

Goffstown Public Library
Policy and Procedures for Responding to Law Enforcement Requests for
Patron Information

The staff of the Goffstown Public Library will respond to formal, legitimate requests by federal and state authorities for business records or tangible items made by federal authorities pursuant to the Foreign Intelligence Surveillance Act, 50 U.S.C. Sec. 1861 and Executive Order 12333 (46 FR 59941) following the procedures in set forth below. The staff of the Goffstown Public Library, in conformity with state law (RSA 91-A: 5, IV and RSA 201-D:11), as well as professional ethics and the first amendment rights of our patrons, will not respond to informal requests for confidential information.

The Goffstown Library Board of Trustees is the legal custodian of the records of the Goffstown Public Library. The Library Director is the employee authorized to receive court orders on behalf of the Board of Trustees.

The Goffstown Public Library also recognizes that according to the Foreign Intelligence Surveillance Act, Sec.501 (a)(1), an order obtained under the Act cannot be issued for an investigation that is based solely on activities protected by the first amendment of the US Constitution. Furthermore, the Library acknowledges that according to Part 2, Sec. 2.8 of the Executive Order 12333, nothing in the Executive Order shall be construed to authorize any activity in violation of the US Constitution or US statutes.

When a staff member is presented with a formal, legitimate request for patron information, it is the policy of the Goffstown Public Library to conform to the following procedures:

- A. Staff should immediately ask for identification if they are approached by an agent / officer, and then immediately refer the agent / officer to the Library Director or his / her onsite designee.
- B. The Library Director will meet with the agent / officer with legal counsel or another colleague in attendance.
- C. If the agent / officer does not have a court order compelling the production of records, the Library Director will explain the Library's confidentiality policy and the state's confidentiality law, and inform the agent / officer that users' records are not available except when a proper court order in good form has been presented to the Library.
- D. Without a court order, no law enforcement agent / officer has authority to compel cooperation with an investigation or require answers to questions, other than the name and address of the person speaking to the agent / officer. The staff member approached should give his / her name and address if asked.
- E. If the agent / officer presents a court order, the Library Director or designee should immediately make a photocopy of the order and refer the court order to legal counsel for review.
- F. If the court order is in the form of a subpoena, it is the responsibility of legal counsel to examine the subpoena for any legal defect, including the manner in which it was served on the Library, the breadth of its request, its form, or an insufficient showing of good cause made to a court. If a defect exists, counsel will advise on the best method to resist the subpoena.

- (1) The Library Director will review all information that may be required to be produced in response to the subpoena before releasing the information and will follow the subpoena strictly and will not provide any information that is not specifically requested in it.
- (2) The Library Director will determine the costs and feasibility of compliance and present these costs together with any technical problems to legal counsel.
- (3) If disclosure is required, the Goffstown Public Library may ask the court to enter a protective order keeping the information confidential and limiting its use to the particular case and the specific purpose for which it was requested. The Library may also ask that access to the information be restricted to those persons working directly on the case.

G. If the court order is in the form of a search warrant, which is executable immediately and which may be served on any employee present where the records are, the agent / officer may begin a search of Library records as soon as any person on the premises is served with the court's order. This order may include seizure of Library hard drives or other storage devices and / or paper records.

- (1) The employee shall ask the agent / officer if the warrant is issued under the Foreign Intelligence Surveillance Act (FISA). The warrant may not state on its face that it is a FISA warrant. If the agent / officer fails to affirmatively state that it is a FISA warrant, then the employee shall immediately document the question and the agent / officer's answer and provide a copy to the Library Director.
- (2) Whether the warrant is issued under FISA or not, the employee shall notify his / her supervisor and the Library Director as soon as possible and shall ask to make a photocopy of the warrant.
- (3) The Library Director or responding onsite designee will request to have legal counsel present before the search begins in order to allow counsel an opportunity to examine the search warrant and to assure that the search conforms to the terms of the search warrant.
- (4) If the search order is presented to lower level staff and the agent / officer will not allow time to reach the Library Director, staff will cooperate fully with the search. If the agent / officer requests assistance in identifying or securing the records, then the employee will cooperate fully. To the extent possible, ensure that only the records identified on the warrant are produced and that no other users' records are viewed or scanned.
- (5) The employee shall ensure that the agent / officer leaves a receipt.
- (6) The Library Director will review the search warrant with the Library Board of Trustees and legal counsel immediately following the visit to ensure that the Library complies with any remaining requirements, including restrictions on sharing information with others.

Note: If the court order is a search warrant issued under the Foreign Intelligence Surveillance Act (FISA) (USA Patriot Act amendment), the recommendations for a regular search still apply but with a "gag order" attached. This means that no person or institution served with the warrant can disclose that the warrant has been served or that records have been produced pursuant to the warrant. However, this "gag order" does not include an employee's supervisor, the Library Director, the Board of Library Trustees or legal counsel.

H. The Library Director will document fully all requests for information from federal or state law enforcement agent(s) / officer(s) including date, time, names of staff and agent(s) / officer(s) involved (if available), type of document(s) presented, type of search requested, time spent in complying, all costs of complying with those requests, and a copy of all court orders. Requests under FISA will be documented in a separate file marked "Access Restricted by Federal Law" and

will be kept in a controlled area accessible only to Library personnel for library purposes, or by court order.

Approved by Library Board of Trustees July 16, 2003

Reviewed and reaffirmed November 14, 2012; June 18, 2014; December 21, 2016; May 16, 2018