

## INQUEST FAQ

### General

*Q: What is an inquest?*

A: An inquest is a confidential proceeding that can be used as an investigative tool to compel witness testimony or the production of documents/data. See 13 V.S.A. Sec. 5131, et. Seq.

*Q: How do we use inquests today?*

A: More often than not, we commence inquests to compel production of documents or data. The “inquest hearing” is an opportunity for the custodian of the documents or data to appear and show cause why those items have not already been produced in response to the subpoena.

*Q: What can I get with an inquest subpoena?*

A: As a general rule, you cannot and should not obtain evidence for which a search warrant is required under statutory or constitutional law. If an individual has a “reasonable expectation of privacy” in data or documents, think hard about whether you need a warrant.

Examples of things you can get with an inquest subpoena:

- Bank Statements
- Billing Statements
- I.P. Addresses
- Basic accountholder info (name, credit card number, email address)

Examples of things you cannot get with an inquest subpoena.

- Cell tower location
- GPS location
- Communication content
- Photos

*Q: Who issues an inquest subpoena?*

A: A Superior Court judge. Not a clerk. Not an attorney.

### Generating an inquest

*Q: What are the first steps?*

A: A law enforcement officer needs to provide an affidavit setting forth reasonable suspicion to believe that a crime was committed, asserting that the evidence sought will be probative of the crime, and identifying the records custodian.

Q: *Ok, what next?*

A: You go into Justware and generate two documents: Application for Inquest and Inquest Subpoena(s). You will also need to draft a proposed Authentication Order.

Q: *The inquest needs a caption. What should we call it?*

A: All inquest documents (application, subpoenas, authentication order, etc.) should be labeled with the same caption. The caption should include the incident number. The rest of the caption should be descriptive of the investigation. Example: "In re: Theft of Avery's Blue Dog Toy, 16D500238"

Q: *How do I draft the subpoena? Does JustWare do it all for me?*

A: Justware does not auto generate these, and they require the assigned attorney to draft. Some things to keep in mind:

- Verify that the caption is correct.
- Make sure the custodian of records is identified properly, including the person's name, company name (if applicable), and address in the recipient block of the subpoena.
- Set an "appear in court date" that is the third Tuesday of the month at 3:30PM. Give the respondent at least 2 weeks to reply.
- Add a section that says, in bold, "**IN LIEU OF PERSONAL APPEARANCE, YOU MAY PROVIDE THE FOLLOWING DOCUMENTS OR DATA.**" Then, list the data or documents you need as well as the date range for those data or documents. Your demand should use bullet points to identify:
  - The date range for records sought
  - How the records sought are to be identified (Ex: "For the Verizon Wireless phone number 802-555-1212" or "For the TD Bank Account #12345678")
  - The records themselves ("Account statements, including images of checks deposited into this account") *Practice tip: you need to know how the records are described in the lingo of the relevant industry. Don't ask for "Everything you have regarding John Smith."*
  - The form in which you want to receive the records (Ex: "Records shall be provided, if possible, in searchable format such as .XLS, .CSV, or OCR PDF").
  - Identify how the records should be sent: "To stephanie.jordan@vermont.gov, cc: [officer's email address], or via U.S. Mail at 5 South Main Street, Suite 208, White River Junction, VT 05001. Please reference incident # [Incident #] in your reply."

## **What happens next?**

*Q: What happens when the signed inquest subpoena comes back from court?*

A: WCSA Admin sends the subpoena to the law enforcement officer who requested it along with instructions clearly noting that it is the officer's responsibility to serve subpoenas.

*Q: What if the subpoena is addressed to an out-of-state recipient? Is there some interstate agreement on reciprocal inquests (the "IAORI")?*

A: General rule: inquest subpoenas are only valid in-state, and when served in hand. Exceptions: subpoenas addressed to electronic service providers may be served out-of-state and may be served via reliable electronic means.

*Q: What if I need a subpoena served outside the USA?*

A: You need to get a Mutual Law Assistance Treaty document from the US State Department. It is possible – particularly if the case is a homicide or child abduction.

## **Special circumstances**

*Q: What about prison phone calls?*

A: The subpoena needs to include language on its face that: "The Court finds that the above-listed phone records may be relevant to a criminal investigation and orders their release."

*Q: What about stuff from Google, Facebook, Verizon Wireless, Etc?*

A: You can use an inquest subpoena to get "subscriber information" as defined in 13 VSA Sec. 8101(11). If you want to get other data for which a search warrant is not required, the subpoena must include the following language: "The Court finds there is reasonable cause to believe an offense has been committed and that the information sought herein appears reasonably calculated to lead to discovery of evidence of the alleged offense."

## **Authentication Orders**

*Q: Hey, it would be great if the evidence I receive in response to the subpoena would be admissible at hearing/trial by virtue of a hearsay exception. How can I do that?*

A: Make sure that your inquest packet include an authentication order requiring the respondent to produce a sworn records custodian declaration.