

The Forbush Memorial Library
118 Main Street
Westminster, MA 01473

USA PATRIOT ACT COMPLIANCE

Or

When the FBI shows up at the Library

Under the USA Patriot Act, library circulation records, interlibrary loan requests, use of public computers for the Internet, e-mail or chat could be subpoenaed.

Upon Request for records:

1. The front-line library staff person contacted should immediately locate the Director. If the Director is out of the building, every attempt should be made to contact the Director. In the case that the Director cannot be reached, the Children's Librarian will act in the Director's behalf.
2. The Director or person acting on behalf of the Director, must make sure that the officer is indeed from the FBI.

Note: Local and state officials cannot administer search warrants under the Patriot Act. Other federal subpoenas, such as administrative subpoenas, do not necessarily have the same force or urgency.

3. The Director will ask for time to consult counsel before complying with the request. As of 2/03, the Town of Westminster Legal Counsel is Alan Seewald, (Seewald, Jankowski & Spencer), 413-549-0041.

Note: The FBI may not allow this; however you should still ask. The Freedom to Read Foundation offers legal counsel if you do not have access to your own (1-800-545-2433, ext. 4223).

4. The Director will provide the information requested, without assistance from other staff members

Note: To protect the rights of those not subject to the search, don't have the FBI search through records. Do not turn over a whole database if the request is for records on a particular individual. Under the principle of "exigent circumstances", federal authorities should not need to seize and remove computers from the library building, since the equipment is under the control of the library, not a terrorist and the information is not likely to be destroyed. Nevertheless, they may want to take some computers or other equipment with them.

5. The Director Libraries must not tell anybody that information was provided to the FBI. Library staff is only able to talk to library administration and to counsel. (Some subpoenas and search warrants under the Patriot Act come with a gag order automatically attached.)

More Information:

Electronic Privacy Information Center:

www.epic.org/privacy/terrorism/usapatriot/

ALA Web sites: USA Patriot Act:

www.ala.org/alaorg/oif/usapatriotlibrary.html

Q&A on Privacy & Confidentiality:

www.ala.org/alaorg/oif/privacyqanda.html

Library Records Matrix by Mary Minow:

www.llrx.com/features/libraryrecords.htm

THAT INFRINGE ON THE RIGHTS OF LIBRARY USERS

WHEREAS, The American Library Association affirms the responsibility of the leaders of the United States to protect and preserve the freedoms that are the foundation of our democracy; and

WHEREAS, Libraries are a critical force for promoting the free flow and unimpeded distribution of knowledge and information for individuals, institutions, and communities; and

WHEREAS, The American Library Association holds that suppression of ideas undermines a democratic society; and

WHEREAS, Privacy is essential to the exercise of free speech, free thought, and free association; and, in a library, the subject of users' interests should not be examined or scrutinized by others; and

WHEREAS, Certain provisions of the USA PATRIOT Act, the revised Attorney General Guidelines to the Federal Bureau of Investigation, and other related measures expand the authority of the federal government to investigate citizens and non-citizens, to engage in surveillance, and to threaten civil rights and liberties guaranteed under the United States Constitution and Bill of Rights; and

WHEREAS, The USA PATRIOT Act and other recently enacted laws, regulations, and guidelines increase the likelihood that the activities of library users, including their use of computers to browse the Web or access e-mail, may be under government surveillance without their knowledge or consent; now, therefore, be it

RESOLVED, That the American Library Association opposes any use of governmental power to suppress the free and open exchange of knowledge and information or to intimidate individuals exercising free inquiry; and, be it further

RESOLVED, That the American Library Association encourages all librarians, library administrators, library governing bodies, and library advocates to educate their users, staff, and communities about the process for compliance with the USA PATRIOT Act and other related measures and about the dangers to individual privacy and the confidentiality of library records resulting from those measures; and, be it further

RESOLVED, That the American Library Association urges librarians everywhere to defend and support user privacy and free and open access to knowledge and information; and, be it further

