

UC Santa Barbara
Policies

Policy 7040

Issuing Unit: Administrative Services

Date: March 1, 1978

HANDLING
SUBPOENA DUCES TECUM
FOR PERSONAL RECORDS

I. PURPOSE AND SCOPE:

This procedure describes the handling of subpoena duces tecum for personal University records for past or present University students or employees.

II. REFERENCES:

- A. Code of Civil Procedure (¶1985, et seq. and 2019).
- B. General Counsel Cunningham's memorandum to All Chancellors, dated February 22, 1971.
- C. UCSB Policies Manual, Policy 7035, Acceptance of Subpoena Duces Tecum for Personal Records.

III. PROCEDURE:

A. Acceptance of the Subpoena:

- 1. The authority to accept subpoenas for UCSB student or employee records and the responsibility for the release of these records in accordance with such subpoenas are outlined in Policy 7035. The deputy serving the subpoena should be directed to the appropriate official.
- 2. Before accepting the subpoena, the designated official must:
 - a. Ascertain that the individual about whom the information is wanted is or was a student or an employee.
 - b. Ascertain that the subpoena is proper as to form. If in doubt as to form, consult with the Office of the General Counsel by transmitting the subpoena through the Office of University Relations.
 - c. Ascertain that the subpoena correctly and specifically identifies the desired records (i.e., medical, academic, counseling, financial, disciplinary, etc.).
 - d. Ascertain whether the personal attendance of a custodian or other qualified witness is required.
 - e. Request and receive the tender of one day's witness and mileage fees (see paragraph D.1. below), the personal attendance of a custodian or qualified witness is required.

3. Upon acceptance, or prior to the acceptance if there is doubt concerning the validity of the subpoena, the official designated to accept the subpoena will:
 - a. Call the General Counsel's Office to inform that office of the service or attempted service of the subpoena and give that office an opportunity to give advice and counsel.
 - b. Attempt to notify the student or employee of receipt of the subpoena (in writing, to last known permanent address). See Attachment A.

B. Collecting the Specified Records:

The official designated to accept the subpoena will provide the custodian office (see Policy 7035, paragraph II.B.) with a copy of the subpoena and will either (1) collect the required documents and forward the package to the appropriate official (sealed, if desired) or (2) verify that the documents are properly transmitted to the court or the subpoenaing party.

C. Transmittal of Records

1. If the University is neither a party to the cause of action at issue nor the place where the cause of action arose and if the subpoena does not contain a clause which reads:

The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized pursuant to sub-division (b) of Section 1560 and Sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena.

The accepting official or the custodian may make copies of all the records described in the subpoena and mail them to the Clerk of the Court or other subpoenaing party within five days of the date of service (Evidence Code 1564 and 1560). The official shall mail with such records an affidavit stating in substance: (1) the affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records; (2) the copy is a true copy of all the records described in the subpoena; (3) the records were prepared by the authorized University personnel in the ordinary course of business at or near the time of the act, condition or event.

2. If the subpoena requires the original documents and/or presentation by the custodian or another appropriate official, this fact should be established from the start, and the accepting official should instruct the deputy so that the appropriate individuals and records are subpoenaed. The accepting official's office will still remain the coordinating agency for handling of these subpoenas and for advice and assistance to the individuals involved.

3. If the lawyer demanding the records hires someone to duplicate the records, the accepting official will still coordinate the collection of the records as previously indicated. The duplicating process will preclude the necessity of copying and mailing the records as indicated above.

D. Fees:

1. At any time that the University is served with a subpoena duces tecum, demanding personal appearance, the University shall require the tender of one day's witness and mileage fees (usually \$12.00 per day and 20 cents per mile). If no personal appearance is demanded, the University may request the tender of one day's witness and mileage fees.
2. Witness fees are \$12 per day of actual attendance plus 20¢ per mile one way pursuant to Government Code Section 68093.
3. The University may deduct the reasonable cost of copying records and return the balance, if any, to the party, if personal appearances are not required.
4. If the fees are not tendered upon demand, the University need not comply with the subpoena duces tecum and should notify the party of the reason for noncompliance.

Please direct questions about these policies to Meta.Clow@vadmin.ucsb.edu. For questions or comments regarding the format of the above information, please contact webcontact@ucsbuxa.ucsb.edu.

Return to the [UCSB home page](#).

Last Modified By: EBH, 7/09/98