



Law Enforcement Inquiries: Guidelines for MCCCD Library Staff

Basic Principles:

- Confidential library records or other information should not be released or made available in any format to a federal agent, law enforcement officer or other person *unless a legal document is presented*.
- Even when presented with a legal document, under most circumstances, *you do not need to respond immediately to the request*. You are, however, expected to exercise due diligence in complying with a lawful request.
- USA PATRIOT Act, which allows for “fishing expeditions” in looking for terrorist-related activities, overrides the state’s confidentiality law but only for federal requests.

Instructions:

1. If an officer/agent approaches you, inform the officer/agent that you must immediately contact your Library Director.
2. If you cannot locate your Library Director at work or at home, contact the next designee(s) responsible for attending to law enforcement inquiries.
3. If it is impossible to locate any of these designees, you will have to handle the situation.
 - a. Ask officer/agent for identification and for legal documentation.
 - b. If the officer/agent has no legal documentation, neither the FBI nor local law enforcement has authority to compel cooperation with an investigation or require answers to questions, other than your name and address.
 - i. Record your contact in the Law Enforcement Inquiry Log and inform your Library Director as soon as possible.
 - c. If the officer/agent has legal documentation, follow the appropriate instructions for a subpoena, search warrant, or Foreign Intelligence Surveillance Act (FISA) court order.
 - d. If the law enforcement agent has no legal documentation but has stated an *emergency situation involving immediate danger to life and limb*, assist the agent as best you can. Record the contact in the Law Enforcement Inquiry Log and inform your Library Director as soon as possible.

Instructions for Library Director or Designee

Basic Principles:

- You should immediately ask for identification and ask the officer/agent for the type of documentation. Unless there is a stated emergency involving *immediate* danger to life and limb, you do not have to supply the requested information immediately.
- Inform Campus Security and Dean of Instruction, noting that you will follow up later with further details.
- You should meet with the officer/agent with another colleague in attendance or, preferably, with Legal Counsel present. Specific instructions on contacting Legal Counsel are described within each of the following situations - - no document/no immediate danger, subpoena, search warrant, and FISA court order.
- Document contact in the Law Enforcement Inquiry Log. If designee, inform Library Director of contact as soon as possible. The Library Director will follow up with Campus Security and the Dean, as appropriate.

Instructions for No Documentation/No Immediate Danger:

1. If possible, request that a colleague or co-worker accompany you to meet with the officer/agent in a non-public area.
2. Record the officer/agent's identification for log entry.
3. Explain the MCCC Libraries Privacy Statement and inform the officer/agent that 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 your name and address.
4. If the officer/agent persists, or makes an appeal to patriotism, you should explain that, as good citizens, library staff will not respond to informal requests for confidential information. Such requests conflict with our professional ethics, the First Amendment, Arizona state law, and democratic principles.

Instructions for Subpoena:

Remember that you do not need to comply with the request immediately and that the library has a legal right to have counsel examine the document before the library responds.

1. If possible, request that a colleague or co-worker accompany you as you meet with the officer/agent in a non-public area.
2. Explain to the officer/agent that Legal Services attorneys must examine the subpoena before the requested information is released. Exchange contact information with the officer/agent, which you will provide to Legal Services. Make sure you request the officer/agent's identification.

3. Call MCCC Legal Services (Pete Kushibab at 480.731.8878 or the department at 480.731.8877) to inform them of the request.
 - o 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 a court.
 - o If disclosure is required, legal counsel may ask the court to enter a protective order keeping the information confidential and limiting its use to the particular case. ALA recommends that you ask the officer/agent that access to the information provided be restricted to those persons working directly on the case.
4. After legal counsel has examined the subpoena and recommended compliance, you should review the information that may be produced in response to the subpoena before releasing the information. Follow the subpoena strictly and do not provide any information that is not specifically requested in it. [By this time, the process should be in the hands of the Library Director, unless the Director is still unavailable.]

Instructions for Search Warrant:

1. Call MCCC Legal Services (Pete Kushibab at 480.731.8878 or the department at 480.731.8877) to inform them of the request.
2. The officer/agent may begin a search of library records as soon as you are served with the court order. Ask to have legal counsel present before the search begins in order to allow legal counsel an opportunity to examine the search warrant and to assure that the search conforms to the terms of the search warrant. Since legal counsel is not readily available on campus, ask if you can fax the warrant to legal services (fax: 480-731-8890 – this is a direct fax line for Legal Services if the officer/agent expresses any concern).
3. ALA recommends gathering the exact information for the officer/agent rather than allowing him/her to rifle through library databases or records. 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.

Instructions for FISA Court Order:

This is very much like a search warrant. The officer/agent may begin a search of library records as soon as you are served with the court order.

1. Follow search warrant instructions #1 through #3.
2. Although a FISA search warrant contains a “gag order,” the library (in this case, you, representing the library) retains the right to seek legal advice concerning the warrant and to request that legal counsel be present during the actual search and execution of the warrant.
3. The “gag order” means that neither you nor legal counsel can disclose that the warrant has been served or that records have been produced pursuant to the warrant. However, if you are a designee, this restriction does not preclude you from informing the Library

Director. No other information about the request can be disclosed to any other party, including the patron whose records are the subject of the court order.

4. Record only the request date and “FISA” under Authorizing Statute in the Law Enforcement Inquiry Log. Since FISA excludes any appeals process, the library community has been strongly encouraged to record the number of requests made under this authorizing legislation.

These guidelines are based on guidance from the American Library Association’s website. Permission to reproduce these guidelines for training and educational purposes has been granted.

Sources Consulted

USA PATRIOT Act. Signed into law on October 26, 2001. Public Law 107-56.

<http://www.access.gpo.gov/nara/publaw/107publ.html>

Foreign Intelligence Surveillance Act (FISA). Public Law 95-11 (1978). Has elements that were amended by the USA PATRIOT Act.

Code of Ethics (ALA)

<http://www.ala.org/alaorg/oif/ethics.html>

Library Bill of Rights (ALA)

<http://www.ala.org/work/freedom/lbr.html#rights>

Intellectual Freedom Principles for Academic Libraries: An Interpretation of the Library Bill of Rights

<http://www.ala.org/alaorg/oif/ifprinciplesacademiclibraries.html>

Privacy: An Interpretation of the Library Bill of Rights

<http://www.ala.org/alaorg/oif/privacyinterpretation.html>

ALA Questions and Answers on Privacy and Confidentiality

<http://www.ala.org/alaorg/oif/privacyqanda.html>

Arizona Revised Statute (ARS) 41-1354

<http://www.azleg.state.az.us/ars/41/01354.htm>

**Sample Format for
Law Enforcement Inquiry Log**

Date	Staff Initials	Name of Requestor	Affiliation of Requestor	Records Requested	Documentation for Request (court order, subpoena) & Authorizing Statute or Jurisdiction	Notes or Outcome

Informing Library Users/Patrons of Possible Law Enforcement Inquiries

Suggested language for warning library patrons of the implications of the USA PATRIOT Act:

WARNING: Under Section 215 of the federal USA Patriot Act (Public Law 107-56), records of books and other materials you borrow from this library may be obtained by federal agents. This law also prohibits librarians from informing you if records about you have been obtained by federal agents. Questions about this policy should be directed to Attorney General John Ashcroft, Department of Justice, Washington, DC 20530.

Source: American Civil Liberties Union's draft resolution for communities to protect civil liberties. See <http://www.aclu.org/SafeandFree/>