



NOBLE

Confidentiality: Legal Request Procedure

The laws protecting national security interests and authorizing state and federal criminal investigations supersede a librarian's ethical obligation to protect patron privacy rights and state library confidentiality laws.

In general, libraries are only obligated to disclose patron records to law enforcement agents if directed by a court order or other appropriate legal process. Appropriate legal process may be in the form of (i) a search warrant, which authorizes law enforcement officers to conduct a search of a place and seize evidence, (ii) a subpoena, which commands the production of specified evidence in a person's possession within a stated period of time or (iii) a request (called a national security letter) from a federal agency under the USA Freedom Act.

Without appropriate legal process, neither the FBI nor any state or local law enforcement agents have the authority to compel a librarian to cooperate with an investigation or answer questions.

Since data applying to all NOBLE libraries can be accessed through any library workstation, NOBLE counsel has the right to review all court orders and documents and take any actions deemed in the best interest of NOBLE and our libraries.

Warrants:

1. Any staff member approached by a law enforcement officer with a search warrant shall immediately contact the library director, but in no way shall staff interfere with the execution of the warrant.
2. The library director or supervisory designee shall ask to see positive identification from the officer and shall record the agency, officer's name and identification number.
3. The library director or designee shall contact NOBLE immediately, as well as following any local notification procedures.

4. The library director or designee shall keep a record of all legal requests and of the time or cost associated with compliance with such requests.

The library director or designee shall cooperate with law enforcement personnel and must be present during the execution of a search to ensure that only records identified in the warrant are viewed or scanned.

Subpoenas:

1. Any staff member served with a subpoena for the library or staff in their official capacity shall immediately contact the library director.
2. The library director or designee shall contact NOBLE immediately, as well as following any local notification procedures.
3. NOBLE counsel will examine all subpoenas 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, NOBLE counsel may advise to file a motion to quash the subpoena or a motion for a protective order. A motion to quash a subpoena is used to nullify or terminate the subpoena, while a motion for a protective order is used to limit the scope of the subpoena or relieve the library from complying with certain terms of the subpoena.
4. The library director or designee shall keep a record of all legal requests and of the time or cost associated with compliance with such requests.

Approved by Executive Board, August 10, 2016

Approved by Members Meeting, September 22, 2016

National Security Letter:

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) became law on October 26, 2001, largely in response to the events of September 11, 2001. This law amended over 15 federal statutes, including the Foreign Intelligence Surveillance Act (FISA) and other statutes that govern criminal procedure, computer fraud and abuse, foreign intelligence, wiretapping, immigration, and the privacy of student records. The USA Freedom Act revised certain provisions of the USA PATRIOT Act, particularly by limiting the scope of business records that may be requested, largely in response to the revelations of government documents leaked by Edward Snowden

Nevertheless, these amendments broadly expand the powers of federal law enforcement agencies investigating cases involving foreign intelligence and international terrorism, and grant greater authority to the Federal Bureau of Investigations and other law enforcement agencies to gain access to business records when investigating terrorist activities. Business records could include medical records, educational records and library records either in paper or electronic format. The USA Freedom Act limits the scope of business records to those relevant to an authorized investigation so that an entire library database may not be seized, just individual patron records.

In addition to granting broad powers to law enforcement agencies, the USA PATRIOT Act amendments also impose a "gag order" on all warrants issued under the Foreign Intelligence Surveillance Act (FISA). The "gag order" prevents the library and all library staff from disclosing to any other party, including the patron whose records are the subject of the search warrant, that the library was served with a warrant or that records were produced in accordance with the warrant. The existence of the "gag order" does not mean that libraries and librarians served with such a search warrant cannot consult with their legal counsel concerning the warrant. A library and its employees can still seek legal advice concerning the warrant and request that the library's legal counsel be present during the actual search provided for by the warrant.