

MODEL POLICY: RESPONDING TO DEMANDS FOR LIBRARY RECORDS

The reauthorization of the USA PATRIOT Act in March 2006 and frequent news reports about law enforcement agencies demanding the surrender of library records for investigations into crime and terrorism prompted the Office for Intellectual Freedom and the Washington Office to examine how ALA could help libraries, librarians, and library workers protect library users' privacy. We concluded that developing a model policy for responding to a demand for library records would provide the best guidance for those in the library community who wished to ensure that users' records were secure from unauthorized or unjustified disclosure.

The two documents included in this pamphlet are templates that contain the essential elements of an effective policy for responding to law enforcement or other third parties when they make a demand for library records, as well as examples of staff guidelines that provide the library's staff and volunteers with information on how to respond to a law enforcement inquiry in a manner consistent with the library's privacy policy and the law.

The model policy and guidelines should be seen not as a one-size-fits-all solution, but as a starting point and template for libraries to use as they develop written privacy and confidentiality policies that fit the needs of the library, its staff, and its community, in consultation with an attorney who is familiar with local and state law.

Other ALA policies and guidelines that provide additional information and guidance for developing written privacy policies are available through the ALA Web site. These include:

- **PRIVACY: AN INTERPRETATION OF THE LIBRARY BILL OF RIGHTS**
www.ala.org/oif/policies/interpretations/privacy
- **AMERICAN LIBRARY ASSOCIATION CODE OF ETHICS**
www.ala.org/oif/policies/codeofethics
- **QUESTIONS AND ANSWERS ON PRIVACY AND CONFIDENTIALITY**
www.ala.org/oif/policies/interpretations/privacyqanda
- **POLICY ON CONFIDENTIALITY OF LIBRARY RECORDS**
www.ala.org/ala/oif/statementspols/otherpolicies/policyconfidentiality.htm
- **POLICY CONCERNING CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION ABOUT LIBRARY USERS**
www.ala.org/ala/oif/statementspols/otherpolicies/policyconcerning.htm

Libraries also may call or write to the Office for Intellectual Freedom for additional assistance with policy development or for answers to questions about privacy and confidentiality in the library, including access to sample policies and legal authorities. These resources include state confidentiality laws and relevant case law that can help provide the framework for library policies and procedures.

Office for Intellectual Freedom
800-545-2433 x4223
oif@ala.org
www.ala.org/oif

Funded by the Ford Foundation

ALA Washington Office
202-628-8410
alawash@alawash.org
www.ala.org/washoff

**GOTHAM CITY PUBLIC LIBRARY
MODEL POLICY 1.1**

**Third Party and Law Enforcement Requests
for Library Records and User Information**

The legal custodian of records for the Gotham City Public Library is the Library Director. As the legal custodian of records, the Library Director is the person responsible for responding to any request for library records or information about a library user.

The Library Director may designate one or more library employees to serve as persons responsible for responding to any request for library records or information about a library user when the Library Director is absent or unavailable.

The circulation and registration records of the Gotham City Public Library shall not be made available to any third party nor any law enforcement agency of a local, state, or federal government except when a court order in proper form, issued by a court of competent jurisdiction after a showing of good cause, is presented to the library by the law enforcement agency or person seeking the records.

No library employee or volunteer may release library records or reveal information about a library user to any third party or law enforcement agent unless authorized to do so by the Library Director or the Library Director's designated alternate. In all circumstances, without exception, employees and volunteers shall follow the procedures set forth in Gotham City Public Library Staff Procedure Document Number 1.5, "Guidelines for Responding to Requests for Library Records and User Information."

The Library Director and the Gotham City Public Library Board are jointly responsible for ensuring that every library employee and volunteer is provided with a copy of Model Policy 1.1 and Staff Directive 1.5 and ensuring that every employee and volunteer participate in a training program on their implementation.

*Adopted by the Gotham City Public Library Board
April 1, 200_*

**GOTHAM CITY PUBLIC LIBRARY
MODEL STAFF DIRECTIVE 1.5**

**Guidelines for Responding To Law Enforcement Requests
for Library Records and User Information**

PROCEDURES FOR LIBRARY STAFF

If a law enforcement officer requests library records or information about a library user or staff member:

- Ask for the officer's identification.
- Inform the officer that the Library Director is the individual authorized to respond to requests for records and information, and that library policy requires you to refer the officer to the Library Director.
- Refer the officer to the Library Director or to a designated alternate authorized by the Library Director to respond to requests for records and information. A listing of library employees authorized to respond to records and information requests in the absence of the Library Director can be found in Appendix I.*

If a law enforcement officer requests library records or information about a library user or staff member and neither the Library Director nor a designated alternate is present in the library:

- Ask for the officer's identification. Record the information on the identity card.
- Inform the officer that the Library Director is the individual authorized to respond to requests for records and information, and that library policy requires you to refer the officer to the Library Director.

* Appendix should be developed by the library when writing its policy.

