Library Privacy Audits and Search Warrants: Preparing for Inquiries into User Records

Infopeople Webcast
November 4, 2004

Karen Coyle and Mary Minow
Housekeeping

- New interface! HorizonLive is now HorizonWimba
- Today’s webcast:
  - presentation: 100 minutes
  - Q&A: final 20 minutes
- Submit your questions via ‘Chat’ during webcast so presenter gets them in time
- Fill out evaluation during Q&A

Webcast Archives: http://infopeople.org/training/webcasts/archived.html
When to Use Chat

• Get help with technical difficulties
  • send message to “HorizonHelp”
• Ask presenter questions
  • send message to “ALL”
• Chat with other participants
  • “select name from dropdown list”

Chat Area There
List of Participants There
Privacy Today
“Data Mining”

- SSN
- Zip code
- Date of birth
- Public records
“Data Mining”

SSN

zip code

date of birth

public records
Privacy Today – in Libraries

- Computer systems create records where none existed before
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- Library services go beyond library walls
Privacy Today – in Libraries

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- Library network is part of a larger networked world
Privacy Today – in Libraries

- Computer systems create records where none existed before
- Library services go beyond library walls
- Library network is part of a larger networked world
- Any library data is in the context of the “data soup”
What libraries can do....

Be responsible keepers of information about our patrons and library use

Be honest and informative
More service can require more user information

“Personalization” is ... personal
Security and Privacy

An insecure system cannot protect the privacy of users.

Desire for security can lead to monitoring and logging of use.
Systems & Privacy

- Library application systems
- Web site and servers
- Public workstations
- Remote services
Rules for data collection

- Only gather data that is absolutely necessary to perform the function
- Do not keep data longer than is needed to perform the function
- Limit access to those persons who must work with the data
Library Application Systems

Circulation and Borrower Records

- Patron database
- Circulation records
- Fines and payments
- Document delivery
- ILL requests and fulfillments
- Electronic reserves
- OPAC logs
Library Application Systems

Personalized Services

- Saved searches or bibliographies
- Automated search profiles (SDI)
- Virtual reference
- “my library” personal view
- Email services
Library Web Site

- Web server logs
- Proxy server logs
- Cookies
- Forms and email
Sample web log

204.123.28.31 - - [23/Jun/2002:02:21:31 -0400] "GET /reach.html HTTP/1.0" 200 2186 "-" "Mercator-2.0"
204.123.28.31 - - [23/Jun/2002:02:21:39 -0400] "GET /htdig/search.html HTTP/1.0" 200 1083 "-"
"Mercator-2.0"
204.123.28.31 - - [23/Jun/2002:02:21:47 -0400] "GET /privacy-policy.html HTTP/1.0" 200 4406 "-"
"Mercator-2.0"
204.123.28.31 - - [23/Jun/2002:02:21:54 -0400] "GET /best.html HTTP/1.0" 200 5780 "-" "Mercator-2.0"
204.123.28.31 - - [23/Jun/2002:02:22:01 -0400] "GET /upto.html HTTP/1.0" 200 4171 "-" "Mercator-2.0"
Sample web log

204.123.28.31 - - [23/Jun/2002:02:21:23 -0400] "GET /topiclist.html HTTP/1.0" 200 17602 "-" "Mozilla/3.01-C-MACOS8 (Macintosh; I; PPC)"

Internet address of user: 204.123.28.31
Date and time: [23/Jun/2002:02:21:23 -0400]
Requested document: "GET /topiclist.html"
Browser: "Mozilla/3.01-C-MACOS8 (Macintosh; I; PPC)"
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Sample Web Log

Can include searches

“http://www.google.com/search?hl=en&ie=UTF-8&oe=UTF8&q=library+not+safe+place”
Public Workstations

- Browser cache and history
- Cookies
- Saved data
- Login records
- Sign-up sheets or systems
Remote Services

Databases and licensed services

- Logons (in library or from home)
- Personalization
- Statistics
Remote Services

Internet use

The Internet is outside of the library

User education
Privacy audit materials

http://www.kcoyle.net/infopeople/
Library Systems Privacy Inventory

Circulation and Borrower Records

<table>
<thead>
<tr>
<th>Data</th>
<th>What data is recorded?</th>
<th>Where is it located?</th>
<th>Who has access?</th>
<th>How long is data kept?</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patron database</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circulation transactions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fines and other billing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Document delivery</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ILL transactions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electronic reserves</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

