

**RESPONSE LETTER TO ANYONE SUBPOENAING  
AN OMBUDSMAN TO TESTIFY/APPEAR IN A COURT HEARING OR DEPOSITION**

Dear \_\_\_\_\_

This letter acknowledges the receipt of the subpoena to appear as a witness in [A COURT HEARING OR DEPOSITION], which was served on [NAME OF OMBUDSMAN] of the [NAME OF PROGRAM] ombudsman program regarding [NAME OF RESIDENT].

Please be advised that pursuant to 42 USC 3058g(d)(2)(b) and the Welfare and Institutions Code Section 9725, the records of the ombudsman are confidential and disclosure of the records is prohibited except with written consent or court order. Specifically, 42 USC 3058g(d)(2)(b) prohibits the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless:

- ”(i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;
- (ii) (I) the complainant or resident gives consent orally; and  
(II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or
- (iii) the disclosure is required by court order.”

Welfare and Institutions Code Section 9725 provides as follows:

”All records and files of the office relating to any complaint or investigation made pursuant to this chapter and the identities of complainants, witnesses, patients, or residents shall remain confidential, unless disclosure is authorized by the patient or resident or his or her conservator of the person or legal representative, required by court order, or release of the information is to a law enforcement agency, public protective service agency, licensing or certification agency in a manner consistent with federal laws and regulations. “

In addition to the foregoing provisions, Title 45 of the Code of Federal Regulations, Section 1321.51 provides that:

“... no information about an older person, or obtained from an older person by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, ...”.

In light of the foregoing provisions, [NAME OF OMBUDSMAN] will appear at the [COURT HEARING OR DEPOSITION] but would be unable to release any ombudsman records without written consent from all relevant parties or a court order. If you have any questions, please contact me at [PROGRAM'S TELEPHONE NUMBER].

Sincerely,  
YOUR NAME AND TITLE