

# Legal Issues for Teacher Librarians

Nov. 6 and 8, 2006

Presented by:

Carol Greta, Attorney  
Iowa Department of Education  
[carol.greta@iowa.gov](mailto:carol.greta@iowa.gov)  
515/281-8661

Mary Gannon, Attorney  
Iowa Association of School Boards  
[mgannon@ia-sb.org](mailto:mgannon@ia-sb.org)  
515/288-1991 or 800/795-4272

*Note: The materials in this document are not legal advice, but have been prepared as a courtesy to and for the use of teacher librarians as general guidelines.*

## Legislative Changes that Impact Teacher-Librarians

This past year, legislation was passed (House File 2792) that requires school districts to have a qualified teacher librarian and an updated articulated sequential kindergarten through grade twelve media program beginning July 1, 2006.

The pertinent sections of the law now read as follows:

Iowa Code section 256.11(9):

Beginning July 1, 2006, each school district shall have a qualified teacher librarian who shall be licensed by the board of educational examiners under chapter 272. The state board shall establish in rule a definition of and standards for an articulated sequential kindergarten through grade twelve media program.\* A school district that entered into a contract with an individual for employment as a media specialist or librarian prior to June 1, 2006, shall be considered to be in compliance with this subsection until June 30, 2011, if the individual is making annual progress toward meeting the requirements for a teacher librarian endorsement issued by the board of educational examiners under chapter 272. A school district that entered into a contract with an individual for employment as a media specialist or librarian who holds at least a master's degree in library and information studies shall be considered to be in compliance with this subsection until the individual leaves the employ of the school district.

---

\*A committee chaired by Rita Martens of the Iowa Department of Education and including several teacher-librarians, as well as Mary Wegner and other State Library staff, is working on draft rules. These rules, as is true of all agency rules, must be approved by the State Board of Education. There will be a public comment period once the State Board votes its approval to publish its intent to adopt the rules. Mary and her staff will keep you advised, or you may check these online sources for more information: <https://www.edinfo.state.ia.us/web/adminrulescal.asp> and <http://www.legis.state.ia.us/Rules/Current/Bulletin/>. The earliest that information will be posted is mid-December.

Iowa Code section 256.11A:

1. The board of directors of a school district may, not later than August 1, 2006, for the school year beginning July 1, 2006, file a written request to the department of education that the department waive the requirement adopted by the state board pursuant to section 256.11, subsection 9, that the school district have a qualified teacher librarian. The procedures specified in subsection 3 apply to the request. Not later than August 1, 2007, for the school year beginning July 1, 2007, the board of directors of a school district may request a one-year extension of the waiver.
2. A request for a waiver filed by the board of directors of a school district shall describe actions being taken by the district to meet the requirement for which the district has requested a waiver.

### ***Personnel Requirements for Teacher-Librarians***

Personnel requirements can be met through any of the following:

- Your district currently employs a fully licensed individual (individual holds an Iowa teaching license).
- Your district entered into a contract with an individual for employment as a media specialist or librarian prior to June 1, 2006 and the individual is making annual progress toward meeting the requirements for a teacher librarian endorsement.
- Your district employs a media specialist or librarian who has a master's degree in library and information studies but does not currently hold an Iowa teaching license.
- Your district entered into a contract via a 28E agreement with an individual for employment as a media specialist or librarian prior to June 1, 2006 and the individual is making annual progress toward meeting the requirements for a teacher librarian endorsement or is already fully licensed.

### ***K-12 Media Program Requirements***

A district in which an articulated sequential K-12 media program currently does not exist and/or has not been recently updated must have a waiver from the DE for the 2006-07 school year. The district needing a waiver must articulate affirmative steps it is taking to make a waiver unnecessary after the 2006-07 school year. Those steps include:

- The district will make an effort to employ a fully licensed teacher librarian by 2007-2008 or sooner.
- The district will pursue sharing a teacher librarian with another district through a 28E agreement by 2007-2008 or sooner.
- The district will develop or revise an articulated sequential K-12 media program by 2007-2008 or sooner.
- Other Actions. (The DE did not want to preclude a district from coming up with other "proof" that it will be compliant after this year.)

