufficiently in advance of compliance (likely 5-10 business days) so that the student may seek protective action (by going to court and filing a motion to quash the subpoena) if he or she so chooses. You should immediately provide a copy of the subpoena that Loyola received to the current or former student. See Attachment 2 for a sample letter that can be used when notifying students. Retain a copy of the letter to the student. Please note that FERPA does not require that Loyola fight the subpoena on the student’s behalf. Indeed, having provided notice of the subpoena, Loyola generally must comply regardless of the student’s wishes if the student fails to take appropriate action with the court to quash the subpoena before Loyola is required to provide the records.

Again, please note that law enforcement subpoenas frequently will specify that the student should **not** be notified. If you receive such a subpoena, omit this step, and see *Step 4 below*.

For subpoenas requesting student medical and/or mental health records, see *Step 5 below*.

(e) Determine where requested records are located. Subpoenas for records addressed to Loyola frequently seek records which are held in more than one Loyola office. In such situations, Loyola is legally obligated to furnish all relevant records. Therefore, if the subpoena requests records which are not held in your department, please forward a photocopy of the subpoena and any other materials which were received with the subpoena to the other Loyola offices which may have relevant records. Each office may respond directly to the attorney or organization which issued the subpoena, or one office may coordinate all of the responses and send the materials as a single package. If responding separately, each office should notify the attorney or organization which issued the subpoena that other responsive documents from other

pertinent departments may be forthcoming so that they will not receive a response and assume that it is complete. See also *Step 2(g) below*.

(f) Gather and carefully review records responsive to the subpoena. In the event that a student other than the student whose records have been subpoenaed is identified in an educational record, you should generally white out that other student's name and the document should be marked "redacted." For personnel records of current or former employees, any personal information relating to persons not named in the subpoena must also be excluded or redacted. Please contact our office if you have questions regarding the application of FERPA to the documents called for by the subpoena or regarding the handling of any confidential or privileged information or communications that may be included in the responsive documents. Generally, in routine cases, it should not be necessary to send any documents to our office during the course of responding to a Non-Adversarial Subpoena for records. Nevertheless, should it become necessary, please call us before sending any original documents, including the subpoena itself, through inter-office mail.

(g) Produce the requested records and maintain copies electronically. It is important, however, to defer producing the documents for a reasonable period of time (likely at least 5-10 business days) after the notice (provided pursuant to *Steps 2(c) or (d) above*) is sent to the individual whose records are subpoenaed so as to give that individual the opportunity to receive the notice regarding the subpoena and challenge it in court, should he or she wish to do so, before the documents are delivered by Loyola to the law firm or organization issuing the subpoena.

If the responsive records are being produced from more than one department, each office may respond directly to the attorney or organization that issued the subpoena, or one office may coordinate all of the responses and send the materials as a single package. Generally, the sender will enclose a form for you to sign and return stating that the records enclosed are a complete and accurate copy of Loyola's records. If each department will be responding separately, and the attorney or organization that issued the subpoena enclosed such a form, each department should modify the form to reflect that a complete and accurate copy of the department's records are enclosed and that responsive documents from other pertinent departments, if any, may be forthcoming.

Prepare a cover letter to the law firm or agency issuing the subpoena before the due date identified in the subpoena. See Attachment 3 for a sample cover letter for your use. Include the following items in the package you provide to the law firm or organization issuing the subpoena:

- Your cover letter (modified, as indicated in brackets in Attachment 3, if responsive documents may be forthcoming from other pertinent departments);
- A copy of the subpoena;
- Responsive documents; and
- A form stating that the records enclosed are a complete and accurate copy of Loyola's (or the department's) records (if any is provided by the sender).

Retain for your files electronic copies of your cover letter, the subpoena, the responsive documents produced, and any signed forms regarding the completeness and accuracy of the document production.

Special Issues

3. As explained in *Step 1(b)(ii) above*, Adversarial Subpoenas (subpoenas directed at Loyola activities, or that have potential criminal or quasi-criminal implications, or that otherwise involve investigations with serious potential results for Loyola or members of the Loyola community) may require different treatment. Prior to taking any action, you must immediately notify our office if you receive a records subpoena that raises any of the above issues. For example, certain subpoenas relating to criminal investigations, grand juries, or other law enforcement activities may include a court order precluding Loyola from notifying the subject of the subpoena about its existence.