OPAC and System Services

<table>
<thead>
<tr>
<th>Data</th>
<th>What data is recorded?</th>
<th>Where is it located?</th>
<th>Who has access?</th>
<th>How long is data kept?</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Search histories saved beyond a session</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saved searches and</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
For each:

- What data exists?
- Where is it located?
- Who has access?
- How long is the data kept?
For each:

- What data exists?
- What is gathered and what does it reveal?
- Where is it located?
- Who has access?
- Who must have access to do their job?
- Is it within the library’s control?
- How long is the data kept?
- How long is this data really needed?
Example: Saved bibliography

<table>
<thead>
<tr>
<th>What?</th>
<th>Who?</th>
<th>How long?</th>
</tr>
</thead>
<tbody>
<tr>
<td>List of record IDs + Patron ID + Date created. Saved on server</td>
<td>Patron has access to their own; system admin has access to all; no other staff access</td>
<td>Purged at the end of each academic year; patrons can delete</td>
</tr>
</tbody>
</table>
Remind users to delete saved bibliographies they are no longer using

Remove bibliographies for user accounts that are no longer active

Inform users that although the library wishes to provide a secure environment, it cannot guarantee the privacy of these files.
Example: Web logs

<table>
<thead>
<tr>
<th>What?</th>
<th>Who?</th>
<th>How long?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Each request</td>
<td>Only systems staff have</td>
<td>Stay on server until log file fills up; about 6 weeks</td>
</tr>
<tr>
<td>sent to library</td>
<td>access</td>
<td></td>
</tr>
<tr>
<td>web server;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>includes: IP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>address of sender; item requested; browser...</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Example: Web logs

- If using web logs for statistics, gather statistics immediately and then purge the logs.
- If logs must be kept, “anonymize” the user’s identity by removing all or part of the user’s incoming Internet address.
Summary

- Identify system areas where data is stored
- Determine how long it is needed, and who should have access
- Educate staff and educate users
Thank You.

Karen Coyle

http://www.kcoyle.net
Search Warrants: Preparing for Inquiries into User Records

Infopeople Webcast
November 4, 2004

Mary Minow
Legal Disclaimer

- Legal information
- **Not** legal advice!
Responding to Requests for Patron Records

- Federal, State, Local Requests for records
- Records vs Observations
- Subpoenas vs Search Warrants
- Responding to Search Warrants
Records vs. Observations

Records
- circulation
- registration
- Internet sign-ups (maybe)

Observations
- “plain view” (what’s visible on screen)
- patron behavior
- physical descriptions
California Law Protects Library Registration and Circulation Records

Exceptions

Administration of the library
Consent – Written
Order of superior Court

California Govt Code Sect. 6267
Records vs. Observations

**Records**
- circulation
- registration
- Internet sign-ups (maybe)

**Observations**
- “plain view” (what’s visible on screen)
- patron behavior
- physical descriptions

Need Court Order
Records vs. Observations

**Records**
- circulation
- registration
- Internet sign-ups (maybe)

**Observations**
- “plain view” (what's visible on screen)
- patron behavior
- physical descriptions

**Need Court Order**

**Don’t Need Court Order**
Observations: Dead Body in Library Parking Lot

Memphis Public Library
Green Plymouth Fury

“massive amount of flies”

Police found dead body

Observations: Tylenol Murders

Librarian tipped off FBI
Observations: Library Security Videotapes

Children reported man in bookshelves exposing himself

Library security tapes showed man leaning forward in bookshelves

Convicted - criminal sexual conduct

Minnesota v. Sihler, 2002 Minn. App. LEXIS 376
Observation or Records?

Facts:

Sept 15, 2001 Kathleen Hensman, reference librarian, Delray Beach recognized name of patron

Talked to library director

Called local police; forwarded to FBI
Legal opinion by library’s lawyers:

- Recollection not records
- Records released only after “properly drawn” order
May Release Electronic Communications ... IF

Reasonable belief

emergency involving immediate death or serious physical injury

Sect. 212 Patriot Act, amending ECPA Sect. 2702
Requests for Records vs. Court Orders

These are **not** Court Orders:

- Verbal Requests (even appealing to Patriotism)
- Letter Requests
- Subpoenas (unless issued by court)
- Exigent Circumstances
Exigent Circumstances

Imminent

- threat to life
- serious threat to property
- escape of a suspect
- destruction of evidence
Exigent Circumstances

Imminent
- threat to life
- serious threat to property
- escape of a suspect
- destruction of evidence