## Waiver Form

The waiver form is on the DE's web site at  
<http://www.state.ia.us/educate/ecese/asis/waivers/index.html#media>.

Districts unable to comply with the teacher-librarian and/or the media program requirement may file a one-year waiver by August 1, 2006. The waiver shall include a description of the actions being taken by the district to meet the requirements. This requirement does not apply to accredited non-public schools. Questions and waiver requests should be directed to:

Del Hoover  
 Deputy Division Administrator  
 Division of Early Childhood, Elementary and Secondary Education  
 Iowa Department of Education  
 Grimes State Office Building  
 400 East 14th Street  
 Des Moines, Iowa 50319-0146  
 515/281-8402  
[del.hoover@iowa.gov](mailto:del.hoover@iowa.gov)

<p><b>Teacher Librarian/Media Program Waiver Request</b>  <b>For the 2006-2007 School Year</b>  <b>Request for Approval Due by August 1, 2006</b></p>
---

<b>School District Name</b>	<b>AEA</b>
<b>School District Contact Person</b>	<b>Phone</b>
<p><b>Directions:</b></p> <ol style="list-style-type: none"> <li><b>1. Complete Section A for a Teacher Librarian waiver request.</b></li> <li><b>2. Complete Section B for a Media Program waiver request.</b></li> <li><b>3. Complete Sections A &amp; B for a waiver request for both Teacher Librarian <u>AND</u> Media Program.</b></li> </ol>	
<b>Section A: Teacher Librarian Waiver Request</b>	
<p>Please do not request a Teacher Librarian Waiver if any of the four conditions apply to your district:</p> <ul style="list-style-type: none"> <li>• Your district currently employs a fully licensed individual (individual holds an Iowa teaching license).</li> <li>• Your district entered into a contract with an individual for employment as a media specialist or librarian prior to June 1, 2006 and the individual is making annual progress toward meeting the requirements for a teacher librarian endorsement.</li> <li>• Your district employs a media specialist or librarian who has a master's degree in library and information studies but does <u>not</u> currently hold an Iowa teaching license.</li> <li>• Your district entered into a contract via 28E agreement with an individual for employment as a media</li> </ul>	

specialist or librarian prior to June 1, 2006 and the individual is making annual progress toward meeting the requirements for a teacher librarian endorsement or is already fully licensed.

\_\_\_\_\_ Our district requests a teacher librarian waiver for the 2006-2007 school year.

## Section B: Media Program Waiver Request

\_\_\_\_\_ Our district requests a media program waiver for the 2006-2007 school year because an articulated sequential K-12 media program currently does not exist and/or has not been recently updated.

**Note:** The Department of Education in partnership with the State Librarian and staff and the AEA media directors will be developing rules and program technical assistance during the 2006-2007 school year.

**Describe below the actions being taken by the district to meet the requirement for which it is seeking a waiver (check all that apply).**

\_\_\_\_\_ The district will make an effort to employ a fully licensed teacher librarian by 2007-2008 or sooner.

\_\_\_\_\_ The district will pursue sharing a teacher librarian with another district through a 28E agreement by 2007-2008 or sooner.

\_\_\_\_\_ The district will develop or revise an articulated sequential K-12 media program by 2007-2008 or sooner.

\_\_\_\_\_ Other Actions - Specify in 2 to 3 direct sentences (please, no attachments).

**By submitting this Teacher Librarian/Media Program waiver request, your district makes the following assurance:**

\_\_\_\_\_ The District's Board of Education will approve this waiver request by August 31, 2006.

### **Required Signatures**

\_\_\_\_\_ Superintendent \_\_\_\_\_ Date

\_\_\_\_\_ Board President \_\_\_\_\_ Date

The Iowa Department of Education will complete the section below.

