

# Department of the Interior Departmental Manual

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**Effective Date:** 11/2/79

**Series:** Legal

**Part 452:** Litigation

**Chapter 3:** Witness Immunity Procedures

**Originating Office:** Office of the Solicitor

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## 452 DM 3

3.1 **Purpose.** This chapter prescribes procedures concerning authorizations to issue immunity orders under Title II of the Organized Crime Control Act of 1970, @ 18 U.S.C. 6001, applicable to Department personnel.

3.2 **Provisions of Law.** Under the procedure established for administrative proceedings, an agency, as defined in 18 U.S.C. 6001, may issue an order compelling an individual to give testimony or to produce information which he/she refuses to give or produce on the basis of his/her privilege against self-incrimination. Such an order may only issue with the approval of the Attorney General, and only if in the judgment of the agency:

A. The testimony or other information from such individual may be necessary to the public interest; and

B. Such individual has refused or is likely to refuse to testify or provide other information on the basis of his/her privilege against self-incrimination.

No testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

3.3 **Responsibility.** The Solicitor, as the Chief Legal Officer of the Department, will be solely responsible for the issuance of immunity orders including requests for approval to the Attorney General, except for immunity orders issued in conjunction with a proceeding to carry out the duties and responsibilities as provided in the Inspector General Act of 1978, 92 Stat. 1101. In such cases, requests to the Attorney General and issuance of orders will be the responsibility of the Inspector General.

### 3.4 **Request Procedures.**

A. All requests to immunize prospective witnesses must be in writing, allowing at least four weeks for consideration, and must contain the following information:

(1) Name, citation, or other identifying information, of the proceeding in which the order is to be used.

(2) Name of the individual for whom the immunity is required.

(3) Name of the employer or company with which he/she is associated.

(4) Date and place of birth, if known, of the witness.

(5) FBI number or local police number, if any, and if known.

(6) Whether any State or Federal charges are pending against the prospective witness and the nature of the charges.

(7) Whether the witness is currently incarcerated, under what conditions, and for what length of time.

(8) A brief resume of the background of the investigation or proceeding before the agency or department.

(9) A concise statement of the reasons for the request, including:

(a) What testimony you may expect the prospective witness to give;

(b) How this testimony will serve the public interest;

(c) Whether the witness (i) has invoked the privilege against self-incrimination; or (ii) is likely to invoke the privilege;

(d) If (c)(ii) is applicable, then why you anticipate that the prospective witness will invoke the privilege.

(10) An estimate as to whether the witness is likely to testify in the event immunity is granted.

B. Note should be taken that immunity will not attach until the prospective witness has invoked the privilege against testifying on the specific ground that his/her answers may tend to incriminate him/her, and an order compelling his/her testimony has issued under 18 U.S.C. 6002 and 6004. However, it is the intent of the statute that orders may be issued prospectively, to become effective in the event of a claim of the privilege.

C. While it is anticipated that under the proposed general procedures for implementing the statute requests for clearance will require a minimum of four weeks, we recognize that emergency circumstances may arise where a more expeditious handling of requests will be needed. Such emergency requests should be appropriately flagged and the need-date clearly

specified.

**3.5 Report Procedures.** In order that the Office of the Solicitor may maintain adequate records concerning immunized witnesses, it will be necessary that agencies submit to the Solicitor the following information after the witness has testified:

- A. Name, citation, or other identifying information, of the proceeding in which the order was requested.
- B. Date of the examination of the witness.
- C. Name and residence address of the witness.
- D. Whether the witness invoked the privilege.
- E. Whether the immunity order was used.
- F. Whether the witness testified pursuant to the order.
- G. If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded.

**3.6 Recordkeeping Requirements.** In addition to the information requested in 452 DM 3.5 in all cases where testimony or information is produced under a grant of immunity, a verbatim transcript of the witness= testimony must be preserved for a period of five years from the date of the witness= appearance pursuant to the immunity order. Situations will undoubtedly arise where a defendant in a criminal proceeding at some future date will make a defense based on the alleged illegal use of testimony compelled in a prior hearing or proceeding. The Government will bear the burden of establishing that the evidence is not tainted. In that event, access to the verbatim transcript may be necessary to a successful prosecution.

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