RESOLVED, That the American Library Association will work with other organizations, as appropriate, to protect the rights of inquiry and free expression; and, be it further

RESOLVED, That the American Library Association will take actions as appropriate to obtain and publicize information about the surveillance of libraries and library users by law enforcement agencies and to assess the impact on library users and their communities; and, be it further

RESOLVED, That the American Library Association urges all libraries to adopt and implement patron privacy and record retention policies that affirm that "the collection of personally identifiable information should only be a matter of routine or policy when necessary for the fulfillment of the mission of the library" (*ALA Privacy: An Interpretation of the Library Bill of Rights*); and, be it further

RESOLVED, That the American Library Association considers sections of the USA PATRIOT Act are a present danger to the constitutional rights and privacy rights of

library users and urges the United States Congress to:

1) provide active oversight of the implementation of the USA PATRIOT Act and other related measures, and the revised Attorney General Guidelines to the Federal Bureau of Investigation;

2) hold hearings to determine the extent of the surveillance on library users and their communities; and

3) amend or change the sections of these laws and the guidelines that threaten or abridge the rights of inquiry and free expression; and, be it further

RESOLVED, That this resolution be forwarded to the President of the United States, to the Attorney General of the United States, to Members of both Houses of Congress, to the library community, and to others as appropriate.

Adopted by the ALA Council, January 29, 2003

Initiated by: Committee on Legislation

Cosponsored by: Committee on Legislation and Intellectual Freedom Committee

Endorsed by: OITP Advisory Committee, LITA

Endorsed in principle by: ACRL, ALTA Executive Board, ALSC, ASCLA, AASL
Legislation

Committee, Intellectual Freedom Round Table

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The USA Patriot Act

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What Does the Patriot Act Do?

The Patriot Act synchronizes and expands federal law enforcement's ability to find out about telephone and electronic communications, and its ability to obtain tangible things such as documents and records. Library circulation records, interlibrary loan requests, use of public computers for the Internet, e-mail or chat could be subpoenaed. Different laws and procedures exist for tracking communications depending on the medium (e.g., phone lines, cable, Internet,

wireless). The Patriot Act brings some consistency to law enforcement's ability to obtain both non-content information, such as who contacted whom and when (phone number called, e-mail address or IP address), and the actual content of the communications. Pre-existing laws were also amended so that in certain circumstances federal judges can authorize search warrants all across the country, where previously they were subject to regional jurisdictional boundaries. Sections 215/218 of the Act are most germane to the issuance of a search warrant or subpoena for library records. These sections of the Patriot Act expand the scope of the Foreign Intelligence Surveillance Act of 1978 (FISA). Section 218 says that surveillance and searches now may be justified on the basis that foreign intelligence gathering is significant purpose, where it formerly was the purpose. Section 215 allows FBI personnel to obtain search orders on library records, ie to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

Does the patron confidentiality clause in the Mass General Laws offer any refuge?

Chapter 78: Section 7 of the General Laws says that part of the records of a public library which reveals the identity and intellectual pursuits of a person using such library shall not be a public record. Even before the Patriot Act, a subpoena from a Massachusetts Court would have required a public library to release records, though in some circumstances libraries may have been inclined to challenge the court order. A subpoena or search warrant under the Patriot Act specifically supersedes state confidentiality laws. The Act contains language to immunize librarians against civil suits if personal information is provided.

Preparation

Libraries should position themselves to respond to requests for their records in a logical, principled fashion.

1. Identify a staff person responsible for privacy issues, establish clear lines of communication to that person, and train staff.
2. Identify legal counsel for the library and talk to them about your concerns.
3. Have an approved privacy policy in place.
4. Perform a privacy audit and limit the amount of personal identification informa

tion that is kept in library records to that which is absolutely necessary. Automated networks should consider how long circulation records on particular titles are kept, and once purged, how completely they have been removed from the system. Since the large automated networks in Massachusetts (OCLN, NOBLE, Minuteman) store circulation transactions for their members and act as de facto ISP™s (Internet Service Providers), networks should do their own privacy audit and develop system-wide policies and procedures.