Yes	No	Required Components for Teacher Librarian/Program Waiver Request
		a) Request for teacher librarian and/or media program include signatures of both superintendent and board president
		b) Assurance has been checked
		c) Actions being taken by the district to meet the requirements for which it is requesting a waiver are included
Yes	No	Results of Request for Teacher Librarian/Program Waiver Request
		Pursuant to the provisions of H.F. 2792, Section 3 (2006) the Department grants your school district's request for a teacher librarian waiver for the 2006-2007 regularly established school year.
		Pursuant to the provisions of H.F. 2792, Section 2 (2006), the Department grants your school district's request for a media program waiver for the 2006-2007 regularly established school year.
Approved by:		Date

## Student Records Considerations

### Key Features of 20 USC 1232g, the Family Educational Rights and Privacy Act (FERPA)

#### A. Definitions

- "Education records" means "those records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution.
- "Educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.
- "Eligible student" means a student age 18 years and older.

*So, the first inquiry is...are library circulation records included in the definition of "education records?"*

Nothing in FERPA requires a school to create or maintain any particular education records. DE agency rule 281—IAC 12.3(4) requires that a permanent and a cumulative student record be created and maintained, but nothing in rule 12.3(4) includes library circulation records in the state definition.

#### B. Access by parent/guardian or eligible student of the student's own education records

- Right to inspect/review record within 45 days of request
- Right to be given a copy if not feasible for inspection/review on site
- Redact personally identifiable information of other students

#### C. Directory information (to be defined by each district) is that student information that may be disclosed without prior written consent of a parent/guardian or eligible student if the district

has given notice of how it defines directory information and has given a parent/guardian or eligible student the opportunity to “opt out” of such disclosures. Directory information may, but does not have to, include any or all of the following:

- Name
- Address
- Telephone listing
- Email listing
- Date and place of birth
- Dates of attendance
- Participation in officially recognized activities, sports
- Height and weight of members of athletic teams
- Major field of study
- Degrees and awards received
- Photographic likeness
- Most recent previous educational agency or institution attended

D. Disclosure of personally identifiable student information

- No prior consent of parent/guardian or eligible student is needed:
  - School officials at school of enrollment who have a “legitimate educational interest”
  - School to which student seeks or intends to enroll
  - SEA authorities auditing or enforcing education programs
  - Financial aid programs
  - “Lawfully issued” court order or subpoena
  - Persons employed by the educational agency or institution to defend it if a parent or eligible student initiates legal action against the agency or institution
  - Appropriate persons if the information is necessary to protect the health or safety of the student or other persons
- Need prior consent for all other requests, and remember to keep the required log

## **Iowa’s Open Records Act (Chapter 22)**

### **Iowa Code 22.7 Confidential records.**

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

...

13. The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item or information from the library. The records shall be released to a criminal or juvenile justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.

### **There has been one court case regarding the above law.**

Shortly after the above statute was enacted, the Polk County Attorney (Dan Johnston) was investigating cattle mutilations in Polk and surrounding counties. He issued a subpoena to the Des Moines Public Library, requesting the disclosure of circulation records dealing with witchcraft and related topics.

The Iowa Supreme Court decided that a county attorney's subpoena for certain library circulation records is not limited or restricted by section 22.7(13) and that an individual's right of privacy in library records does not outweigh the public's interest in effective criminal investigations.

*Brown v. Johnston*, 328 N.W.2d 510 (Iowa 1983).

## **Fees, Fines**

Considerations to keep in mind:

- DO NOT post names of students who owe fines for overdue books or for books returned in poor condition
  - It is a violation of the Consumer Credit Code (Iowa Code Chapter 537) to "publish" the fact that a person owes a debt
  - This does not mean that the school cannot collect the fine. This is not a "fee;" therefore, the amount due may be collected in full from a student who is otherwise eligible for full or partial waiver of fees. Just make sure that all communications about the fine are solely with the family of the student (or the adult student) or legal counsel for the family, if the family has retained an attorney in this regard.
- DO NOT post the titles of overdue or missing books with the name of the student who last checked out the same

## **The USA PATRIOT Act**

The USA PATRIOT Act stands for the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. It was passed by Congress quickly after the September 11 attacks and was signed into law by President Bush on October 26, 2001.

The full table of contents of the Act is included in Appendix A to give the reader an idea of the breadth of the legislation. Public school libraries are most affected by two sections of the Act, set out in Appendix B.

