

# DOES THE LOCATION OF A *CRIME STOPPERS* CALL-TAKING CENTER OR INTERNET SERVER PROVIDE EXEMPTION FROM A SUBPOENA OF CRIME STOPPERS TIP RECORDS?

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Many Crime Stoppers organizations use telephone "Call Centers" to answer incoming calls to the Crime Stoppers program. The use of a web-based internet site to solicit and receive crime-solving information has also grown in popularity due to the ability to encrypt such information. And, yes, text-messaging is a part of the new Crime Stoppers technology.

The issue has been raised as to whether or not a Crime Stoppers organization's use of call center and/or web-based tips system which is located outside of the geographical area or jurisdiction of a court will, in and of itself, enhance ability of a Crime Stoppers organization to protect a Crime Stoppers informant from a subpoena duces tecum for Crime Stoppers records (which might lead to the unwanted disclosure or discovery of the identity of the person who contacts Crime Stoppers).

The short answer is: "No". There is no law or evidence to support the validity of such a belief.

It is well-established as a general rule that all or some of the items specified in a subpoena duces tecum are in the possession of a foreign custodian in another country is not, in and of itself, a valid ground for their nonproduction, and that compliance with the subpoena as to such items may be enforced where it is within the power or ability of the person or corporation to which it is directed to produce them, subject, as in other cases, to conditions and limitations with respect to the difficulty, inconvenience, or expense involved.

Ordinarily, to excuse noncompliance with the subpoena, it must appear that the person to whom or the corporation to which it was directed acted in good faith or made a reasonable effort to comply. And where it appears that the production of the books or papers, or access thereto, may be obtained by means of an application to a court or other authority of the foreign country, it has been held that the person subpoenaed will be

required to make such application, or to cooperate with local governmental authorities in making such application, as a condition of being relieved of the duty to produce the items in question.

Nor can a corporation evade compliance with a subpoena duces tecum by a Bylaw or a Resolution of its board of directors prohibiting the removal of its records from its home office in a foreign jurisdiction.

The existence or absence of an alternative method for obtaining the information contained in the records may be a consideration of importance in determining whether compliance with the subpoena should be enforced.

Whether compliance with the subpoena should be enforced has generally been treated as a matter resting within the sound discretion of the court.

The above legal principles are summarized from three (3) massive legal articles published in *American Law Reports*. See 130 A.L. R. 327 ("Practice or procedure for testing validity or scope of the command of subpoena duces tecum"); 82 A.L.R.2d 1403 ("Subpoena duces tecum for production of items held by a foreign custodian in another country"); and 47 A.L.R.3d 676 ("Who has possession, custody, or control of corporate books or records for purposes of order to produce"). The cases cited in the articles involve court actions in the United States involving records located in such nations as Canada, France, Switzerland, Mexico, Panama, Kenya, Greece, Germany, Cayman Islands, et al.

So what does this mean in non-*legalese*? It means that the general rule in courts in the United States (both state and federal), a Crime Stoppers organization cannot simply claim that it cannot produce Crime Stoppers records because they are located in a geographical area outside the long-arm of the court's jurisdiction. The Judge of the court will ultimately find that the person or legal entity that is in possession of the records is actually under the control and works as the agent for the Crime Stoppers organization and must send the records to the Crime Stoppers organization so that Crime Stoppers can produce the records in compliance with the subpoena or court order. Failure to produce could result in a finding of *contempt*, a fine and/or incarceration. A Judge is often empowered with the authority to consider the contempt to be a "continuing" contempt, with the person remaining in custody of he/she purges the contempt by producing the records. Persons subject to such contempt orders in such circumstances would more than likely be the President or Chair of the Crime Stoppers corporation's board of directors, although it could possibly include employees of the corporation.

Thus, it is incorrect to assume that Crime Stoppers records possessed outside of the court's jurisdiction are protected from *production*, thus Crime Stoppers informant identification or information that could lead to the informant being identified are not immune due to such location.

Rather, the only protection available to Crime Stoppers organization's operating in the United States are:

1. The general "informer's privilege" recognized by case law and/or statute;
2. Any special "Crime Stoppers statutes" that may have been enacted by the state legislature in the jurisdiction (See statutes in: Arizona; Colorado; Connecticut; Guam; Kansas; Kentucky; Louisiana; Mississippi; New Mexico; Oklahoma; Pennsylvania; Texas; Virginia; and Wisconsin.);
3. Case law (court decisions) to the extent it exists in the jurisdiction.

Some of the above-referenced statutes provide broader protection than others. For example, Guam (Title 6, Section 503.1, Guam Code Annotated), covers Crime Stoppers "or any other person or entity". Other states, like Texas, expand protection with language such as: "...and the person who accepted the report on behalf of the council or organization." (See Section 414.008, Texas Government Code).

At the present time, efforts are underway to seek the enactment of federal legislation to protect Crime Stoppers records and information in the United States district courts, courts of appeal, and Supreme Court. More information will be forthcoming from Crime Stoppers of the United States of America, Inc. ("CSUSA") in 2008.

Additionally, compliance with traditional Crime Stoppers best practices and guidelines, so that no information is taken or kept in a form which could lead to the identification of the Crime Stoppers informant, is always recommended. Adoption of a corporate resolution creating a Record Retention Policy is also lawful in most jurisdictions, provided the policy is adopted and records are not destroyed after a subpoena *duces tecum* or a production Order is issued by the Court.

Dues-paid members of CSUSA may contact the author for additional information or answers to specific questions.