

Topic: Employee and Agency Response to Governmental Investigations	Department: Entire Agency
Original effective date: 3/11/02	Last revision date: 8/7/26
Owner: VP for Quality and Compliance (VPQC)	Frequency of reviews: Annual
Internal/Regulatory Reference(s) (all that apply): SSA sec. 1936; 45 CFR 164.512; 18 NYCRR 517; 18 NYCRR 504.3; 18 NYCRR 521-1	
Related documents/Links: Please see references within the document	

Policy: It is the policy of The Arc of Monroe (“The Arc”) that business, administrative and support functions promote personal and organizational outcomes; and sound fiscal practices.

Additional Information: This policy applies to all persons who are affected by the agency’s risk areas (to the degree that they are so affected) including our employees, the CEO and other senior management, managers, contractors, agents, subcontractors, independent contractors, vendors consistent with the “Vendor Management Policy”, the Board of Directors, and Board committees; hereafter referred to as “affected parties.” For the purposes of this policy, the term “staff” refers to employees of The Arc of Monroe. Executive Management Team (EMT) consists of the CEO, COO, CFO and CHRO.

Federal, state, and local governmental agencies may have authority to investigate The Arc, its programs, records, or activities. These could occur for a variety of reasons including but not limited to the following:

- To ensure we are compliant with regulatory requirements
- In response to a complaint or alleged misconduct, such as fraud; or any evidence of the same

PLEASE NOTE: This policy does NOT apply to routine reviews, surveys or audits including but not limited to OPWDD’s Division of Quality Improvement recertification surveys, investigations conducted by the Justice Center in response to allegations of abuse, or most Department of Labor audits. This policy is meant to reflect unusual and non-routine investigations only. NOTE: For Federal ICE or immigration activity, please refer to the agency’s policy, “Responding to requests from Immigration Authorities,” which is owned and managed by the CEO with the support of the Chief HR Officer.

The Arc and its affected parties are required to cooperate with governmental investigations, as indicated within this policy. This is designed to provide guidelines for affected parties on expectations we have as an agency if an investigation were to occur.

While we may be given some warning that an investigation is going to occur, these could also happen without any warning. In this latter case, the first we might know about an investigation is when investigators show up.

Investigators or other governmental officials may present any of the following (not fully inclusive) either prior to or at the time of the investigation:

- An investigative demand letter
- A subpoena
- A search warrant

For investigations of a specific location, program or the whole agency, these would most likely be given to the receptionist upon their arrival at the facility. Subpoenas or other court orders that are for a specific person only will generally be given to that person directly.

PLEASE NOTE: Anything that affected parties say to investigators should be considered on the record, even if the conversation seems casual. Employees and other affected parties should assume that any statement made to an investigator may be documented or used as part of the investigation, regardless of whether the conversation appears informal.

Procedure	
Task:	Responsible party:
Actions to take Upon Notice of an Investigation:	
1. If an affected party is informed ahead of time of a forthcoming investigation, they should inform their supervisor, manager or agency contact immediately.	Affected parties
2. If the investigation is imminent or investigators are present on site, staff should ask to see the investigators' official IDs.	Staff, Managers
3. Staff should notify their manager immediately. Staff can also ask the investigator to speak to a member of EMT.	Staff, Managers
4. The manager should ensure that a member of EMT is notified. If the investigators arrive after hours, they should contact AOD2 at 953-4479.	Managers
5. All affected parties should remain polite and professional in all dealings with government agents or investigators.	Affected parties
6. If investigators request that affected parties stop working (including stopping typing, filing, writing, calling, texting, etc.), affected parties are required to comply immediately. They do not need to wait until management arrives before doing so.	Affected parties
7. Investigators should be asked to wait to look at anything until they can talk to a member of EMT.	Staff greeting the investigator or manager
8. Staff and other affected parties should immediately refer any request to search an Arc facility, or presentation of legal authority to conduct a search, to a member of EMT. EMT will consult with legal counsel as appropriate before granting permission or otherwise responding.	Staff, affected parties; EMT
9. If the investigators have a search warrant, they can begin their search. If a member of EMT has not spoken with them yet, staff should ask again if they could please wait until that happens. If they refuse to wait, then staff should not stop them and should cooperate as necessary.	Staff
10. Affected parties are prohibited from doing any of the following during or in anticipation of an investigation: *Removing, hiding, withholding, destroying, fabricating, falsifying, backdating, altering or amending any information the investigators have requested *Lying to an investigator about anything related to the investigation. Staff should always be honest with an investigator. *Convincing others to lie to an investigator *Intimidating or retaliating against others because of their role, participation or willingness to assist in an investigation	Affected parties

