

FTC Investigation? Seven Things You Must Do to Protect Yourself

Article By:

Dr. Nick Oberheiden

The moment you learn that you or your business is subject to an FTC investigation is undoubtedly a stressful one. Understandably, the thought of a formal FTC investigation, and how it will impact your business, may keep you up at night. However, when it comes to an open FTC investigation, knowledge is power. Not only that, but knowing what to expect, what to do, and what not to do, can provide much-needed peace of mind throughout the process.

Below is a list of things individuals and businesses that are facing an FTC investigation should do to protect themselves.

1. Understand the FTC's Position

Not all FTC investigations are the same. The FTC will typically initiate an informal investigation by issuing an access letter. An access letter is an unenforceable request for voluntary cooperation. However, just because the FTC cannot require a business to comply with the requests in an access letter does not mean that it is wise to ignore the request. If the FTC does not receive a response, it can open up a formal investigation.

A formal FTC investigation begins with the FTC issuing a [Civil Investigative Demand](#) (CID). Unlike an access letter, a CID is a judicially enforced demand for certain documents. In addition, a CID will likely include a demand for written answers to specific questions.

When receiving any communication from the FTC, the first step is to determine what the FTC is asking for and whether compliance is mandatory. In many cases, FTC communication is not indicative of a targeted investigation of the recipient, and is merely requesting documents pertaining to the investigation of another organization.

If a CID is targeting your business, it is crucial to understand the FTC's position. The CID will contain the alleged violation, the statutory authority under which the FTC is acting, and all important deadlines. Make a note of these, as they can be important for developing a defense to an FTC enforcement action.

2. Preserve All Necessary Documents

This may go without saying, but businesses in receipt of a CID are under a duty not to destroy any documents or information covered by the CID. Thus, to avoid further (and potentially more serious) problems down the road, businesses targeted by an FTC investigation should issue a litigation hold and contact their IT department to temporarily put a hold on all system maintenance that could purge covered information.

3.Contact the FTC

When a business receives a CID, it will contain the name of the FTC commissioner who signed the CID, as well as the name of the FTC attorney handling the matter. The CID will also dictate the date by which you must attend the initial meeting, referred to by the FTC as the “call and confer.” Typically, this must be completed within 14 days of the business’s receipt of the CID.

Individuals and businesses are permitted to have an attorney attend the “call and confer” meeting, which is advisable considering the matters covered under the FTC investigation may be unfamiliar. During the meeting, you or your attorney can ask the FTC attorney questions about the investigation. The answers to these questions can provide guidance on the scope of the concerns and how you can tailor your response in hopes of narrowing the investigation.

4.Provide Alternatives to Get the FTC What It’s Looking for

In some cases, the demands contained in a CID are extremely burdensome. In this situation, if you understand the nature of the FTC’s concerns, you may be able to propose another, less burdensome, alternative. For example, if the information the FTC demands in the CID is reasonable in scope, but will take time to compile, you may consider requesting an extension of time. In other cases, there may be alternatives to get the FTC what it is looking for. For example, by offering to provide a sampling of the data requested, you may be able to limit both the efforts necessary to comply with the CID as well as narrowing the scope of the investigation. For individuals and businesses that are not intimately familiar with the FTC investigatory process, working with an FTC compliance attorney is wise, as they have been through the process before and will know how to best make any requests.

5.See the Big Picture

Once you’ve identified which documents you think are covered under the FTC CID, take a moment to consider how these documents fit into the FTC’s concerns. While the CID will include a brief description of the issues, it will not disclose the FTC’s theory against the company. Looking at the CID and the documents you’ve come up with in response, come up with possible theories the FTC may pursue against the company. This will help guide your response and, quite possibly, develop a defense.

6.Formally Respond

Once you’ve identified all the documents, reviewed them in conjunction with the CID, and determined what the FTC’s theory will likely be, it’s time to formally respond to the FTC. When responding, it is crucial to closely read the CID, noticing distinctions between demands for “all” documents versus a demand for “sufficient” documentation to answer the FTC inquiry. You don’t want to withhold covered material, but at the same time, handing over unnecessary documents can only expand the scope of the investigation. One theory is to reduce the workload of FTC staff, assuming that the more time they spend rummaging through your documents, the more likely they

are to find issues.

If there are special areas of concern, you may consider writing a brief to the FTC to explain the context of what may otherwise appear to be a red flag. Doing so can head off a potential problem.

7.Contact an FTC defense attorney

While there is no requirement that an individual or business under FTC investigation work with an attorney, doing so is almost always in your best interest. Working with an FTC compliance and defense attorney offers you various benefits. Primarily, attorneys who routinely handle FTC investigations are familiar with the process, and can offer you peace of mind through this anxiety-inducing process. An attorney will know how FTC staff interact with businesses and individuals, and can explain the import of certain comments or actions of an FTC attorney. You may be able to find an FTC defense attorney who has handled a very similar claim for another client, who can offer valuable insight into the FTC investigation.

If you've recently received an FTC CID, you don't need to go through the FTC investigation process alone. Many businesses and individuals who find themselves facing FTC scrutiny find that working with an experienced attorney reduces the scope of the investigation and possibly resolves the investigation more quickly. Additionally, an attorney can offer valuable insight into the FTC's thought process, which is equally as valuable for many in the FTC's crosshairs.

Oberheiden P.C. © 2025

National Law Review, Volume XI, Number 7

Source URL:<https://natlawreview.com/article/ftc-investigation-seven-things-you-must-do-to-protect-yourself>