

## What to do in a dawn raid - part 1

The Competition Commission is empowered to make on the spot investigations and searches, typically referred to as dawn raids, at a company's premises with or without a search warrant, depending on the circumstances. The Commission will use these powers when it suspects that company will not provide it with the evidence that it is looking for or that evidence may be destroyed.

By [Rosalind Lake](#) 26 Nov 2015



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By following the procedures below, a company's interests can be protected while ensuring compliance with the law.

### General steps

Staff should always be co-operative and cordial with the investigators. At the same time, staff must ensure that the investigators abide by the legal restrictions under which they must work. Adequate preparation, before the investigators arrive, will reduce that stress and help guarantee that the company presents itself suitably and acts appropriately.

To ensure that company and individual legal rights are respected at all times during the inspection, it is critical that internal or external legal representatives be involved throughout the process.

### Arrival of investigators at reception

For the unannounced visits or dawn raids, investigators will likely arrive without any warning at the start of the day. It is useful to provide the receptionist and security personnel with a list of internal and external contact persons to refer to when a dawn raid occurs.

The receptionist should courteously take the investigators to a suitable meeting room where no files or documents are kept to wait until the contact person(s) arrives. Special badges should be available for

investigators that will enable company personnel to identify investigators from all other visitors and staff.

## **Initial actions**

The contact person should inform relevant staff that an inspection is taking place and give clear instruction that in no case should documents or electronic files be concealed, altered, destroyed or removed nor should anyone outside the company be informed of the inspection.

The company is entitled to have legal representation present during the search. The contact person should inform the investigators that the company wishes to have its lawyers present. The contact person should then ask the company's legal representatives to come to the site as soon as possible, with at least as many legal representatives as there are investigators. Do not engage in further discussions with the investigators until the legal representatives arrive.

The contact person should check the identity of all of the investigators and ascertain the capacities in which they are acting and ask them to produce their written authorisation to investigate or the search warrant issued by the High Court. Each investigator should be able to produce an official Competition Commission identification card or other identification that can be verified against the authorisation or warrant. The authorisation or warrant will normally be an official document that identifies the subject matter and purpose of the investigation as well as the offences that may be committed in cases of non-compliance.

## **The warrant**

If no warrant is presented, the contact person or the legal representative should assess whether the legal requirements for inspection (as per section 47 of the Competition Act 1998) are met.

Key things to bear in mind:

- an inspection without a warrant must take place in the daytime;
- permission to enter and search must be obtained from the owner or person in charge of the premises;
- check the identification of the inspector and obtain an explanation as to the authority by which the search is being conducted; and
- the inspector must have reasonable grounds for believing that a warrant, if applied for, would be granted, and that the delay involved would defeat the purpose of such search (eg documents would be shredded)

## **Inspection with a warrant**

If a warrant is presented, it should also be carefully checked to ensure that it is valid and to determine the exact scope of the investigators' powers. This should happen with legal representatives present.

The following is required for a warrant to be valid:

- it should specifically and correctly identify the premises that may be entered and searched;
- it should specify the inspectors or police officers authorised to carry out the inspection;
- it should set out the subject matter and purpose of the investigation;
- the warrant must be authorised by a judge, regional magistrate or magistrate with jurisdiction;
- the warrant must not have previously been executed;
- the warrant must not have been cancelled by the person who issued it or, in that person's absence, by

person with similar authority;

- the purpose for issuing the warrant must not have lapsed;
- the warrant must be executed during the day unless a night inspection is explicitly authorised by the judge or magistrate issuing the warrant, in which case the judge or magistrate will determine a time for night inspection that is reasonable in the circumstances; and
- the warrant must have been issued no more than one month before it is executed.

### **Continue reading:**

[What to do in a dawn raid - part 2](#)

[What to do in a dawn raid - part 3](#)

## **ABOUT THE AUTHOR**

Rosalind Lake is a director at Norton Rose Fulbright South Africa Inc.

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