- Attempt to reach the library director, a designated alternate, or the library's legal counsel using the phone/contact list in Appendix I.*

If you cannot reach the Library Director or a designated alternate, utilize the procedures outlined below for use by the Library Director or a designated alternate. A written report describing the officer's inquiry should be provided to the Library Director at the earliest opportunity.

PROCEDURES FOR THE LIBRARY DIRECTOR OR A DESIGNATED ALTERNATE

In all cases:

- Ask for the officer's identification. Record the information on the identity card.
- If possible, ask a colleague to be present during the interview with the officer.

Requests for voluntary assistance or warrantless searches (the officer does not present a subpoena or court order):

- Explain the library's privacy policy, informing the officer that library records and information about library users and library staff are not made available to law enforcement agencies unless a proper court order in good form has been presented to the library.
- If the officer persists, provide the officer with the contact information for the library's legal counsel and ask the officer to speak to the library's attorney.
- If the officer claims that an emergency or other circumstance requires the library to turn over records or provide information without a court order, call the library's legal counsel and ask for assistance.
- If the officer employs force to take possession of library records or other library property, do not obstruct the search in any way. Keep a written record describing the incident.
- Provide all notes and records to the library's legal counsel. If a library worker or volunteer is required to respond to a voluntary request or a warrantless search in the absence of the Library Director or a designated alternate, all materials should be turned over to the Library Director.

If the law enforcement officer presents a subpoena or similar request for records:

- Accept the subpoena. Inform the officer that the library's legal counsel responds to subpoenas on behalf of the library.
- Turn the subpoena over to the library's legal counsel. If a library worker or volunteer accepts service of the subpoena in the absence of the Library Director or a designated alternate, the subpoena should be turned over to the Library Director.
- The Library Director will work with the library's legal counsel to respond appropriately to the subpoena.

[A sample subpoena can be found in Appendix II.* Similar types of judicial process include administrative subpoenas and orders for electronic records or communications. None of these orders require an immediate response from the library or its staff.]

If the law enforcement officer presents a search warrant:

- Immediately ask the library's legal counsel to provide advice and assistance.
- Ask the officer if he or she would be willing to delay the search until the library's legal counsel arrives.
- Read the warrant and any attached documentation. Verify that it is signed by a judge and is issued by a local, state, or federal court. If you have questions about the validity of the warrant, call the issuing court to verify the validity of the warrant or order.
- Identify the items or records specified in the warrant. If the officer will not wait for legal counsel, you may assist the officer in locating the items or records identified in the search warrant in order to prevent review of records or items not named in the warrant.

* Appendix should be developed by the library when writing its policy.

- Do not agree to any additional searches, or volunteer information about the items or records in the warrant. Do not sign any documents on behalf of the library without the advice of the library's legal counsel.
- Ask the officers to provide an inventory of the items or records seized. Ask if it is possible to provide copies to the officers or to make copies for the library's own records.
- Do not obstruct the search in any way.
- If the law enforcement officials are unwilling to cooperate with you, simply step aside and let them do their job. Request that the officer sign an inventory receipt for the materials. Keep a written record describing the incident.
- Provide all notes and records to the library's legal counsel. If a library worker or volunteer is required to respond to a search warrant in the absence of the Library Director or a designated alternate, all materials should be turned over to the Library Director.

[A sample search warrant can be found in Appendix II.*]

If an agent for the Federal Bureau of Investigation presents an order and informs you that the order is issued as part of a terrorism or espionage investigation and is subject to a "nondisclosure order" or "gag order" (Orders issued under the USA PATRIOT Act):

- Call the library's legal counsel and ask for assistance.
- Read the order and any attached documentation. If it provides a period of time to respond to the order, respond to the order in the same manner as a subpoena. Except for legal counsel, do not inform other library staff or any other person about the order until authorized to do so by the library's legal counsel.
- If the order requires the immediate surrender of records or other items, respond to the order in the same manner as a search warrant. Ask the agent if he or she will delay the search until the library's legal counsel arrives.
- If required to turn over records or other items at once, do not notify any library staff except for legal counsel and those staff members necessary for the production of the requested records or other items. (For example, it may be necessary to ask a member of the Information Technology staff to assist with the production of electronic or computer records.) Instruct all staff members who assist in responding to the order that, with the exception of legal counsel, he or she cannot inform other library staff or any other person about the order unless authorized to do so by the library's legal counsel.
- If a library worker or volunteer is required to respond to an order issued under the USA PATRIOT Act in the absence of the Library Director or a designated alternate, they should inform the Library Director as the custodian of records. It is not unlawful for library staff or volunteers to refer the agent to the Library Director or her designated alternate, however, except for legal counsel, the staff member or volunteer should not inform anyone else about the order unless authorized to do so by the library's legal counsel.

[Sample FISA orders ("Section 215 orders") and sample National Security Letters (NSLs) can be found in Appendix II.*]

*Adopted by the Gotham City Public Library Board
April 1, 200_*

* Appendix should be developed by the library when writing its policy.

**Office for Intellectual Freedom
Washington Office
American Library Association**

July 2007