



Ohio Revised Code

Section 1331.16 Investigative demand for discovery.

Effective: July 1, 1996

Legislation: Senate Bill 269 - 121st General Assembly

(A) As used in this section, "documentary material" means the original or any copy of any writings, drawings, graphs, charts, photographs, phonorecords, and other data compilation from which intelligence, relevant to any investigation conducted to determine if any person is or has been engaged in a violation of this chapter, can be perceived with or without the use of detection devices.

(B) Whenever the attorney general has reasonable cause to believe that any person, as defined in section 1331.01 of the Revised Code, may be in possession, custody, or control of any documentary material or may have knowledge of any fact that is relevant to any investigation conducted to determine if any person is or has been engaged in a violation of this chapter, the attorney general or the attorney general's designated representative may issue in writing, and cause to be served upon any person or the representative or agent of the person, an investigative demand that requires the person to produce the documentary material for inspection and copying or reproduction, to answer under oath and in writing written interrogatories, or to appear and testify under oath before the attorney general or the attorney general's duly authorized representative, or that requires the person to do any combination of the three demands.

(C) Each investigative demand shall:

(1) Describe the conduct under investigation and state the provisions of law applicable thereto;

(2) If it is a demand for production of documentary material:

(a) Describe with reasonable particularity the documentary material to be produced;

(b) Prescribe a return date that will provide a reasonable period of time within which the material may be assembled and made available for inspection and copying or reproduction;

(c) Identify the custodian to whom the material shall be made available.



(3) If it is a demand for answers to written interrogatories:

- (a) Identify the representative of the attorney general to whom the answers shall be made;
- (b) Prescribe a date by which the answers shall be presented.

(4) If it is a demand for the giving of oral testimony:

- (a) Prescribe a date, time, and place at which oral testimony shall be taken;
- (b) Identify the representative of the attorney general who shall conduct the oral examination.

(D) No investigative demand shall:

(1) Contain any requirement that would be unreasonable if contained in a subpoena or a subpoena duces tecum issued by a court in aid of a grand jury investigation;

(2) Except as provided in division (H) of this section, require any answers to written interrogatories, the giving of any oral testimony, or the production of any documentary material that would be privileged from disclosure if demanded by a subpoena or subpoena duces tecum issued by a court in aid of a grand jury investigation.

(E) Service of any investigative demand may be made and is complete by doing either of the following:

(1) Depositing a copy of the demand in the United States mails, by certified mail addressed to the person to be served at his principal office, place of business, or residence;

(2) Delivering a copy of the demand to the person, or to the representative or agent of the person.

(F) Any person who is served with a demand under this section may be represented by counsel at the taking of that person's testimony.



(G) In all respects, the taking of oral testimony, answering of written interrogatories, and production of documentary material under this section, except as otherwise provided in this section, shall follow the procedures established by the discovery provisions of the Rules of Civil Procedure.

(H)(1) Whenever a natural person who is served with a demand under this section refuses, on the basis of the person's privilege against self-incrimination, to provide any oral testimony, to answer any written interrogatories, or to produce any documentary material, the attorney general or the attorney general's designated representative may file a written request with a court of common pleas, and the court, unless it finds that to do so would not further the administration of justice, shall compel that person to provide the oral testimony, to answer the written interrogatories, or to produce the documentary material if all of the following apply:

(a) The attorney general or the attorney general's designated representative makes a written request to the court of common pleas to order the person to provide oral testimony, to answer written interrogatories, or to produce documentary material, notwithstanding his claim of privilege;

(b) The written request is made to a court of common pleas in the county in which the person resides, transacts business, or is otherwise found, except that if the person transacts business in more than one county, the request shall be made in the county in which the person maintains his principal place of business;

(c) The court of common pleas informs the person that by providing oral testimony, answering written interrogatories, or producing documentary material the person will receive immunity under division (H)(2) of this section.

(2) If, but for division (H) of this section, the person would have been privileged to withhold any oral testimony, answers to written interrogatories, or documentary material given in these proceedings and if the person complies with an order under division (H)(1) of this section that compels the person to provide testimony, answers, or material, the person shall not be prosecuted or subjected to any criminal penalty for or on account of any transaction or matter concerning which, in compliance with the order, the person provided testimony, answers, or material.



(3) A person granted immunity under division (H)(2) of this section may be subjected to a criminal penalty for any violation of section 2921.11, 2921.12, or 2921.13 of the Revised Code, or for contempt committed in providing oral testimony, answers to written interrogatories, or documentary material in compliance with the order.

