

## *Suggested Guidelines*

# **How to Respond to Law Enforcement Requests for Library Records and User Information**

*These suggested guidelines will help you prepare for and respond to requests from law enforcement while upholding First and Fourth Amendment freedoms, professional ethics, and state law. State and local jurisdictions may have different laws applicable to privacy, confidentiality and library records. Review these guidelines with your legal counsel and modify them as appropriate for your library. These guidelines are not intended as legal advice. If legal advice or expert assistance is required, the services of a competent legal professional should be sought.*

### **What if it's an emergency?**

In some cases, especially those involving missing persons, law enforcement may ask you to voluntarily provide records immediately and give you the impression that it's not possible to obtain a court order.

It is important to remember that requiring a court order is neither unusual nor burdensome. Law enforcement officers have access to judges even after normal business hours. You can extend cooperation by preserving the desired records (or by keeping a computer turned on and making sure no one uses it) while the officer seeks a court order.

There is a limited legal exception to the warrant requirement when "exigent circumstances" exist. If members of law enforcement believe an emergency truly exists, that there is inadequate time to obtain a warrant, and that they have probable cause for seizure of records, they may simply take custody of the records over the library's objection. In this case, you should not interfere, but you should also indicate that you are not granting permission. This is necessary so that the law enforcement officials and *not* the library will bear responsibility and any legal risks associated with the decision to proceed without a warrant.

A number of states make provision for exigent circumstances in the state's library confidentiality statute. If so, precisely follow the law's requirements. For example, one state requires any law enforcement officer asking for library records under exigent circumstances to provide a written affidavit to the library affirming that such circumstances exist. Legal counsel should assist the library in interpreting state and local laws on exigent circumstances for inclusion in the policy on release of records and information.

### **Do this NOW, before any visit:**

- Designate the person(s) who will be responsible for handling law-enforcement requests (typically the library director and the library's legal counsel). Prepare a list of these persons, with contact information including home or cell-phone numbers for use if they are not present in the library.
- Review the library's confidentiality policy and state confidentiality law with library counsel. Communicate the requirements of both to staff and volunteer workers in the library.
- Train all library workers, *including volunteers*, on the library's procedure for handling law-enforcement requests. They should understand that it is lawful to refer the agent or officer to an administrator in charge of the library, and that they generally do not need to respond immediately to any request.
- A court order may require the removal of a computer workstation or other computer storage device from the library. Have plans in place to address service interruptions and any necessary backups for equipment and software.

## Procedures for Library Staff

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**If a law enforcement officer requests library records or information about a library user or staff member:**

1. Ask for the officer's identification.
2. Inform the officer that the library director or legal counsel is the individual authorized to respond to requests for records and information, and that library policy requires you to refer the officer to the specified person under your policy.
3. Refer the officer to the library director, legal counsel or to a designated alternate authorized by the library director to respond to requests for records and information. (A list of library employees authorized to respond to records and information requests in the absence of the library director should be available to staff.)

**If a law enforcement officer requests library records or information about a library user or staff member and neither the library director, legal counsel, nor a designated alternate is present in the library:**

1. Ask for the officer's identification. Record the information that appears on the identity card.
2. Inform the officer that the library director or legal counsel is the individual authorized to respond to requests for records and information, and that library policy requires you to refer the officer to the specified individual.
3. Attempt to reach the library director, a designated alternate, or the library's legal counsel using the phone contact list.
4. If you cannot reach the library director, legal counsel, or a designated alternate, utilize the procedures outlined below for use by the library director or a designated alternate. Provide a written report describing the officer's inquiry to the library director at the earliest opportunity.

## Procedures for the Library Director or Designated Alternate

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**In ALL CASES:**

1. Ask for the officer's identification. Record the information that appears on the identity card. If possible, verify the information with the local FBI office or the police department.
2. Ask a colleague to be present during the interview with the officer. One person should take notes that may be useful if a record of the encounter is needed in the future.

**Requests for VOLUNTARY ASSISTANCE or WARRANTLESS SEARCHES (officer does *not* present a subpoena or court order):**

1. Explain the library's privacy policy, informing the officer that library records and information about library users and library staff are not made available to law enforcement agencies unless a proper court order in good form has been presented to the library.
2. Without a court order, neither the FBI nor local law enforcement has authority to compel cooperation with an investigation or require answers to questions, other than the name and address of the person speaking to the agent or officer. If the officer persists, explain that, as good citizens and in conformity with professional ethics, First Amendment freedoms, and state law, the library

staff will not respond to informal requests for confidential information in the absence of a court order.

3. If the officer claims that an emergency or other circumstance requires the library to turn over records or provide information without a court order, call the library's legal counsel and ask for assistance. (See also the note associated with this article: "What if it's an Emergency?")
4. If the officer employs force to take possession of library records or other library property, do not obstruct the search in any way. Keep a written record describing the incident. Ask any witnesses to the incident to prepare a written record of the interaction between the officer and library employees or volunteers.
5. Provide all notes and records to the library's legal counsel. If a library worker or volunteer is required to respond to a voluntary request or a warrantless search in the absence of the library director or a designated alternate, all materials should be turned over to the library director.

