

BROOME COUNTY PUBLIC LIBRARY POLICY & PROCEDURE MANUAL	SECTION	Public Services	POLICY #	3001-2
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	SOURCE	Board of Trustees		
	SUPERCEDED			

CONFIDENTIALITY POLICY PERTAINING TO LAW ENFORCEMENT INQUIRIES

Librarians' professional ethics require that personally identifiable information about library users be kept confidential. This principle is reflected in Article III of the [Code of Ethics](#), which states that "[librarians] protect each library user's right to privacy and confidentiality with respect to information sought or received, and resources consulted, borrowed, acquired, or transmitted."

Currently, confidentiality of library records is protected by the Consolidated Laws of the State of New York, CPLR, Article 45, section 4509. 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 a showing of good cause by the law enforcement agency or person seeking the records.

Keep in mind that:

- A user's personally identifiable information will only be recorded when necessary for the efficient operation of the library.
- Library records will be purged after three years of non-use, although they cannot be destroyed after notice is received from law enforcement agents that the records may be subject to judicial process.
- Personal information will not be placed on public view. Some examples are the use of postcards for overdue notices or requested materials; sign-in sheets to use computers or other devices; and the provision of titles of reserve requests or interlibrary loans provided over the telephone to users' family members or answering machines.

In the event of a law enforcement inquiry:

The Library Director will be the only person responsible for handling law enforcement requests and, if available, the library's legal counsel. Staff should immediately refer the officer to the Library Director. The Library Director will ask for identification if he/she is approached by an agent or law enforcement officer, and then record the information. If possible, verify the information with the local police department.

- The Library Director should meet with the agent with another colleague in attendance. If possible, one person should take notes if a record of the encounter is needed in the future.
- If the agent or officer does not have a court order compelling the production of records, the library director 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, law enforcement has no 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, the library director should explain that 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 search warrant or other judicial process, the library director should immediately call the library's counsel and ask for assistance.

In the case that a subpoena is served:

- Thank the officer serving the subpoena and inform him or her that the library will respond to the subpoena within the time allotted and in conformity with the law. Immediately refer the subpoena to the library's legal counsel.
- 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 the best method to resist the subpoena.
- 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. If there does not appear to be good cause for the subpoena, or if it seems too broad or intrusive, ask your attorney to file a motion to quash the subpoena in its entirety.
- Require that the agent, officer, or party requesting the information submit a new subpoena in good form and without defects.
- If you decide to comply with the subpoena after consulting with legal counsel, 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, 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. Ask that access be restricted to those persons working directly on the case.

If the court order is presented in the form of a search warrant, the Library Director should be notified immediately.

- A search warrant may be executed immediately. The agent or officer may begin a search of library records as soon as the library is served with the court's order.
- The Library Director 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 ensure that the search conforms to the terms of the search warrant.
- If the officer refuses to delay the search, the Library Director will examine the warrant. Ensure that the warrant has been issued by a federal court or a local court in New York State and is current and not expired. If questioning the validity of the warrant, call the issuing court to confirm the validity of the warrant. (The warrant will include information that identifies the premises to be searched and the items or records to be produced under the warrant. Ask that the officer observe the boundaries set by the search warrant.)
- 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. Staff should be trained not to discuss the warrant with the officer, identify any documents, or to volunteer information without first consulting with the library's counsel.
- Record and keep an inventory of the records or items seized from the library. If possible, keep the originals and provide the agent with copies (or make copies for the library's reference).

- While most law enforcement officers will cooperate with a library's request to allow counsel to examine the warrant, it is possible that an officer will refuse to delay his or her search. Train staff to step aside and not to interfere with the officer in those cases.

If the court order is a search warrant issued under the Foreign Intelligence Surveillance Act (FISA) (USA PATRIOT Act amendment):

- While regular search warrant procedures apply, 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. Note that the FISA gag order permits the person receiving the FISA warrant to inform the library director and those members of the staff who are needed to produce the records.
- The library should 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.

After the visit:

- Review the subpoena or search warrant with library counsel to ensure that the library complies with any remaining requirements, including restrictions on sharing information with others.
- Review library policies and staff response and make any necessary revisions in light of the experience.
- Designate a person to communicate with the news media. Ensure that the staff is briefed on the event in case there are follow up questions from the public.