

Responding to Law Enforcement Inquiries

Your library needs to designate who should receive any court order. A person should be designated for every hour the library is open. If the Library Director is not there, someone present should be designated. **All library staff should understand that it is lawful to refer the agent or officer to an administrator in charge of the library, and that they do not need to respond immediately to any request.**

During a visit:

Staff should:

1. If anyone approaches a staff member alleging to be a law enforcement official requesting information, **DO NOT DISCLOSE ANY INFORMATION.**
2. Ask for identification and then immediately refer the agent or officer to the library Director or other designated staff. Photocopy identification or take business card.

Director or person designated should:

1. Ask to see the court order(s) (for example: search warrant, subpoena, National Security Letter) authorizing law enforcement.
 2. Call legal counsel.
- If the agent or officer does not have a court order compelling the production of records, the director or officer should explain the library's confidentiality policy and/or the state's confidentiality law (NYS 4509) and inform the agent or officer that users' records are not available except when a proper court order in good form has been presented to the library.
 - If there is no court order presented the FBI and /or local law enforcement has no authority to compel cooperation with an investigation or require answers to questions (other than the name and address of the person speaking to him/her). If the agent or officer makes an appeal to patriotism, the Director will explain that, as good citizens, the library staff will not respond to informal requests for confidential information, in conformity with professional ethics, First Amendment freedoms and state law.
 - If the agent or officer does present a court order the Director should immediately refer the court order to the library's legal counsel for review.

If the court order is in the form of a subpoena:

- Counsel will 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, counsel will advise on the best method to resist the subpoena.
- Through legal counsel the Director will 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.

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- The Attorney or Director will require that the agent, officer, or party requesting the information submit a new subpoena in good form and without defects.
- The Attorney and Director will review the information that may be produced in response to the subpoena before releasing the information. They will follow the subpoena strictly and will not provide any information that is not specifically requested in it.
- If disclosure is required the Library's Attorney will draft a request to the court to enter a protective order keeping the information confidential and limiting its use to the particular case. The document will ask that access be restricted to those persons working directly on the case.

If the court order is in the form of a search warrant:

- Search warrants are executable immediately. However, ask to have library counsel present before the search begins to allow counsel to examine the warrant and assure that the search conforms to the terms of the warrant. This request may not be granted.
- Gather records identified in the warrant and present them rather than allowing non-library personnel to go through the Library's databases or records.

If the court order is a search warrant issued under the Foreign Intelligence Surveillance Act (FISA) (USA PATRIOT ACT amendment):

- The recommendations for a regular search warrant still apply. However, a search warrant issued by a FISA court also contains a "gag order." That means that no person or institution served with the warrant can disclose that the warrant has been served or that records have been produced pursuant to the warrant
- The library and its staff must comply with this order. *No information can be disclosed to any other party or to the patron whose records are the subject of the search warrant.* Under the March 9, 2006 reauthorization, the gag rule of who can be informed has been slightly loosened suggesting you can call anyone necessary to respond to the request. This could mean the library director or tech staff.
- The gag order does not change a library's right to legal representation during the search. The library can still seek legal advice concerning the warrant and request that the library's legal counsel be present during the actual search and execution of the warrant.

If the court order is a National Security Letter:

The procedure is the same as for a search warrant. However, a gag order applies. The Director will contact Library counsel. If the Director is not available, contact the Assistant Director or Librarian in charge. S/he may request that the Library's legal counsel be present during the search and that the search be delayed until counsel examines the court document. If law enforcement chooses to proceed, the Library must comply.

A library board should recognize that it is only through continued public confidence in the fact that these guidelines are being upheld that the public can maintain its confidence in the public library.