*Asking, encouraging or demanding that others respond in a certain way to the investigator *Doing anything illegal *All document destruction will cease for all affected programs pending confirmation of the scope of the investigation	
11. Member(s) of EMT will meet with the investigators as soon as possible. Members of program management might also be included. Legal counsel may be informed and included when appropriate.	EMT; leadership; managers
12. EMT will identify a person as the designated agency contact for the investigator. This person will monitor the investigation and keep EMT apprised as it evolves.	EMT
13. During a legally-authorized search (such as with a search warrant), investigators may both review information and seize it. This may include taking hard copy documents, hard drives, computers, cell phones, etc. This could include both agency and personal items based on the scope of the warrant.	Investigators
14. The following will occur during a search under the oversight of EMT: *A member of leadership will be designated to go with the investigators to document everything the investigators look at and everything they say to or request from staff (unless in the context of a private interview). *If investigators want to take copies of information, we will assist in making those copies for them. If they demand to take originals, we will make a copy for our records and attach a note indicating the date and time the original was taken, by whom (person and agency) and why. If they refuse to allow us to make copies of originals, a member of EMT should be notified and the investigator should be asked to remain until they speak with them. As appropriate, the VPQC (functioning as the HIPAA Privacy Officer) will be consulted to ensure that any requests involving PHI occur only within HIPAA requirements except where immediate compliance with a warrant or other lawful authority is required. *At the end of the search, the investigator(s) should give the designated agency contact a list of everything they are taking – including an accounting of any copies made. *If the investigator demands to take computers, we will facilitate appropriate levels of access, and document the serial numbers of the computers, the date and time they are being taken, by whom (person and agency) and why. The investigator(s) will provide a receipt for them. *If an investigator acting within lawful authority asks staff to identify the location of information and the staff member knows where it is located, the staff member should provide that information. Questions concerning the scope or production of records should be referred to the designated agency contact when circumstances permit.	EMT; designated members of leadership
15. Investigators may ask to speak with or interview staff or other affected parties. Unless compelled by lawful process, an individual may decline or postpone a voluntary interview, including to seek legal advice before deciding whether to participate.	Staff, affected parties
16. Staff should remember: *Investigators can't threaten staff into talking with them. Staff are not required to speak with investigators immediately; they can schedule a	Staff

time later. They can also refuse to be interviewed altogether. Staff are only required to speak with investigators if compelled by lawful process, such as but not limited to a court order. *If staff chooses to speak with an investigator, they should let the designated agency contact know as soon as possible. *Staff can have someone with them during an interview. Staff are permitted to hire their own attorney at their own expense if they prefer.	
17. Anytime staff talk with investigators, whether during a formal interview or during an incidental conversation, they should do the following: *Always tell the truth. *If they don't know something, say they don't know something. *If they aren't sure about something, say they aren't sure about something. *Only answer the question that is asked. If they ask a "yes/no" question, answer with a "yes" or "no". Wait for them to ask additional questions. *Be clear in their answers. *Not ramble or include extraneous information that was not specifically asked *Be clear as to whether they saw something firsthand or if they learned it from someone else. *Not speculate or guess. *Let the designated agency contact know as soon as they are done.	Staff
18. Staff should protect the confidentiality and integrity of the investigation. Staff should not disclose confidential agency information, protected health information, privileged information, or other information they are legally or professionally required to keep confidential. Staff should not attempt to influence another person's recollection, testimony, or participation in the investigation. Nothing in this policy is intended to prohibit or interfere with an individual's legally protected right to communicate with government agencies, legal counsel, coworkers, or others as permitted by law.	Staff
19. Staff should report to a member of EMT or Marketing and Communication staff if they are approached by the media about the investigation. Staff are prohibited from talking about the investigation with the media without express permission from a member of EMT or Marketing and Communication. This includes off the record conversations.	Staff
20. The CEO or their designee will let the Board chairperson and The Arc of NY know about the investigation.	CEO (designee)
21. Through the designated agency contact, EMT will monitor the investigation and will keep the VPQC informed (and vice versa) as appropriate.	EMT, VPQC
22. The EMT will respond to the investigation findings with the support and assistance of legal counsel as appropriate.	EMT, Legal Counsel

Document revision record:

Revision Date	Release Date	Reason for change	Approver
10/27/05	10/27/05	Reasons for changes not documented	P Dancer

4/14/06	4/14/06	Reasons for changes not documented	P Dancer
11/8/06	11/8/06	Reasons for changes not documented	P Dancer
5/19/08	5/19/08	Reasons for changes not documented	P Dancer
6/25/09	6/25/09	Reasons for changes not documented	P Dancer
8/6/10	8/6/10	Reasons for changes not documented	P Dancer
1/7/11	1/7/11	Reasons for changes not documented	P Dancer
8/3/12	8/3/12	Reasons for changes not documented	P Dancer
7/29/13	7/29/13	Reasons for changes not documented	P Dancer
10/24/14	10/24/14	Reasons for changes not documented	P Dancer
7/29/15	7/29/15	Reasons for changes not documented	P Dancer
5/31/17	5/31/17	Reasons for changes not documented	P Dancer
11/9/18	11/9/18	Reasons for changes not documented	P Dancer
11/26/19	11/26/19	Transitioned to new procedural format	P Dancer
8/18/21	9/8/21	Fleshed out information; added discrete sections for managers, EMT and the VPQC; Added that the decryption code for any computers will be provided to investigators; and we will ask to make copies of files on computers being seized	ICC
7/18/22	7/18/22	Clarified that personal items may also be covered by a warrant and would need to be turned over to investigators; corrected typos	ICC
7/21/22	8/8/22	Defined “staff” for the purposes of this policy	ICC
2/20/23	3/15/23	Removed definition of “staff” and added definition for “affected parties,” and defined those; updated terms throughout	ICC
9/13/23	9/13/23	Spelled out acronyms, changed Arc Foundation to Marketing and Communication and corrected some typos	ICC
8/23/24	9/25/24	Added minor clarifying language	ICC
7/3/25	9/25/25	Added reference to the policy on immigration activities; reorganized information in the general guidelines and removed redundancies; added clarifying language; removed unnecessary language	ICC
8/7/26	8/7/26	Clarified procedures for responding to governmental investigations; defined EMT and designated agency contact roles; revised requirements related to searches, document preservation, records and PHI, staff interviews, and confidentiality; updated regulatory references; streamlined roles and responsibilities and removed redundancies; and added clarifying language throughout.	