**If the law enforcement officer presents a SUBPOENA or similar request for records:**

1. Accept the subpoena. Inform the officer that the library's legal counsel responds to subpoenas on behalf of the library. A subpoena does not require an immediate response from the library.
2. Turn the subpoena over to the library's legal counsel. If a library worker or volunteer accepts service of the subpoena in the absence of the library director or a designated alternate, the subpoena should be turned over to the library director for coordination with legal counsel.
3. The library director will work with the library's legal counsel to respond appropriately to the subpoena. Examine the subpoena for any legal defect, including the manner in which it was served on the library, the breadth of its request, its form, or an insufficient showing of good cause made to a court. If a defect exists, legal counsel will advise on the best method to resist the subpoena.
4. Through legal counsel, insist that any defect be cured before records are released and that the subpoena is strictly limited to require release of specifically identified records or documents. If there does not appear to be good cause for the subpoena, or if it seems too broad or intrusive, ask your attorney to file a motion with the issuing court to quash the subpoena in its entirety. Require that the agent, officer, or party requesting the information submit a new subpoena in good form and without defects.
5. If you decide to comply with the subpoena after consulting with legal counsel, review the information that may be produced in response to the subpoena before releasing the information. Follow the subpoena strictly and do not provide any information that is not specifically requested in it.
6. If disclosure is required, ask the court to enter a protective order (drafted by the library's counsel) keeping the information confidential and limiting its use to the particular case. Ask that access be restricted to those persons working directly on the case.

**If the law enforcement officer presents a SEARCH WARRANT:**

1. Immediately ask the library's legal counsel to provide advice and assistance.
2. Unlike a subpoena, a search warrant may be executed immediately. Ask to have library counsel present before the search begins in order to allow library counsel an opportunity to examine the warrant and to ensure that the search conforms to the terms of the warrant.
3. If the officer refuses to delay the search, read the warrant and any attached documentation. Verify that it is signed by a judge; is issued by a local, state or federal court in your state or county; and is current and has not expired. If you have questions about the validity of the warrant, call the issuing court to verify the validity of the warrant or order.
4. Identify the items or records specified in the warrant. If the officer will not wait for legal counsel to arrive, you may assist the officer in locating the items or records identified in the search warrant in order to prevent review of other users' records or items not named in the warrant.

5. Do not agree to any additional searches or volunteer information about the items or records in the warrant. Do not sign any documents on behalf of the library without the advice of the library's legal counsel.
6. Record and keep an inventory of the records or items seized from the library. Ask if it is possible to provide copies to the officers or to make copies for the library's own records.
7. Do not obstruct the search in any way.
8. If the law-enforcement officials are unwilling to cooperate with you, simply step aside and do not interfere with the officer. Continue your attempts to notify legal counsel, and make every effort to keep a written record of the incident. Ask any witnesses to keep a written record of the interaction between law enforcement officials and library employees and volunteers.
9. Request that the officer sign an inventory receipt for the materials with a specific list of all materials seized.
10. Provide all notes and records to the library's legal counsel. If a library worker or volunteer is required to respond to a search warrant in the absence of the library director or a designated alternate, all materials should be turned over to the library director for coordination with legal counsel.

**If an agent for the Federal Bureau of Investigation presents an order and informs you that the order is issued as part of a TERRORISM OR ESPIONAGE INVESTIGATION and is subject to a "nondisclosure order" or "gag order" (FISA court orders or National Security Letters):**

1. Call the library's legal counsel and ask for assistance.
2. Read the order and any attached documentation. If it provides a period of time to respond to the order, respond to the order in the same manner as a subpoena (see above). Except for legal counsel, do not inform other library staff or any other person about the order until authorized to do so by the library's legal counsel.
3. If the order requires the immediate surrender of records or other items, respond to the order in the same manner as a search warrant (see above). Ask the agent if he will delay the search until the library's legal counsel arrives.
4. If required to turn over records or other items at once, do not notify any library staff except for legal counsel and those staff members necessary for the production of the requested records or other items. (For example, it may be necessary to ask a member of the information technology staff to assist with the production of electronic or computer records.) Instruct all staff members who assist in responding to the order that, with the exception of legal counsel, they cannot inform other library staff or any other person about the order unless authorized to do so by the library's legal counsel.
5. If a library worker or volunteer is required to respond to an order issued under the USA PATRIOT Act in the absence of the library director or a designated alternate, she should inform the library director as the custodian of records. It is not unlawful for library staff or volunteers to refer the agent to the library director or his designated alternate; however, except for legal counsel, the staff member or volunteer should not inform anyone else about the order unless authorized to do so by the library's legal counsel.

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This is a preprint of material that will be included in the ninth edition of the ALA *Intellectual Freedom Manual*, forthcoming in spring 2015. To purchase a copy of the manual, please visit the ALA Store at <http://www.alastore.ala.org/>

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