OFFER TO PRESERVE EVIDENCE

DO: Preserve on oral request. Ask for written follow-up to clarify specifics.
When Computers Are Being Hauled Away

Options:

Get out of the way

Suggest library “preserve evidence” (get follow-up letter)

Point out King County case
King County Library case

Police seized computers without a warrant

Federal District Court: police did irreparable harm to both privacy and property rights

Library filed suit; city settled>$30,000

“Kent child porn case closed,” Seattle Post-Intelligencer 09/10/02 seattlepi.nwsourc.com/local/86306_library10.shtml
Subpoenas vs. Search Warrants
Subpoenas vs. Search Warrants

GIVES YOU TIME  
e.g. 5 DAYS

EXECUTABLE  
IMMEDIATELY
Subpoena vs Search Warrant

**Subpoena:** commands person to appear before court or produce documents – time to consult with attorney

**Search warrant:** court order authorizing law enforcement to *immediate* search (Ask for time)

Subpoenas – Many Kinds

Not all subpoenas are court orders

California law requires court order

Time to respond; call lawyer
Search Warrants

Immediately executable
Responding to a Search Warrant
First Step: The Encounter

Identify the agent-in-charge. Ask for ID, business card. Check it out.

Tell agent-in-charge who is in charge (you) at the library.

Request (but do not demand) officers direct inquiries through you.
Ask for Copy of Search Warrant

Also ask for affidavit used to get the warrant – though you are unlikely to get this
ASK FOR BRIEF DELAY

Ask for brief delay to assemble team.
If possible, escort the law enforcement officers to a private area.

If impossible, get out of the way
Get Warrant to Attorney

Fax warrant to Director who will get it to Attorney

(probably will ask person with Original to fax to attorney)
Next, Remind Staff of Their Roles.

Staff should not interfere

Staff need not talk to law enforcement:
   No “informal conversations”
   Inquiries regarding items’ location should go to person-in-charge

But don’t tell staff they can’t answer questions

Careful not to “consent” to a broader search

Staff should not authenticate documents
Second Steps: The Attorney

The Attorney will ask to speak to the agent-in-charge (by phone if necessary)

Will emphasize that the library will do everything it can to ensure that the search proceeds smoothly, but would like to wait until library team arrives.
Verify Warrant

Judge or magistrate signature
Jurisdiction
Expiration

Consider asking for delay to litigate warrant’s validity (unlikely to succeed)

_Tattered Cover v. Thornton, 44 P. 3d 1044 (Colo. 2002)._
Closely Examine Scope

Exact premises to be searched
Exactly what is to be seized

Negotiation here may be possible, (such as one hour of records instead of 30 days).

*Make sure the search conducted does not exceed the terms of the document.*
Appoint Note Taker

Assign note taking responsibility to someone on staff other than principal team members
If law enforcement goes beyond the scope of the warrant, the attorney may ask them to desist.

No one should grant consent to go beyond the scope of the warrant.

Consider taking pictures of event.
Copy and Inventory
Seized Items

Keep copies (or originals if possible) of items seized

Write your own inventory of items seized
Sample Federal Search Warrants and Subpoena Language

Computer Crime and Intellectual Property Section (CCIPS)

and Seizing Computers

and Obtaining Electronic Evidence

in Criminal Investigations

Computer Crime and Intellectual Property Section

Criminal Division

United States Department of Justice

Sample Patriot Act
Sect. 215 Order

Materials released by Justice Department in response to FOIA requests

- New! Procedural Rules of the Foreign Intelligence Surveillance Court
- Form letter used by FBI to order disclosure under Section 215
- Form used by FBI to apply for Section 215 orders from FISA court
- Form Section 215 order proposed by FBI to FISA court
- FBI internal e-mail discussing scope of Section 215
- Form used by FBI field offices to request Section 215 orders from FBI headquarters
- Memo delegating authority to approve Section 215 applications
- Memo indicating that FBI applied for a Section 215 order in October 2003

www.aclu.org/SafeandFree/SafeandFree.cfm?ID=15327&c=262
Section 215
Gag Order for Library Staff

No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the FBI has sought or obtained tangible things under this section.

Call ALA 1-800-545-2433 x4223 and simply say “I need to speak to a lawyer”
Recap: Responding to Requests for Patron Records

• Is request for patron records or observations?

• What type of request? Informal, Subpoena, Search Warrant, 215 order?

• Train all in-charge staff on how to respond to search warrants