The PATRIOT reauthorization legislation signed into law by President Bush on March 9, 2006 contains some changes from the original USA PATRIOT Act.

### **Sunset**

A sunset of December 31, 2009 was established for Section 215 of the USA PATRIOT Act.

### **Standards**

The standards under which the FBI can obtain library records in the course of an investigation are slightly more stringent under the new law.

Under the original PATRIOT Act, the FBI had only to assert that records were "sought" for an authorized investigation "to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities." **Under the new legislation**, the FBI can obtain library records of anyone when they present facts showing "reasonable grounds" to believe that the records are "relevant" to an "authorized investigation as described above.

The reauthorized statute brings in language regarding individualized suspicion, but it does not **require** the FBI to show such individualized suspicion and so it leaves the door open to wide search order requests.

The law now says that the records sought will be "**presumptively relevant**" (i.e., nothing further needed) if the FBI shows that they pertain to:

- i. a foreign power or agent of a foreign power;
- ii. the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or
- iii. an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation.

The reauthorized law also requires records or other things to be described with "sufficient particularity" to allow them to be identified—reducing the danger that the FBI will engage in fishing expeditions in library or bookstore records.

It also states that the order "may only require the production of any tangible thing if such thing can be obtained with a subpoena duces tecum (a writ or process including a clause requiring the witness to bring with him and produce to the court, books, papers, etc., in his hands, tending to elucidate the matter in issue) issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or other tangible things," again putting some limits on the scope of the order

### **Disclosure**

The reauthorized PATRIOT Act reforms the original legislation by allowing disclosure of receipt of a Section 215 order to "any person to whom disclosure is necessary to comply with such order." It also explicitly allows a recipient to consult an attorney and to obtain legal advice or assistance "with respect to the production of things in response to the order;" and also allows disclosure to "other persons as permitted" by the Director of the FBI or the Director's designee.

Further, there is now no requirement that a recipient of a Section 215 order inform the FBI of the identity of an attorney to whom disclosure was or will be made. But, upon the request of the Director of the FBI, a recipient is required to identify anyone besides an attorney to whom a disclosure is made or will be made.

### **Challenges**

The reauthorization legislation allows a recipient to challenge a Section 215 order. But that challenge can occur only in a special "petition review panel" of the FISA (Foreign Intelligence Surveillance Act) court—and challenges can only be filed in order to determine the "lawfulness" of the order. It is not clear why a FISA review panel would find that a FISA judge issued an unlawful order.

The reauthorization legislation also allows a Section 215 order recipient to challenge the gag order attached to the subpoena. But recipients may challenge only after one year. And the FISA judge may only overturn the gag if the government does not certify and the judge finds that there is no reason to believe that the disclosure "may endanger the national security of the U.S., interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life of physical safety of any person."

## **Minimization Requirements**

The statute now requires the Attorney General to adopt “specific minimization procedures” that:

1. are “reasonably designed in light of the purpose and technique of” a Section 215 order “to minimize the retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;” and

”require that non-publicly available information, which is not foreign intelligence information, ...shall not be disseminated in a manner that identifies any United States person, with such person’s consent, *unless* such person’s identity is necessary to understand foreign intelligence information or assess its importance.”

Public school libraries are most affected by two sections of the Act, set out below:

## **From Mary Minow’s web site (librarylaw.com):**

### **What does the USA PATRIOT Act mean for libraries?**

The upshot is that there will be a great many more surveillance orders, everywhere in the country, and in turn there will be more requests for library records, including Internet use records. Think of law enforcement as needing to enter two doors to apprehend a suspect.

Door One leads to the computer server. Law enforcement can find electronic tracks through email or Internet history logs. They may have intercepted messages through surveillance or other means. This leads to a particular computer terminal, date and time.

Door Two leads to the individual. This person could be someone using the Internet in a library, particularly someone who wishes to remain anonymous. The FBI (or others) will want to see a library record of who was using the library’s terminal(s) at a particular date and time. If the library keeps sign-up records, law enforcement will want to see those records.

