

## Supplementary Information to Policy 3.10 Member Confidentiality

### **Section 1:** Search Warrant vs. Subpoena

The fact that Library personnel are served with a Search Warrant/Court Order should not be disclosed to anyone, including the member whose records are the subject of the Search Warrant/Court Order. There are differences between a Search Warrant and a Subpoena. The time frame for compliance is a key difference.

Libraries may have had experience responding to Subpoenas seeking information unrelated to registration or circulation records (e. 2., Subpoena for garnishment of an employee's wages). Few Libraries have been the subject of a Search Warrant. With a Subpoena, a Library has time to comply. With a Search Warrant, compliance can be immediate.

#### **Section 1.1:** Subpoena

A Subpoena is a document that requires someone to give testimony and/or produce documents pertinent to a pending case. Typically, a Subpoena is issued by one of the parties in the case. A Subpoena specifies an appearance in Court or production of documents at a designated time and location.

As an example, a Subpoena may be issued to someone who witnessed a traffic accident requiring the witness to appear in Court to testify.

The time period between the date a Subpoena is served and the date of compliance affords time to discuss with the Library's Attorney procedures for Subpoena compliance. The scope of a Subpoena, especially a Subpoena for production of records/documents, can be assessed. A Court Order can be obtained, if necessary, to protect both the Library and a member as to issues of confidentiality.

#### **Section 1.2:** Search Warrant

A search warrant is a court order issued by a Judge or Magistrate directed to a Law Enforcement Officer (e.g., FBI, Police) authorizing the search and seizure of property described in the Search Warrant. Unlike a Subpoena, a Search Warrant may be "executed" immediately and may not allow time to evaluate the legality of the Search Warrant's issuance or assess the scope of the Search Warrant. The Officer may begin to search and seize evidence as soon as the Search Warrant is executed, i.e., when the Search Warrant is personally delivered to library staff.

### **Section 2:** Search Warrant Procedure

Library Staff will cooperate with Law Enforcement Officials to allow access to items within the scope of the Search Warrant while at the same time seek to protect the rights of patrons in accordance with the Illinois Library Records Confidentiality Act (75 ILCS 70/1-2).

1. The Officer serving a Search Warrant should be directed to a designated individual, presumably the Library Director or the Designated Primary Responsible Person.
2. The Director should confirm the identification of the Officer serving the Search Warrant, including name, badge number, and agency.
3. To assist Law Enforcement Officials a copy of this Search Warrant Procedure will be provided promptly to the Officials upon arrival at the Library.
4. The Library's Attorney should be contacted as soon as possible to discuss compliance procedures. The Director should ask to wait until the Library's attorney is present before any search begins or records are disclosed (remember, however, a Search Warrant is executable immediately).

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5. The director will cooperate with law enforcement officials to help identify the records/evidence falling within the scope of the Search Warrant while prohibiting access to records not identified in the Search Warrant or beyond its scope.
6. Do not disclose the receipt of the Search Warrant to anyone except the Library Director (or designated individual) and the Library Attorney.
7. The Director should note in writing as soon as possible the details surrounding the serving of a Search Warrant and the items viewed/removed from the premises.