

Law Enforcement Visits -- Guidelines for the Library Director, Assistant Director & Board of Library Trustees

Peabody Institute Library of Danvers

- ✓ The Library Director, Assistant Director, or the Chairperson of the Library Trustees is responsible for handling law enforcement requests.
- ✓ Library Staff should refer the agent or officer to the Library Director, Assistant Director or the Chairperson of the Library Trustees. General staff do not need to respond immediately to any request.
- ✓ The Library Director, Assistant Director, or the Chairperson of the Library Trustees should immediately ask for identification if they are approached by an agent or officer.
- ✓ If the agent or officer does not have a court order compelling the production of records, the Director, Assistant Director, or Chairperson of the Library Trustees should explain the Library's confidentiality policy and the state's confidentiality law, 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, then the Library Director, Assistant Director, or Chairperson of the Library Trustees should indicate that the 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, Assistant Director, or Chairperson of the Library Trustees should immediately refer the court order to Town 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 the Library on the best way to proceed.

- ✓ Through legal counsel, the Library Director, Assistant Director, or Chairperson of the Board of Trustees should 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.
- ✓ The Library Director, Assistant Director, or Chairperson of the Library Trustees should require that the agent or officer submit a new subpoena in good form and without defects.
- ✓ The Library Director, Assistant Director, or Chairperson of the Library Trustees 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.
- ✓ If disclosure is required, the Library Director, Assistant Director, or the Chairperson of the Library Trustees should ask the court to enter a protective order (drafted by Town Counsel) keeping the information confidential and limiting its use to the particular case. Library administration should 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, Assistant Director or the Chairperson of the Library Trustees is served with the court's order.
- ✓ The Library Director, Assistant Director, or the Chairperson of the Library Trustees should ask to have Town Counsel present before the search begins in order to allow Town Counsel an opportunity to examine the search warrant and to assure that the search conforms to the terms of the search warrant.
- ✓ The Library Director, Assistant Director or the Library Trustees should 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.

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 for 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 the staff must comply with this order. No information can be disclosed to any other party, including the patron whose records that are the

subject of the search warrant. (The Library Director, Assistant Director, or Chairperson of the Library Trustees should inform Town Counsel should this situation occur.)

- ✓ The gag order does not change the Library's right to legal representation during the search. The Library can still seek legal advice concerning the warrant and request that Town Counsel be present during the actual search and execution of the warrant.

If The Agent Or Officer Chooses Not To Wait For Town Counsel:

- ✓ The Library Director, Assistant Director, or the Chairperson of the Library Trustees cannot stop the agent or officer.
- ✓ The Library Director, Assistant Director, or the Chairperson of the Library Trustees should continue to try and contact Town Counsel.

Things To Remember:

- ✓ Make every attempt to contact Town Counsel.
- ✓ In an emergency, Town Counsel can be reached directly or through the Town Manager's Office. If the problem occurs during the evening or on weekends, the Town Manager or Assistant Town Manager may be called at home.
- ✓ A response to the news media does not have to be given immediately. Depending on the circumstances, the Library Director, Assistant Director, or the Chairperson of the Board may need to take the time to prepare an official statement from the Library. The Library Director, Assistant Director, or the Chairperson of the Board may indicate when that statement will be released.

After the Visit:

- ✓ The Library Director, Assistant Director, or the Chairperson of the Board should review the court order with Town Counsel to ensure that the Library complies with any remaining requirements, including restrictions on sharing information with others.
- ✓ The Library Director, Assistant Director, or the Chairperson should review Library policies and staff response and make any necessary revisions in light of experience.
- ✓ The Library Director, Assistant Director, or the Chairperson of the Board of Trustees should be prepared to communicate with the news media. The Library Director, Assistant Director, or the Chairperson of the Board of --Trustees should talk to Town Counsel prior to speaking with news media.