AMERICAN LIBRARY ASSOCIATION
Washington Office
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GUIDELINES FOR LIBRARIANS ON THE U.S.A. PATRIOT ACT*
What to do before, during and after a "knock at the door?"

*Uniting and Strengthening America by Providing Appropriate Tools Required toIntercept and Obstruct Terrorism Act of 2001
Public Law 107-56 (October 26, 2001)

Many libraries have already seen an increase in law enforcement inquiries following the September 11th terrorists'attacks. In libraries and other institutions, law enforcement authorities have sought access to patron records, including electronic mail and other electronic communications. With passage of the U.S.A. PATRIOT Act on October 26, 2001, many new questions have been raised about how to comply with the new law and how the PATRIOT Act provisions relate to current laws governing criminal and foreign intelligence investigations as well as to state and local privacy laws.

As always, the best course is to prepare before the "knock at the door." ALA provides the following guidelines for librarians to share with their staffs and local legal counsels. This is *not legal advice* but suggested guidance and direction so that local libraries– whether academic, public or school libraries– can prepare themselves to do what is legal and appropriate.

BEFORE

- CONSULT YOUR LOCAL LEGAL COUNSEL
  These issues are complex and absolutes that apply to every situation are rare. You will need legal experts familiar with your unique situations and local and state laws to help make sure that your policies and procedures are appropriate and legal. You will want to make sure that your local counsel is aware that legal inquiries under the U.S.A. PATRIOT Act may be an issue for your institution.

- REVIEW YOUR POLICIES
  The USA PATRIOT Act does not require institutions to make changes in policies or computer systems. However, with a possible increase in requests from law enforcement and the pervasiveness of technology in the daily transactions of libraries, you will want to review and address your policies on retention of and access to all types of information. Make decisions regarding data, logs and records of all types– digital and paper - to be discarded or saved. Establish a system for referring requests for operational records as well as other types of information within your institution. Plan for service continuity in the event that workstations, servers or backups are removed or made inoperable.

- TRAIN YOUR STAFF
  Every member of your staff should understand your policies for three important reasons:
  1) Anyone on your staff could be approached by law enforcement. Every staff member should know what to do if he or she is presented with a request. A system for referring requests from law enforcement should be clearly communicated to all staff so that everyone from the circulation assistant to the library director know what to

do. Often a library or institution will designate one staff person to receive all such requests.

2) Technology has made data ubiquitous and access to it effortless. Many people within your organization may have unexpected roles to play in implementing your policies. Your policy is only as good as the trained people who carry it out.
3) Knowledgeable staff will assure that your library is complying with all appropriate laws and protect against any institutional or personal liability.

DURING

- FOLLOW YOUR POLICIES
  Sound policies can provide order and justification during what can be a chaotic time. They can help prevent surprises and help ensure that the best possible thinking and judgment go into your responses. Policies and plans will not help you if they are not understood and followed by all of the institution's employees.

- CONSULT YOUR LOCAL LEGAL COUNSEL
  Most inquiries made by law enforcement are lawful and in good order, however, it is imperative to call on your own legal counsel when presented with a request. Legal counsel will help you respond appropriately and legally while protecting you and your staff from possible liability due to an unlawful request. Legal counsel can help you sort through your responsibilities under the myriad federal state and local laws that both protect privacy and require access.

- DOCUMENT YOUR COSTS
  The PATRIOT Act provides for some reimbursement of costs if an entity is asked by law enforcement to perform certain types of assistance in data collection. It is unclear what the guidelines will be for reimbursement. Document all costs incurred.

AFTER

- CONSULT YOUR LOCAL LEGAL COUNSEL
  Once law enforcement leaves your premises, your responsibilities may not be over. There are different rules for sharing information with others about who is being investigated or what types of information you have provided law enforcement. With whom you are allowed to speak and what you are allowed to talk about varies depending upon whether the inquiry is made under criminal or foreign intelligence investigation laws. You will want to consult with your local counsel to be sure that you and your staff meet any legal requirements to conceal the inquiries of law enforcement or conversely to fulfill any affirmative legal requirements to disclose what records may have been released.

- FOLLOW UP
  Consult with counsel; implement your policies; pursue any appropriate reimbursements. Determine whether you will have to maintain any subsequent information or records. The Washington Office will be tracking the impact of this legislation, so when allowed by law and the advice of counsel, inform the Washington Office of your experiences.