

Pine Plains Free Library

X. Law Enforcement Inquiry

The Library Director has been designated as the person responsible for handling law enforcement requests. 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. A library clerk working the desk should try first to call the Director or the Board President.

During a visit:

- If a staff member or volunteer is approached by a law enforcement official, he/she should ask for identification and then immediately refer the agent or officer to the Library Director. A business card should be requested and kept or a copy of other identification should be made; no information other than the staff member's name should be given. If the Director is not on site, she should be contacted immediately, or if unavailable, the President of the Library Board of Trustees should be contacted.
- The Director should meet with the agent with another colleague in attendance. If possible, one person should take notes if a record of the encounter is needed in the future.
- If the agent or officer does not have a court order compelling the production of records, the library Director should explain the library's confidentiality policy and the state's confidentiality law, 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.
- 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 agent or officer persists, or makes an appeal to patriotism, the library Director should 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 presents a search warrant or other judicial process, the library Director should immediately call the library's counsel and ask for assistance.

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

- A subpoena does not require an immediate response from the library. The officer serving the subpoena should be informed that the library will respond to the subpoena within the time allotted and in conformity with the law. Immediately refer the subpoena to the library's legal counsel.
- Counsel should 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, 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, the library's attorney should file a motion to quash the subpoena in its entirety.

- The agent, officer, or party requesting the information should be asked to submit a new subpoena in good form and without defects.
- If it is decided to comply with the subpoena after consulting with legal counsel, the information to be produced in response to the subpoena should be carefully reviewed before releasing the information. The subpoena should be followed strictly and no information should be provided that is not specifically requested in it.
- If disclosure is required, the court should be asked to enter a protective order (drafted by the library's counsel) keeping the information confidential and limiting its use to the particular case. This should include a request that access be restricted to those persons working directly on the case.

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

- Unlike a subpoena, a search warrant may be executed immediately. The agent or officer may begin a search of library records as soon as the library is served with the court's order.
- A request should be made to have library counsel present before the search begins in order to allow library counsel an opportunity to examine the search warrant and to ensure that the search conforms to the terms of the search warrant.
- If the officer refuses to delay the search, the Director/staff should examine the warrant to ensure that the warrant has been issued by a local or federal court in your state and is current and not expired. If there is any question about the validity of the warrant, the issuing court should be contacted to confirm the validity of the warrant.
- The warrant will include information that identifies the premises to be searched and the items or records to be produced under the warrant. The officer should be asked to observe the boundaries set by the search warrant.
- The Director/staff should cooperate with the search to ensure that only the records identified in the warrant are produced and that no other users' records are viewed or scanned. Staff and volunteers should be trained not to discuss the warrant with the officer, identify any documents, or to volunteer information. Any questions should be referred to the Director.
- An inventory should be made of the records or items seized from the library. If possible, the originals should be kept. If originals cannot be kept, copies shall be made for the library's reference.
- While most law enforcement officers will cooperate with a library's request to allow counsel to examine the warrant, it is possible that an officer will refuse to delay his or her search. Staff should be trained to step aside and not to interfere with the officer in those cases. If the Director has been unavailable, staff should continue their attempt to notify the library Director or Trustee President and library counsel, and make every effort to keep a record of the incident.

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, including the patron whose records are the subject of the search warrant. Note that the gag order permits the person receiving the FISA warrant to inform the library director and those members of the staff who are needed to produce the records.
- 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 library's legal counsel is unavailable and it wishes legal advice, the library can still obtain legal assistance through the Freedom to Read Foundation's legal counsel. A call can be made to the Office for Intellectual Freedom (800-545-2433, ext. 4223) and the staff can be informed that legal advice is needed. OIF staff will ensure that an attorney returns the call. It is not necessary and inadvisable to inform OIF staff of the existence of a warrant. (ALA - *Confidentiality and Coping with Law Enforcement Inquiries: Guidelines for the Library and its Staff*).