

Staffeldt, Darlene

From: Cooper, Bob
Sent: Thursday, June 09, 2005 9:39 AM
To: Staffeldt, Darlene
Subject: FW: Search Warrants and Subpoenas

You may have this message that brings a lot of this stuff into one place. If not, here it is again. Bob

-----Original Message-----

From: Cooper, Bob
Sent: Wednesday, September 01, 2004 3:12 PM
To: 'cranney@mtlib.org'
Cc: Staffeldt, Darlene
Subject: Search Warrants and Subpoenas

Hi Carla.

As per your request, I have some more information for you on library staff and directors responding to search warrants and subpoenas. First, Bozeman attorney Brian Close informs us that there is no specific 24-hour stall rule on responding to a subpoena or search warrant. In an E-mail I received from Brian today, he clarifies for us the difference between the two. Here is what Brian wrote:

"1. Warrant: warrants are signed by a judge. If the cops show up with a warrant that means that they can grab stuff right there and then with no delay. "Warrant" means power to do something.

2. Subpoena: various animals, some issued by a grand jury or under administrative law, etc. In all cases, a subpoena can be opposed before being complied with. "Subpoena" means "under penalty for refusing" -- you can always refuse to comply with a subpoena provided you think you can convince a judge that it is, some way, improper.

So no, there is no 24 hour rule."

Via an earlier E-mail, Brian sent me some insights about handling subpoenas and warrants from Jonathan Kelley with ALA's Office for Intellectual Freedom who provided the following:

"Library staff can (and should) refer the request to the responsible officer of the institution (which should be the director) who should then contact counsel. It is not a violation of the gag order, in part because such an order will be served on the institution rather than an individual, and in part because the Patriot Act doesn't override the 6th Amendment right to counsel of those served with any court order. The counsel, however, would still be bound by the strictures of the gag order.

Our suggested procedures for dealing with a FISA search warrant do not differ greatly from the procedures for other court orders. Our online resources include:

The Privacy Toolkit
[http://www.ala.org/Template.cfm?Section=Privacy1
&Template=/ContentManagement/ContentDisplay.cfm&ContentID=40426.](http://www.ala.org/Template.cfm?Section=Privacy1&Template=/ContentManagement/ContentDisplay.cfm&ContentID=40426)

"Confidentiality and Coping with Law Enforcement Inquiries"
[http://www.ala.org/Template.cfm?
Section=Intellectual_Freedom_Issues&Template=/ContentManagement/ContentDisplay.cfm&ContentID=](http://www.ala.org/Template.cfm?Section=Intellectual_Freedom_Issues&Template=/ContentManagement/ContentDisplay.cfm&ContentID=)

22-1-1111.Penalty.

Any person who violates 22-1-1103 is guilty of a misdemeanor and is liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or \$100, whichever is greater. Reasonable attorney fees and the costs of bringing the action may be awarded to the prevailing party.

What if...

The sheriff stops by and asks to see if anyone has shown an interest lately in auto repair books. He has a good lead on the break ins at the auto repair shop and this would help a lot.

The County Attorney sends a letter demanding to see the checkout records for a man who is going to stand trial for child molestation.

A lawyer sends a letter, which asks for a copy of the check out records for a client who has a large number of overdue books.

An angry man demands to see the check out records for his son because he feels the wife (they are divorced) is allowing the child to read the wrong books.

A patron desperately needs a book, which is checked out to a patron. She asks if you could tell her who has the book so she can call the person and see if it could be made available sooner.

As a librarian you are tired of people having overdue books. The local newspaper offers to print a list of who owes money on overdue books and the amounts owed.

An organization calling itself Librarians Against Smut demands to see the records of children under the age of twelve who have access to the Internet in your library.

The above mentioned sheriff hands you a warrant which demands release of library records for a patron.

A woman comes into the library and she's she needs to see what her brother checked out because he left town and she wants to make sure he's returned everything. She has proper identification, which proves she is his sister.