

# PATTERSON LIBRARY

## LAW ENFORCEMENT INQUIRY

### PROCEDURES FOR HANDLING REQUESTS FOR LIBRARY RECORDS

The library director is the individual responsible for handling law enforcement inquiries. All library staff should refer the agent or officer to the library director, or if the library director is not available, a member of the administrative team or president of the board of trustees.

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

- Ask for the officer's identification and record the information.
- Inform the officer that the library director is the individual authorized to respond to requests for records and information, and that library policy requires them to refer the officer to the library director.
- Refer the officer to the library director.

If a law enforcement officer requests library records or information about a library user or staff member and the library director is not available, staff will:

- Ask for the officer's identification and record the information.
- Inform the officer that the library director is the individual authorized to respond to requests for records and information, and that library policy requires them to refer the officer to the library director, who is currently unavailable.
- Refer the officer to a member of the administrative staff who will attempt to reach the library director or the library's legal counsel. If no administrative staff are available, contact the president of the board of trustees.
- If counsel is not available, the library board president, board officer, or trustee should be in attendance during the meeting and should contact the ALA Office for Intellectual Freedom (1- 800-545-2433 x 4223) and inform the staff that legal advice is needed. However, neither the reason that legal assistance is needed nor the existence of a warrant should be disclosed.

If the library director or a designated alternate cannot be reached, utilize the procedures outlined below. A written report describing the officer's inquiry should be provided to the library director at the earliest opportunity.

Responsibilities of the Library Director or a designated alternate:

In all cases:

- Ask for the officer's identification and record the information.
- If possible, ask a colleague to be present during the interview with the officer and to take notes in case a record of the encounter is needed in the future.

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Requests for voluntary assistance or warrantless searches (the officer does not present a search warrant, subpoena or court order):

- 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.
- If the officer persists, provide the officer with the contact information for the library's legal counsel and ask the officer to speak to the library's attorney regarding their right to make a written request for records under the Library's Freedom of Information Act Policy.

Without a court order, neither the FBI nor local law enforcement has the 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 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.

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.

Provide all notes and records to the library's legal counsel. If library staff 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.

## **SUBPOENAS**

A subpoena does not require immediate response from the library. The library director, or their designee, will inform the officer that the library will respond within the time allotted and in conformity with the law. The subpoena will then immediately be referred to the library's legal counsel.

- 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 the court. If a defect exists, then counsel will advise on the best method to respond to the subpoena.
- The library director, through legal counsel, should 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.
- The library director and legal counsel will review the information that may be produced in response to the subpoena before releasing the information. The library director will follow the subpoena strictly and will not provide any information that is not specifically requested in it.
- If disclosure is required, then the library director will 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. The library will ask that access be restricted to those persons working directly on the case.

## **SEARCH WARRANTS**

A search warrant is executable immediately, unlike a subpoena. The agent or officer may begin a search of the library's records as soon as the library director, or their designee, is served with the court's order.

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- The library director should ask to consult with the library's legal counsel before the search begins in order to allow legal counsel an opportunity to examine the search warrant for legal sufficiency and to assure that the search conforms to the terms of the search warrant.
- If the officer refuses to delay the search, the library director will examine the warrant to be sure it has been issued and signed by a local or federal court in New York State and has not expired. If the validity of a warrant is questioned, the issuing court will be called to determine the validity. The warrant must also include information that identifies the premises and the items or records to be searched.
- The library will cooperate with the search to ensure that only the records identified in the warrant are produced and that no other users' records are viewed, scanned or seized.
- An inventory of the records or items seized from the library will be recorded. If possible, keep the originals and provide the agent with copies (or make copies for the library's reference).

### **SEARCH WARRANTS ISSUED UNDER THE USA PATRIOT ACT AMENDMENT OF THE FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA):**

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, including the patron whose records are the subject of the search warrant.
- The "gag order" does not change a library's right to legal representation before and 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 law enforcement chooses to proceed, the library must comply. The procedures in the prior section regarding search warrants should be followed.

### **COURT ORDER ISSUED AS 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 a member of the administrative staff or the president of the board of trustees. 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.