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Patriot Act Teleconference

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ALLUNY NEWSLETTER

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USA Patriot Act Teleconference

by Joseph L. Gerken, University at Buffalo

On December 11, 2002, librarians from around the country attended a teleconference entitled "Safeguarding Our Patrons' Privacy: What Every Librarian Needs to Know about the USA Patriot Act and Related Anti-Terrorism Measures." The program was sponsored by the American Library Association, American Association of Law Libraries, Association of Research Libraries and the Medical Library Association. It featured four presenters: James Neal, University Librarian at Columbia University, Gary Strong, Director of the Queens Borough Public Library, Tracy Mitrano, Policy Advisor at Cornell University, and Thomas M. Susman, a Washington D.C. attorney with extensive experience in litigation involving library policy.

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Spring Institute

Plan to Attend the ALLUNY / CALL Joint
Spring Institute

May 25-28, 2003

Niagara-on-the-Lake, Ontario, Canada

**"New Wine in Old Bottles:
Blending Tradition and Innovation"**

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Patriot Act

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The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, or "USA Patriot Act" was signed into law on October 26, 2001, in response to the terrorist attacks on the World Trade Center and the Pentagon. While the teleconference focused on the implications of the Act for libraries, the presenters stressed that the law has many far reaching implications, beyond library policy. It addresses such issues as money laundering, protecting borders, coordination of information among police and security agencies, and enhanced criminal penalties for terrorist crimes.

In terms of library patrons' privacy, the most significant aspect of the Patriot Act is probably its extension of authority of Federal government agencies to obtain library records, and, in some instances, to intercept electronic communications.

A librarian confronted with a request for information or documents from Federal authorities must be clear on the nature of that request. There are at least three ways that the request could be conveyed. A search warrant generally entitles the law enforcement officials to take immediate possession of items described in the warrant. If confronted with a search warrant, library staff typically will have little option other than to turn over the described items, although it may be feasible to simultaneously contact a supervisor.

A subpoena also demands that described items be turned over, but generally has a more extended time frame for doing so. Library staff will not be required to immediately turn items over to investigators, and can pass the subpoena on to a supervisor to determine how to comply.

At times investigators will simply request documents or information, and the request will not be accompanied by either a search warrant or subpoena. In such instances, the presenters stressed that library staff do not incur legal liability if they simply decline to speak with the investigators, or refer them to supervisory staff.

The Patriot Act does not require that libraries maintain any particular records. However, as Strong emphasized, "if you have records, you must make them available." Therefore, libraries may want to scrutinize their record maintenance policy. In some instances,

libraries may want to cut back on the information that is maintained. Or, it may be that certain information - circulation records, patron profiles - ought to be expunged when it is no longer required for library operations.

In addition to authority to obtain records maintained by the library, the Patriot Act also broadens Federal investigators' authority to intercept electronic communications. Under the Electronic Communications Privacy Act of 1986, internet communications and e-mail enjoy the same protection against illegal wiretapping as telephone communication. There has always been an exception permitting interception of messages under a court order, based on a showing that the intercept was likely to disclose evidence of criminal activity. The Patriot Act broadens this exception. In particular, the Act provides for so-called "rubber stamp" subpoenas that authorize "trap and trace" devices which record routing information from electronic communications.

The presenters emphasized the need for advance planning and preparation, and staff training. In many instances, a library will benefit from a written policy addressing investigative demands for documents or information. It is probably a good idea to involve counsel in the process of developing such a policy. A clearly delineated chain of command and communication is a necessity, to insure that library policy is implemented. All library staff who deal with the public should be informed of the steps that must be taken if confronted with an investigative request. Such a request can come at any time that the library is open, so that evening and weekend staff must be prepared to deal with it. In particular, staff must be instructed on the routing of legal papers - who should get the subpoena or search warrant - and on the necessity of promptly informing supervisory staff.

It is also important to keep accurate internal records of all investigative requests for library records. Such an "institutional memory" will help safeguard against abuses.

The Patriot Act provides that a business, such as a library, subject to a search warrant or subpoena cannot disclose to the public details of the

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order, or even the fact that an order was issued. This non-disclosure or "gag order" provision makes it hard to assess the impact that the Patriot Act has on libraries, since it is virtually impossible to ascertain how often libraries have been served with disclosure orders. The "gag order" does not apply to staff who are required to implement disclosure. Therefore, it is not a violation for subordinate staff to inform supervisors that a subpoena or search warrant has been served.

Since the Patriot Act is Federal legislation it "trumps" state laws. Therefore, even if a state has a patron privacy law, this law will not prevent the disclosure of records covered under the Patriot Act.

All of the participants stressed that librarians need not, and should not, abandon their commitment to patron privacy and free inquiry, in complying with the requirements of the USA Patriot Act. However, librarians certainly may be subject to conflicts between the disclosure provisions of the Act and these values. Planning and preparation are essential to minimize these conflicts and to assure that patron privacy is protected to the fullest extent consistent with the requirements of the law.

Additional information on the USA Patriot Act, and its applicability to libraries can be found at the web site of the American Library Association, www.ala.org/washoff/patriot.html
Or at the information technology web site of Cornell University, www.cit.cornell.edu