### **Will the FBI (or other law enforcement) ask to put surveillance technology on library computers?**

In many cases, the surveillance technology will be placed elsewhere, and lead law enforcement directly to Door Two. However, it is possible that the FBI will approach the library and ask to place software (such as the controversial DCS1000 (also known as Carnivore) on library servers. Libraries should be sure to insist on a court order before complying. Note that libraries that share servers with cities or others may not be directly approached.

### **Should a library cooperate with the FBI (or other law enforcement) in giving library Internet sign up lists?**

Yes, but advisedly with a court order. This is where the library’s individual policies and procedures will become increasingly important. Does the library require sign-ups? If there are no sign-up lists, the inquiry essentially halts. Does the library allow first names only, or made-up names? Does it require identification? Library cards with addresses? Does it keep sign-up records, and if so, for how long? Does it use an automated system that ties library card numbers (tied to registration information) to Internet use? Is such information electronically disengaged after use and electronically shredded? Is it backed up on computer tapes? How long are backup tapes kept?

Search warrants are court orders, signed by a magistrate or a judge.

Whether or not the law protects Internet use records from disclosure without a court order (this includes search warrants) is not entirely clear. Many libraries consider these records as an extension of registration/circulation records, in that personally identifying information linking patron names with content is involved. Additionally, another section of the law known as the "personal privacy" exemption, provides that certain types of information may be kept confidential by a public agency where the disclosure would constitute an unwarranted invasion of personal privacy. Finally, library policies that protect such records, if well drafted, might protect Internet use records.

Libraries generally decide on whether and how to use sign-up procedures based on the supply and demand of Internet terminals. Sometimes libraries want identification to afford a measure of accountability i.e. prevent hacking. Libraries should be aware, however, that the sign-up procedure has considerable privacy implications. If records are kept, it is best if precise information can be extracted (e.g., user at Terminal #2 on November 13, 2001 at 1 p.m.) without giving out other patron's data.

Nothing in Iowa's Open Records Act (Iowa Code Chapter 22) requires a public library to create or maintain user records. However, although libraries are not required to create or maintain such records, it is definitely not advisable to destroy the records after a law enforcement or public request for disclosure. In a case in New Hampshire, a father requested a school's computer internet logs (in this case, the electronic records of sites visited). He was concerned that the school library's acceptable use policy was inadequate. When the school did not turn over the logs, the father sued under the state's Right-To-Know law. The county superior court ordered the school to turn over the logs, with the user names and passwords omitted. In January 2001, however, the Court found that the school had intentionally deleted the logs after the father filed suit. It found the school to be in contempt of court, and ordered it to produce the remaining records and pay the father his costs and attorney's fees.

Upon receipt of any FOIA (Freedom of Information Act) request, subpoena, warrant, or other court order – check with the library's (or school's) attorney.

### **I read that the USA PATRIOT Act allows federal agents to get court orders for the production of "business records." Does that include library records?**

The Act states that the FBI may apply for an order requiring the "production of any tangible things (including books, records, papers, documents and other items) for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment...

This provision is designed to get ISP records of user billing information. Library patrons who are merely accessing information on Internet terminals should have strong First Amendment arguments. Nevertheless, it's not clear whether they would win. Senator Russ Feingold tried to get an amendment to clarify that the Act would not preempt existing federal and state privacy laws, by maintaining existing criteria for records, such as library records. This amendment failed. Also, it should be noted that this "business records" provision is an amendment of the FISA law, which means that court proceedings are not open and are sealed.

### **I read that a research librarian tipped off the police in Florida. Can I do that, or must I wait for them to come to me?**

If you recognize a picture in the newspaper as one of your patrons, that is not divulging a library record. If, on the other hand, you recognize a suspect's names from library records, you should definitely check in with your attorney before deciding whether to call the police.

In Broward County, Florida, the library was issued an order by a federal grand jury to collect library records when a patron fitting the description of Mohamed Atta, an alleged terrorist leader, was seen using computers with Internet access. The order was given with specific instructions not to release information to anyone other than federal authorities.

Recall that the vast majority of library patrons are not terrorists, and libraries should make all efforts to protect patron privacy.

