

Privacy and Confidentiality Policy

Libraries serve as forums for the pursuit and exchange of knowledge, information, and ideas. We are impartial resources providing information on all points of view to all persons. As such, it is essential that libraries provide the privacy that will free individuals from fear of scrutiny or intimidation by government power or others.

The confidentiality of library records is a basic principle of librarianship. This principle is reflected in Article III of the *Code of Ethics* which states "[librarians] protect each user's right to privacy and confidentiality with respect to information sought or received, and materials consulted, borrowed, acquired, or transmitted." Additionally, Pennsylvania has a state law that protects the confidentiality of library records. Confidential information includes database search records, reference interviews, circulation records, interlibrary loan records, and other personally identifiable uses of library materials, facilities, or services.

The libraries of York County agree to record the minimum personal information necessary for the efficient operation of the library. We will put in place practices and procedures that protect personally identifying information. In instances that private data cannot be protected, we will inform users that there is some risk involved when they use these services.

Our patrons entrust us with personal information. The nature of this relationship requires maintenance of confidentiality. In safeguarding the information received, the library earns the respect and further trust of our patrons. If you are questioned by someone outside the Library, a law enforcement officer or private citizen, and you are concerned about the appropriateness of giving them certain information, you are not required to answer. Instead, as politely as possible, refer the request to the library director or other designated officer of the library. It is lawful to refer the officer to an administrator in charge of the library. You are not required to respond immediately to any request for confidential information.

The libraries of York County also recognize that law enforcement agencies and officers may occasionally believe that library records contain information which would be helpful to the investigation of criminal activity. Confidential records will be released only upon the issuance of a court order in proper form, following a showing of good cause based on specific facts, by a court of competent jurisdiction.

As part of each library's training program all library staff and volunteers will become familiar with the following documents:

- Code of Ethics of the American Library Association
- Pennsylvania's Library Confidentiality Statute
- The USA Patriot Act in the Library

See the following pages for the Procedure for Handling Law Enforcement Requests for Information.

Procedure for Handling Law Enforcement Requests for Information

Prior to the Visit

1. Train all library staff, including volunteers, on the library's procedure for handling law enforcement requests. **Reminder:** staff responsibility is limited to asking the officer or agent for identification and referring the request for confidential information to the library director or designated officer.
2. Keep in an easily accessible location a list of designated officers with their phone numbers and addresses. (Refer to appendix)
3. Ensure that training and updating of the procedure happens on a regular basis.
4. A court order may require removal of a computer workstation or other computer storage device from the library. Be aware of such possibility and prepare to address service interruptions and any necessary backups for equipment and software.

During the Visit

1. Only the library director/designated officer and legal counsel are authorized to handle a request for records submitted by a law enforcement officer.
2. Library staff should immediately ask the agent or officer for identification and then immediately refer the agent or officer to the library director or other designated officer of the institution.
3. The director should meet with the agent or officer in the presence of library counsel or another library representative or legal counsel.
4. If the agent or officer does not have a court order compelling the production of records, the director or designated officer should explain the library's confidentiality policy and the state's confidentiality law. He/she should inform the agent or officer that patrons' records are not available unless the agent/officer presents a proper court order in good form.
5. Absent 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, or makes an appeal to patriotism, the director or officer should explain that, as good citizens, and in conformity with professional ethics, the First Amendment, and state law, the library staff will not respond to informal requests for confidential information.
6. If the agent or officer presents a court order, the library director or designated officer should immediately refer the court order to the library's legal counsel for review.

If the court order is in the form of a subpoena

1. Library's legal 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 by which to respond to the subpoena.
2. The library should, 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.
3. Require that the agent, officer, or party requesting the information submit a new subpoena in good form and without defects
4. 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.
5. If disclosure is required, ask the court to enter a protective order (reviewed or 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 in the form of a search warrant

1. The Patriot Act amends the law so that courts may now issue national search warrants for investigations involving terrorism; therefore it is no longer necessary for law enforcement to obtain multiple search warrants in multiple jurisdictions. Additionally the Act amended the Electronic Communications privacy Act 18 U.S.C. Section 2703 to permit nationwide search warrants for e-mail and voice mail.
2. A search warrant is immediately executable, unlike a subpoena. With a search warrant, the agent or officer may begin a search of library records as soon as the library director or designated officer is served with the court's order.
3. 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 the search conforms to the terms of the search warrant.
4. Cooperate with the search to ensure that only the records identified in the warrant are produced and that no other patron's 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

1. Follow the procedure described in the previous section. However, 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.
2. The library and its staff must comply with this gag order. No information can be disclosed to any other party, including the patron whose records are the subject of the search warrant
3. The gag order does not change a library's right to legal representation during the search. The library can 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.

Intercepts (Wiretaps)

1. Unlike search warrants that look for past information, intercepts involve "real-time" content or future information and examine content of communication. An intercept is the most invasive type of order and is likely to be directed at Internet Service Providers.
2. Under criminal law, federal judges issue intercept orders when probable cause can be shown that a target committed one of a list of serious crimes. The Patriot Act expands that list to include additional crimes related to terrorism and computer abuse.
3. Under FISA, intercept orders are issued when probable cause can be shown only that a target is a foreign power or agent of a foreign power.

Pen Register Surveillance and Trap and Trace Orders

1. Pen register surveillance orders examine real-time transaction records for information such as records of phone calls and e-mail headers. These orders require only that the agent certify in court that the information sought is "relevant to an ongoing investigation."
2. Pen/Trap orders track incoming and outgoing numbers and therefore trap future information. The Patriot Act amends these statutes to include computer communications.

Following the Visit

1. Review the court order with library legal counsel to ensure that the library complies with any remaining requirements, including restrictions on sharing information with others.
2. Review library policies and staff response and make any necessary revisions in light of experience.
3. Be prepared to communicate with the news media. Develop a public information statement detailing the principles upholding library confidentiality.