

LAW ENFORCEMENT REQUESTS FOR INFORMATION

This section contains procedures for library staff to follow if approached by an officer of the law with a request for information from library records. These procedures were developed in response to the increased access to information given the government by the USA PATRIOT Act.

Background

The USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism; hereafter “the Act”) was signed into law on October 26, 2001 and reauthorized on March 9, 2006.

The Act, particularly Sections 215 and 505, contains provisions that are related to libraries:

- Lowers the legal standard for obtaining a search warrant from “probable cause” that a crime is being committed to “reasonable grounds” that the library information is “relevant” to an authorized terrorist or intelligence investigation (Section 215);
- Allows the FBI to get a special search warrant from the Foreign Intelligence Surveillance Act (FISA) court, whose proceedings are classified and closed to the public (Section 215);
- Permits the FBI to use special search warrants to retrieve library usage records of someone who is under investigation of involvement in suspicious activities (Section 215);
- Prohibits the library from notifying the patron under suspicion, the press, or anyone else that an investigation is underway [Note: As part of the reauthorization of the Act, this prohibition may now be challenged in court one year after the warrant’s issuance] (Section 215);
- Under special circumstances, allows the FBI to take records related to Internet usage without a warrant (Section 505).

Library circulation records are protected under Article 4509 of the Civil Practice Law and Rules of New York State as follows:

Civil Practice Law and Rules, Article 45 – Evidence

4509 – Library Circulation Records

Records related to the circulation of library materials which contain names or other personally identifying details regarding the users of public, free association, school, college, college and university libraries and library systems of this state shall be confidential and shall not be disclosed except that such records may be disclosed to the extent necessary for the proper operation of such library and shall be disclosed upon request or consent of

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the user or pursuant to subpoena, court order or where otherwise required by statute.

However, the following information can be requested by officers of the law, with an appropriate search warrant, subpoena or court order:

- Titles of books and other materials that are checked out to patrons
- Searches done by patrons on library computers, including Internet sites visited
- Titles of books and other materials borrowed through interlibrary loan by patrons
- When and where library computers, meeting rooms, etc. have been signed up for by patrons
- Notes taken by librarians when helping a patron with a reference question
- Other information as needed that is collected by the library about patrons

Procedures

- A. If the agent or officer requesting information about a library patron **DOES NOT** have a search warrant, subpoena, or court order compelling the production of records, the library director or librarian-in-charge should explain the library's confidentiality policy and the state's confidentiality law, and inform the agent or officer that patrons' records are not available except when proper documentation has been presented to the library.
- B. If the agent or officer requesting information about a library patron **DOES** have a search warrant, subpoena, or court order compelling the production of records, the following procedures should be followed:
- Immediately refer the agent or officer to the library director, or in the absence of the library director, to the librarian-in-charge.
 - Escort the agent or officer to a private area, if possible. Ask for a brief delay so that the library director (if he/she is not present) and the library's attorney can be contacted.
 - Contact the library director, Marilyn Laubacher, at 673-4616 and the library's attorney, Rosemary Bucci, at 635-9944 if the agent or officer will wait for this to be done. Ask them to come to the library if possible.
 - Ask another staff member to take notes. Ask to see the agent or officer's identification and contact the local FBI office to verify: William S. Huba, SSRA Syracuse Office 422-0141, or the Albany Office after hours at 1-518-465-7751.
 - Ask for a business card, or make note of the name, title, agency, and phone number of the agent or officer.
 - Ask for a copy of the warrant, subpoena, or relevant document.

IMPORTANT NOTE: If you are notified in advance that a court order will be sought to obtain certain information, **do not destroy the information.**

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Two Types of Requests

1. **Search Warrants**

- A. A search warrant is immediately executable. Ask the agent or officer not to proceed until the library director and the library's attorney arrive.

If the agent or officer will not wait for the library director and the library's attorney to arrive, the following steps should be taken:

- Assign a staff person to take notes.
- Read the warrant carefully.
- Check to see that the warrant has been signed by a judge.
- Check to see that the warrant has not expired.
- Determine the scope of the warrant, the area to be searched, and the type of evidence to be seized.
- If there is a discrepancy between the scope of the search document and the search actually being conducted, notify the agent or officer in charge.
- Monitor carefully, but do not obstruct, the search.
- Photocopy each item seized. If the agent or officer in charge refuses to permit you to photocopy, record in detail all items seized.
- Request backup copies of all documents and computer discs, etc., before agents seize computers.
- The agent in charge will prepare an inventory of the items seized. Ask for a copy of the inventory, but do not sign anything verifying the content or accuracy.
- Ask staff not to discuss the search warrant or related events.

While the search is being conducted, nonessential staff members should stay out of the way. **They must not interfere with the search.**

- Advise them that they are not required to answer questions from law enforcement.
- It is improper and may be illegal to instruct staff **not** to answer questions, but they should be advised of their right to decline to be interviewed, and their right to have an attorney present if they choose to be interviewed.
- Be sure staff members understand that there is no such thing as an informal conversation or off-the-record comment with agents or officers in such circumstances.
- Staff members are not required to authenticate documents seized or otherwise respond to questions except as to the location of the items described in the warrant (and these inquiries should be directed to the person-in-charge).

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- B. If the search warrant has been issued under the Foreign Intelligence Surveillance Act (FISA) (USA PATRIOT Act Amendment):
- The recommendations for a regular search warrant (above) 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 in response to the warrant.
 - The library and staff must comply with this order. No information can be disclosed to any other party, **including the patron** whose records are the subject of the search warrant.
 - 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.

2. Subpoenas

A subpoena commands the production of specified evidence within a stated period of time. A subpoena is issued at the request of an attorney or a law enforcement officer, and is not always reviewed by a judge prior to issuance. Although the requestor may demand library records immediately, **a subpoena generally does not require an immediate response, but requires a response in the near future**. The library's attorney may challenge the subpoena, or may move to quash or modify it. There are several types of subpoenas (Judicial, Grand Jury, and a National Security Letter, which is an administrative subpoena issued by the FBI). It is desirable for legal counsel to be present when the subpoena is executed.

Samples of search warrants and subpoenas follow.

What You Should Know about the USA PATRIOT Act. Denver: Intellectual Freedom Committee of the Colorado Association of Libraries, May 2006, selected information.

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Board of Trustees, Baldwinsville Public Library