### **Wasn't there an FBI program years ago that sent FBI agents into libraries asking for reading habits of suspicious looking people?**

Yes. The FBI Library Awareness Program was a program that ran for about 25 years, in which FBI agents tried to enlist the assistance of librarians in monitoring the reading habits of "suspicious" individuals. Such individuals were variously defined as people with Eastern European or Russian-sounding names or accents, or coming from countries hostile to the U.S. During the Library Awareness Program, some FBI agents wrongly claimed that they were not subject to statutes protecting library records. The efforts were largely unsuccessful, due to the tremendous outrage and resistance from those in the library profession.

The most important lesson that libraries learned was the importance of training the "friendly front desk clerk" and even volunteers not to hand over the information, but to refer all inquiries, even by badged FBI agents, to the library director.

### **How is the library community responding to the anti-terrorism legislation?**

The American Library Association joined with the Association of Research Libraries and the Association of American Law Libraries in issuing a statement on the proposed anti-terrorism measures. It says that libraries do not monitor information sought or read by library users. To the extent that libraries "capture" usage information of computer logs, libraries comply with court orders for law enforcement.

The statement is also concerned that the legislation, which makes it easier to access business records, may in some cases apply to library circulation records. It recommends that legislators keep high standard for court order regarding release of library records.

### **Where should libraries go to get guidance on FBI search warrants?**

The Freedom to Read Foundation is making some legal assistance available to librarians. Librarians are advised to call the ALA Office for Intellectual Freedom and request legal advice from Jenner & Block without disclosing the existence of a warrant. For more details, see the ALA's recently issued Alert: USA PATRIOT Act.

## **One Public Library's Response:**

A public library in Oregon posted the following Q & A on its web site (edited):

### **USA Patriot Act and Library Confidentiality Questions and Answers**

Since the USA PATRIOT Act went into effect October 26, 2001, X Library has received many questions about the act's effect on library policy concerning the confidentiality of library records.

- **If I am a library user, what kind of information does the library keep about books I check out or other information services I use?**

To receive a library card, patrons are required to provide a name, birth date and mailing address. This identifying information is retained as long as the patron continues to use the library card.

A customer's library record includes current information: items currently checked out or on hold, as well as overdue materials and fines. The library does not maintain a history of what a customer has previously checked out once books and materials are returned on time. Similarly, the library's computer search stations are programmed to delete the history of a customer's Internet use and information searches once an individual session is completed. The library treats reference questions, whether in person or online, confidentially. Personal identifying information related to these questions is purged on an ongoing basis.

- **In general, how does the library handle requests for records from law enforcement?**

Typically, a court of competent jurisdiction must issue an order for patron records. Based on the advice of the county attorney in each incident, the library director releases the records only if the order is legal and binding upon the library.

- **How has the enactment of the USA PATRIOT Act changed how the library handles requests for patron records from law enforcement?**

Basic protocol remains the same: the request is forwarded to the library director whose response is informed by the advice of the county attorney. Under the act, requests may come in the form of a search warrant or a

national security letter. Should a search warrant result in the confiscation of any materials, library staff members are instructed to cooperate with law enforcement and to report the incident to the director's office for follow up.

- **What about the "gag" provision of the USA PATRIOT Act?**

Should library records be requested under the act, the law states that library staff cannot inform the person about whom the information is requested, nor speak to co-workers, the media or other government officials about the inquiry. The county attorney advises that such requests can be reported to the appropriate higher authority within the library only, and to the library's legal counsel.

Attached Appendices are as follows:

- A Table of Contents of Entire USA PATRIOT Act
- B Sections of PATRIOT Act as originally enacted that impact public libraries
- C Library Bill of Rights
- D IASB Sample Policy on Student Library Circulation Records

## Appendix A

Public Law 107-56

UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS  
REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (USA PATRIOT  
ACT) ACT OF 2001

An Act

To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) Short title.--This Act may be cited as the ``Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001''.

(b) Table of Contents.--The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Construction; severability.

#### TITLE I--ENHANCING DOMESTIC SECURITY AGAINST TERRORISM

Sec. 101. Counterterrorism fund.