4. If the subpoena for records calls for documents relating to the Stritch School of Medicine, the Medical Studies Act may protect some evaluation records which could be construed as “peer review” documents from disclosure. Please contact our office should you have any questions as to which documents, if any, should be withheld.

5. If the subpoena calls for medical records, the subpoena must include an appropriate written consent from the employee or student to comply with federal laws applicable to the privacy of medical records and if the subpoena calls for (or responsive documents would include) mental health records, the subpoena must also comply with the Illinois Mental Health and Developmental Disabilities Confidentiality Act (the “Confidentiality Act”) before such documents may be produced. For mental health records, an appropriate court order or written consent authorizing disclosure of mental health records must accompany the subpoena and the subpoena itself must include the following language: “No person shall comply with a subpoena for mental health records or communications pursuant to Section 10 of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/10, unless the subpoena is accompanied by a written order that authorizes the issuance of the subpoena and the disclosure of records or communications or by the written consent under Section 5 of that Act of the person whose records are being sought.” Under the Confidentiality Act, the written consent of the patient must specify: (i) the person or agency to whom disclosure is to be made; (ii) the purpose for which disclosure is to be made; (iii) the nature of the information to be disclosed; (iv) the right to inspect and copy the information to be disclosed; (v) the consequences of a refusal to consent, if any; (vi) the calendar date on which the consent is expired; and (vii) the right to revoke the consent at any time. Please contact our office should you have any questions regarding the production of medical and/or mental health records.

6. If the scope of the documents called for seems unreasonably broad (*e.g.*, “any and all education records” of the student) and/or would impose an undue burden to gather, you may be able to negotiate the scope of the documents called for with the individual who issued the subpoena, who may not understand the types of documents maintained by Loyola. Please contact our office should you have any questions regarding which documents must be produced.

In the event that you have questions regarding the documents requested by the subpoena, are required to appear at deposition or in court in response to a subpoena, or have other concerns about a subpoena, the Office of General Counsel is available to assist you.

Attachments

ATTACHMENT 1
(Notice for Faculty and Staff)

Confidential

[Individual’s name and address]

Re: [Case Caption]
Case No. _____

Dear _____:

Pursuant to the enclosed copy of a subpoena dated _____, which was received by Loyola University of Chicago on _____, Loyola is required to disclose the following employment records in its possession:

[List of requested documents]

Please be advised that Loyola intends to comply with the subpoena on or before _____.

Loyola generally follows a policy of nondisclosure with respect to employee records, unless such disclosure is compelled by subpoena or court order.

Very truly yours,

Enclosure

ATTACHMENT 2
(Notice for Students)

Confidential

[Student's name and address]

Re: [Case Caption]
Case No. _____

Dear _____:

Pursuant to the enclosed copy of a subpoena dated _____ which was served on Loyola University of Chicago on or about _____, Loyola is required to disclose the following records in Loyola's possession:

[List of requested documents]

Please be advised that Loyola intends to comply with the subpoena on or before _____.

In accordance with the Family Educational Rights and Privacy Act of 1974 ("FERPA," otherwise known as the Buckley Amendment), Loyola follows a policy of nondisclosure with respect to student records, unless such disclosure is compelled by a court order or a lawfully issued subpoena, such as the enclosed subpoena. If you plan to obtain the services of an attorney to attempt to quash this subpoena, we would appreciate receiving written notification prior to _____ **[this date should be at least 2 business days prior to the date that Loyola intends to comply with the subpoena].**

Very truly yours,

Enclosure

ATTACHMENT 3
(Subpoena Response Cover Letter)

[Issuing Law Firm's Name and Address]

Re: [Case Caption]
Case No. _____

Dear _____:

I am enclosing copies of the documents which have been located in possession of [the _____ Department at] Loyola University of Chicago that are responsive to the Subpoena dated _____ issued by your firm in the above-referenced matter, a copy of which Subpoena is also enclosed. [Additional responsive documents from other pertinent departments, if any, may be forthcoming.] [Please be aware that personally identifiable information of other University students has been redacted from the documents in accordance with the University's obligations under the Family Educational Rights and Privacy Act ("FERPA") and that private information related to other employees also has been redacted. (edit as needed)] Unless I hear otherwise from you, I will assume that my appearance will not be required in this matter.

Very truly yours,

Enclosures