

## What to do before, during, and after a "knock at the door?" Understanding the U.S.A. PATRIOT Act\*

With passage of the U.S.A. PATRIOT Act on October 26, 2001, many questions have been raised about the act and how it relates to current state privacy/confidentiality laws, as well as criminal and foreign intelligence investigations. In some libraries, law enforcement authorities have sought access to patron and student records, including electronic mail and other electronic communications.

The act includes a series of changes to the U.S. Code in sections on criminal and foreign intelligence investigations (FISA). Under some circumstances, federal rules may supercede state confidentiality laws. Seek clear advice from your college or university attorneys. Librarians should cooperate with the authorities within the guidelines provided by state and federal laws, as well as the PATRIOT Act.

ALA has been working with colleagues in library and higher education associations (the American Association of Law Libraries [AALL], the Association of Research Libraries [ARL], the American Association of Universities [AAU], and others) to develop preliminary guidelines to help academic libraries do what is legal and appropriate.

### Before

- **Consult local legal counsel.** 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.

- **Review your policies.** The 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.

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- **Train staff.** Anyone on your staff could be approached by law enforcement, so every staff member should understand your policies. Some institutions designate one staff person to manage the details of such requests. Knowledgeable staff will ensure 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 and ensure that the best possible thinking and judgment go into your responses.

- **Consult legal counsel.** Most inquiries made by law enforcement are lawful and in good order, however, you should call your legal counsel when presented with a request. Legal counsel will help you respond properly and legally, while protecting you and your staff from possible liability due to an unlawful request.

- **Document your costs.** Your institution may be able to recoup some expenses if 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 legal counsel.** Again, consult legal counsel to assure that you 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.** Keep counsel informed; implement your policies; pursue any appropriate reimbursements. Determine whether you will have to maintain any subsequent information or records.

The ALA 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. ■

\* Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 Public Law 107-56



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