(I) Within twenty days after service of an investigative demand upon any person pursuant to this section, or at any time before the compliance date specified in the demand, whichever period is shorter, the person may file in the court of common pleas in the county in which the person resides, transacts business, or is otherwise found, and serve upon the attorney general, a request for an order of the court modifying or setting aside the demand, except that if the person transacts business in more than one county, the request shall be filed in the county in which the person maintains the person's principal place of business, or in any other county that may be agreed upon by the person and the attorney general, or the attorney general's designated representative. The application shall specify each ground upon which the person relies in seeking relief. The time allowed for compliance with the demand shall be tolled during the pendency of the request in court.

(J) Whenever any person fails to fully comply with an investigative demand served upon the person pursuant to this section, the attorney general may file in the court of common pleas in the county in which the person resides, transacts business, or is otherwise found, and serve upon the person, a request for an order of the court that compels compliance with the demand, except that if the person transacts business in more than one county, the request shall be filed in the county in which the person maintains the person's principal place of business, or in any other county that may be agreed upon by the person and the attorney general, or the attorney general's designated representative. If the court finds that the noncompliance was in bad faith or for the purpose of delay, it may order the person to pay to the attorney general the reasonable expenses incurred in obtaining the order, including attorney's fees, and may invoke the sanctions provided by Rule 37 of the Rules of Civil Procedure.

(K) A person who obstructs an investigative demand made under this section may be liable for criminal prosecution for a violation of section 2921.13, 2921.31, or 2921.32 of the Revised Code.

(L) The attorney general is responsible for the custody, use, and necessary preservation of the documentary material made available pursuant to a demand and for its return as provided by this



section. All documentary material, answers to written interrogatories, and transcripts of oral testimony that are provided pursuant to an investigative demand are, for purposes of section 149.43 and division (E)(2) of section 1347.08 of the Revised Code, trial preparation records, and shall be confidential and shall not be subject to disclosure, inspection, or copying except as provided in this section. Unless otherwise ordered by a court of common pleas, no documentary material, answers to written interrogatories, or transcripts of oral testimony that are provided pursuant to an investigative demand shall be available for inspection or copying by, nor shall the contents of the material, answers, or transcripts be disclosed to, any individual other than an authorized representative of the attorney general, without the consent of the person who provided the material, answers, or testimony, except that the material, answers, or testimony may be used in any grand jury investigation or, after reasonable notice to the person who provided the material, answers, or testimony, in the conduct of any case or other official proceeding involving an alleged violation of this chapter. No employee of the office of the attorney general shall purposely make available for inspection or copying documentary material, answers to written interrogatories, or transcripts of oral testimony provided pursuant to an investigative demand, nor disclose the contents of the material, answers, or transcripts, except as provided by this section.

(M) When copies of documentary material made available pursuant to an investigative demand are no longer required for use in a pending proceeding, or, absent any pending proceeding, are no longer required in connection with the investigation for which they were demanded, or at the end of twenty-four months following the date when the material was made available, whichever is sooner, all copies of the material shall be returned, unless a request to extend the period beyond twenty-four months has been filed in the court of common pleas in which a request for an order compelling compliance pursuant to division (J) of this section could be filed. This division shall not require the return of any copies of the documentary material that have passed into the control of any court or grand jury.

(N) Public officers and their deputies, assistants, clerks, subordinates, and employees shall render and furnish to the attorney general, or to the attorney general's designated representatives when so requested, all information and assistance in their possession or within their power.

(O) When any request is filed in any court of common pleas under this section, the court shall have jurisdiction to hear and determine the matter presented and to enter any order that may be required to



carry into effect the provisions of this chapter.

(P) Nothing contained in this section impairs the authority of the attorney general to file any complaint alleging an antitrust violation that is not described in the demand, nor does this section prevent the use of any evidence, obtained through this section or otherwise, in such an action.

(Q) Nothing in this section impairs the authority of the attorney general or the attorney general's representatives to lay before any grand jury that is impaneled in this state any evidence, obtained through this section or otherwise, concerning any alleged violation of this chapter, to invoke the power of the courts to compel the production of any evidence before any grand jury that is impaneled in this state, or to institute any proceeding for the enforcement of any order or process that is issued in execution of such power or to punish disobedience of any such order or process by any person.