



LAW ENFORCEMENT RECORD REQUEST AND SEARCH PROCEDURE

This procedure provides guidance to staff when record requests are presented by state and local law enforcement officers and by federal agents. The Library Board has also adopted a "Confidentiality Policy." The following is the Library's procedures for implementing that policy.

Procedure In Advance of the Subpoena, Search Warrant or Other Legal Process

- **Evaluate the Library Records**
The Library Director or designee should evaluate the Library Records located in the Library. This evaluation should include (1) how the documents are kept; (2) who is responsible for preservation of the Library records; (3) what records are maintained by the Library and what records are maintained by the Library Cooperative; (4) how long documents are kept and (5) how can the documents be preserved.
- **Staff Training**
The Library staff should receive training on implementing the "Confidentiality Policy," following these procedures if law enforcement were to come to the Library and understanding issues of library privacy.
- **Private Areas**
Clearly mark private areas in the Library. For example, the Library should mark as private areas that patrons are not permitted to remain unattended.

Procedure To Follow For Handling Requests for Records or Searches of the Premises

- **Notification of the Library Director**
Any employee of the Library who receives a written request for documents, or who is served with a subpoena, court order or other legal process (1) to release or disclose any Library records or (2) to search the Library premises must promptly notify the Library Director or designee.
- **Law Enforcement Officials Come to the Library**
If law enforcement officials come to the Library to serve a subpoena, search warrant or other legal process, staff must direct those officials to the Library Director. The Library Director may provide a copy of Michigan's Library Privacy Act, MCL 397.601 *et seq.* The Library Director will ask for credentials and keep records of the identity and contact information of the law enforcement officials. The Library Director will make copies of all documents provided by law enforcement. Staff should be aware that law enforcement agents are permitted to come into public (not private) areas of the Library without a subpoena, search warrant or other judicial warrant.

- **Action by the Library Director**

The Library Director will review all requests and orders, consult with the Library attorney as necessary and respond in an appropriate manner to each such request and order in accordance with this procedure. The Library Director will contact the Library Board President unless such contact is prohibited by law or the search warrant, subpoena or other legal process.

If the request involves computer or other digital records that must be preserved, the Library Director will contact the appropriate entity to request that the records be preserved. The action taken by the Library Director will vary depending on the nature of the request as set forth more fully below:

- Verbal Requests: The Library Director will inform the law enforcement officer that the Library Privacy Act prohibits the release of "library records" without a proper court order. Thus, the Library Director will not release any records in response to a verbal request.
 - If the request involves computer or other digital records that must be preserved, the Library Director will contact the appropriate entity to request that the records be preserved in the event that the law enforcement officer is able to obtain a proper search warrant or other legal process.
 - If the request is for records that are not included in the definition of "library record," the Library Director will request that the officer submit a written request for the records and they will be processed pursuant to the Freedom of Information Act ("FOIA").
 - If law enforcement is seeking verbal consent for a search of the Library premises, the Library Director will inform law enforcement that the Library Director does not consent and has no authority to consent to a search without a lawful court order or search warrant.
 - Staff are not required to answer questions from law enforcement unless such responses are required pursuant to a search warrant.
- Written Requests (Not in the Form of a Subpoena, Search Warrant or other Legal Process): If the Library receives a written request for records that is not in the form of a subpoena, search warrant or other legal process, the Library Director will process the request pursuant to the Library's Freedom of Information Act policy, regardless of whether the request was made by law enforcement officials.
- Subpoenas: A Subpoena is a command to appear at a certain time and place to give testimony on a certain matter or the Subpoena may command a witness to bring certain documents, books, papers and other things (including computers). It can be addressed to a specific individual or to an organization like a library. Unlike a search warrant, subpoenas are not immediately executable, so the Library has time to determine how to respond.
 - Upon receipt of any subpoena, the Library Director will determine the date by which a response is required.
 - The Library Director will also determine whether "library records" are being requested.