Sec. 102. Sense of Congress condemning discrimination against Arab and Muslim Americans.

Sec. 103. Increased funding for the technical support center at the Federal Bureau of Investigation.

Sec. 104. Requests for military assistance to enforce prohibition in certain emergencies.

Sec. 105. Expansion of National Electronic Crime Task Force Initiative.

Sec. 106. Presidential authority.

#### TITLE II--ENHANCED SURVEILLANCE PROCEDURES

Sec. 201. Authority to intercept wire, oral, and electronic communications relating to terrorism.

Sec. 202. Authority to intercept wire, oral, and electronic communications relating to computer fraud and abuse offenses.

Sec. 203. Authority to share criminal investigative information.

Sec. 204. Clarification of intelligence exceptions from limitations on interception and disclosure of wire, oral, and electronic communications.

Sec. 205. Employment of translators by the Federal Bureau of Investigation.

Sec. 206. Roving surveillance authority under the Foreign Intelligence Surveillance Act of 1978.

Sec. 207. Duration of FISA surveillance of non-United States persons who are agents of a foreign power.

Sec. 208. Designation of judges.

Sec. 209. Seizure of voice-mail messages pursuant to warrants.

Sec. 210. Scope of subpoenas for records of electronic communications.

Sec. 211. Clarification of scope.

Sec. 212. Emergency disclosure of electronic communications to protect life and limb.

Sec. 213. Authority for delaying notice of the execution of a warrant.  
Sec. 214. Pen register and trap and trace authority under FISA.  
Sec. 215. Access to records and other items under the Foreign Intelligence Surveillance Act. [See Appendix B.]  
Sec. 216. Modification of authorities relating to use of pen registers and trap and trace devices.  
Sec. 217. Interception of computer trespasser communications.  
Sec. 218. Foreign intelligence information.  
Sec. 219. Single-jurisdiction search warrants for terrorism.  
Sec. 220. Nationwide service of search warrants for electronic evidence.  
Sec. 221. Trade sanctions.  
Sec. 222. Assistance to law enforcement agencies.  
Sec. 223. Civil liability for certain unauthorized disclosures.  
Sec. 224. Sunset.  
Sec. 225. Immunity for compliance with FISA wiretap.

TITLE III--INTERNATIONAL MONEY LAUNDERING ABATEMENT AND ANTI-TERRORIST FINANCING ACT OF 2001

Sec. 301. Short title.  
Sec. 302. Findings and purposes.  
Sec. 303. 4-year congressional review; expedited consideration.  
Subtitle A--International Counter Money Laundering and Related Measures  
Sec. 311. Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern.  
Sec. 312. Special due diligence for correspondent accounts and private banking accounts.  
Sec. 313. Prohibition on United States correspondent accounts with foreign shell banks.  
Sec. 314. Cooperative efforts to deter money laundering.  
Sec. 315. Inclusion of foreign corruption offenses as money laundering crimes.  
Sec. 316. Anti-terrorist forfeiture protection.  
Sec. 317. Long-arm jurisdiction over foreign money launderers.  
Sec. 318. Laundering money through a foreign bank.  
Sec. 319. Forfeiture of funds in United States interbank accounts.  
Sec. 320. Proceeds of foreign crimes.  
Sec. 321. Financial institutions specified in subchapter II of chapter 53 of title 31, United States code.  
Sec. 322. Corporation represented by a fugitive.  
Sec. 323. Enforcement of foreign judgments.  
Sec. 324. Report and recommendation.  
Sec. 325. Concentration accounts at financial institutions.  
Sec. 326. Verification of identification.  
Sec. 327. Consideration of anti-money laundering record.  
Sec. 328. International cooperation on identification of originators of wire transfers.  
Sec. 329. Criminal penalties.  
Sec. 330. International cooperation in investigations of money laundering, financial crimes, and the finances of terrorist groups.  
Subtitle B--Bank Secrecy Act Amendments and Related Improvements  
Sec. 351. Amendments relating to reporting of suspicious activities.  
Sec. 352. Anti-money laundering programs.  
Sec. 353. