

SEARCH WARRANT PROCEDURES

The USA Patriot Act, which was approved by Congress in October, 2001 as a result of the threat of terrorism, allows for search warrants to be issued to libraries for a patron's library records.

Furthermore, the search warrant prohibits divulging to anyone that a patron's library records are the subject of a search. ALA's Office of Intellectual Freedom has been informed that the Freedom to Read Foundation's legal counsel concurs with this prohibition.

The new law **requires a search warrant**, not a subpoena. A search warrant can be executed immediately, since the judge has already established the existence of "just cause" prior to issuing it. The agent, or officer, serving a search warrant can begin the search as soon as the warrant is served. A subpoena, on the other hand, allows a party a period of time to respond and/or contest the court's order.

If approached by someone claiming he has legal authority to request patron records, **first ask for identification and whether the order being served is under the authority of the USA Patriot Act (USAPA)**. If it is an FBI agent and the authority of the order comes from the USAPA, follow the steps in **A**, below. If it is not an FBI agent, **OR** if the warrant is not related to the USAPA, follow the steps in **B**, below.

A Steps to follow after being served with a search warrant under the authority of the USA Patriot Act:

- 1 Give the warrant, or ask the officer to give it to the Library Director or to the Reference Librarian. Contacts should only be made with either the Library Director or the Reference Librarian as provisions of the act prohibit disclosing information about warrants issued under the USAPA to anyone other than the person authorized to release the records and to the Library's attorney.
- 2 If the law enforcement agent insists that you (at the Circulation Desk) release the information immediately, tell the person that the Library wants to cooperate, but that you do not have the authority to give access to confidential records or information.
- 3 The person in charge (Library Director or Reference Librarian) will ask for a copy of the search warrant if the agent serving it does not provide one.
- 4 The person in charge (Library Director or Reference Librarian) will then access SIRSI Workflows to retrieve the information requested. Provide only the information requested.
- 5 The USAPA prohibits libraries from disclosing information about a search warrant issued under the authority of the Act. To ensure that the Library does not violate this gag order, take the following steps after the agent leaves:
 - Put the warrant in an envelope, seal it, and send it to the Library Director
 - Within that envelope, include a note (on a separate sheet of paper) about who served the warrant and the date of the warrant.
 - The warrant will be kept in the sealed envelope in the Director's Office file.

- Information about who served the warrant, the date it was served and other non-identifying information will be sent to the City Attorney.
- 6 Under no circumstances can you inform anyone else of the existence of the search warrant. Do not discuss with anyone the FBI visit, the warrant, or the name of whom the search warrant was served.

B Law Enforcement Request for Confidential Information NOT under the authority of the USA Patriot Act.

- 1 Determine if the agent has a written court order.
- 2 If there is no court order:
 - a Explain that a court order is necessary since library policy prohibits the release of any information that discloses or could be used to disclose the identity of a library user or how he/she has used the library.
 - b Explain that the court order must be sent to the Library Director since only he has the authority to release records. Once the order is received, it will be faxed to the City Attorney to ensure that it is complete as required by law. Once attorney approval is secured, the record(s) requested will immediately be released.
 - c If the agent has any questions or does not accept your answer, refer him to the Library Director. If the request occurs after office hours, phone the Library Director at his home.
 - d Make a note of what happened; include date and time, name of officer making request and who the matter was referred to.
- 3 If there is a court order:
 - a Explain that the court order must be sent to the Library Director because he is the only one authorized to release records. Once an order is received by the Library Director, he will fax a copy to the City Attorney to ensure that it is complete as required by law. Once the attorney approval is secured, the record(s) requested will be released immediately.
 - b If the agent has any questions or does not accept your answer, refer that person to the Library Director. If it is not during business hours, call the Library Director at his home.
 - c Make a report of what happened; include date and time, name of officer making request and who the matter was referred to. This report will become part of the Library's public record.

Adopted by the Library Board on 9/11/2003