- The Library Director will then contact the Library Board President and the Library's attorney.
- The Library is authorized by the Library Privacy Act to have notice of the request and an opportunity to be heard before releasing a "library record." The Library Director, upon consultation with the Board President if necessary, will determine whether to request a hearing.
- If the Library determines that it will not release records in response to the subpoena or to request a hearing, the Library will contact the Library's attorney to address whether a Motion to Quash will be filed.
- Search Warrants: A search warrant is an order issued by a judge, authorizing a law enforcement officer to search and seize any property named in the warrant.
 - If a law enforcement officer has a Search Warrant, it is immediately executable. Put another way, law enforcement is authorized to seize the named documents or property immediately. If a search of the premises is included in the search warrant, the law enforcement officer is authorized to search the premises within the scope of the warrant.
 - With that said, the Library may request that law enforcement allow the Library to send a copy of the search warrant to the Library Attorney. If law enforcement does not permit advanced legal review, the Library should obtain a copy and send it as soon as possible to the Library Attorney.
 - If law enforcement does not provide the opportunity for legal review, the Library Director should review the search warrant to make sure it has the following:
 - The warrant is signed by a judge (not an immigration official or other administrative official).
 - The warrant is dated.
 - The warrant includes the name of the Library or a Library employee.
 - The warrant has not expired.
 - Review the scope to ensure that only the areas or items identified in the warrant may be searched and only the records identified in the warrant may be obtained.
 - The Library Director will also notify the Library Board President, unless prohibited by the terms of the warrant. After the fact, the Library may still request the opportunity for a hearing if law enforcement are obtaining "library records" through the search warrant.
 - Monitor the search to ensure that only the records identified in the warrant are produced and that no other patron's records are viewed or scanned. The Library may be required to assist in access to the records being requested if the items or records are not easily obtainable by law enforcement alone.
 - Keep a list of all records/items taken and costs associated with responding to the request.

- Federal Order Under USA Patriot Act:
 - The Library Director will follow the same procedure identified above for search warrants.
 - Since there may be a "gag" order attached to the request, staff must not discuss the investigation with anyone other than the people identified in this procedure. Only those staff members necessary to respond to this request will be notified of the request.
 - The "gag" order does not change the right to legal representation during the search. The Library Director can still seek legal advice concerning the warrant and request that the Library Attorney is present during the actual search and execution of the warrant.
- U.S. Immigration and Customs Enforcement ("ICE") Actions:
 - This procedure does not address any requests to review I-9 or other employment records. This procedure relates only to information on patron accounts or access to the Library in general.
 - If there is a request by an ICE agent for "library records" pursuant to a subpoena or ICE administrative warrant (*Identified by ICE Form I-205 and I-200 on the bottom of the form for example – Exhibit A*), the Library should follow the same procedures identified above for subpoenas.
 - If there is a request for "library records" pursuant to a judicial warrant (*See for example, the search and seizure warrant identified in Exhibit B*), the Library should follow the same procedures identified above for search warrants.
 - ICE agents are permitted to come into public (not private) areas of the library for the purpose of immigration enforcement without a judicial warrant.
 - ICE agents are not permitted to enter private areas for the purpose of immigration enforcement unless permitted by a lawful judicial warrant.
 - If an ICE agent enters the Library and demands immediate access based on statutory authority or a proper search warrant, we recommend that staff comply with the order. Staff should not put themselves in a position where they are interfering with the officer, even if staff believes that the officer may be acting without authority. Staff should document the actions of the officer while at the facility.

EXHIBIT A

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____
is removable from the United States. This determination is based upon:

- ☐ the execution of a charging document to initiate removal proceedings against the subject;
- ☐ the pendency of ongoing removal proceedings against the subject;
- ☐ the failure to establish admissibility subsequent to deferred inspection;
- ☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 09/16)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
WARRANT OF REMOVAL/DEPORTATION

File No: _____

Date: _____

To any immigration officer of the United States Department of Homeland Security:

(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

(Signature of immigration officer)

(Title of immigration officer)

(Date and office location)

Exhibit B

AO 93 (Rev. 11/13) Search and Seizure Warrant

UNITED STATES DISTRICT COURT
for the _____

In the Matter of the Search of _____)
(Briefly describe the property to be searched)
or identify the person by name and address)) Case No. _____)
_____))
_____))
_____)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the _____ District of _____
(identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (identify the person or describe the property to be seized):

YOU ARE COMMANDED to execute this warrant on or before _____ (not to exceed 14 days)
☐ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to _____
(United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)
☐ for _____ days (not to exceed 30) ☐ until, the facts justifying, the later specific date of _____

Date and time issued: _____

City and state: _____

Judge's signature
Printed name and title