

Confidentiality of Library Records

Administrative Procedure

Visits to Weber County libraries by law enforcement agents, including officers of city police departments, county sheriffs' departments, and FBI agents, requesting information about our patrons is raising concern among the public, the library community, and Weber County Library staff. Our professional ethics require that a patron's personal information be kept confidential. In addition, Utah has a confidentiality law to protect citizens' First Amendment rights, and Weber County has an Ordinance that also protects the confidentiality of private library records. All library employees should understand that confidential library records should not be released or made available in any format to a federal agent, law enforcement officer, or other person unless a court order, in proper form, has been entered by a court of competent jurisdiction after showing good cause by the law enforcement agency or person seeking the records. The following procedures have been prepared to guide staff in handling law enforcement visits:

Before a visit occurs, we have already decided:

The library director will be responsible for handling all law enforcement requests for information. In her absence, the associate library director, or in her absence an assistant library director, will be the person-in-charge of handling all such requests.

All library staff, including volunteers, must understand that it is lawful to refer the agent or law enforcement officer to the person designated above as responsible for handling all law enforcement requests for information, and that the staff member does NOT need to respond immediately to any request.

During the visit:

Staff should immediately ask for identification if they are approached by an agent or officer, and then immediately refer the agent or officer to the library person responsible for handling all law enforcement requests for information.

The library director, or authorized library representative, will meet with the agent along with library counsel or another colleague in attendance.

If the agent or officer does not have a court order compelling the production of records, the director, or her designee, should explain the library's confidentiality policy, the state's confidentiality law, and the County's ordinance 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 director or other person officially designated to handle such requests 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 court order, the library director, or other person officially designated to handle such requests, 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 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 how to proceed without releasing the information.

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.

Counsel should require that the agent, officer, or party requesting the information submit a new subpoena in good form and without defects.

The library director and legal counsel should review the information that may be produced in response to the subpoena before releasing the information, following the subpoena strictly so as not to provide any information that is not specifically requested in it.

If disclosure is required, 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. Counsel shall 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:

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

The director, or her designee, should ask to have library counsel present before the search begins in order to allow library counsel an opportunity to examine the search warrant and to assure that the search conforms to the terms of the search warrant, and making sure the court order was entered

for good cause.

The director, or her designee, shall 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. Those responsible for handling these requests for information shall gather the exact information for the agent or officer, rather than let them rifle through library 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, 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 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.

Approved 12/09/03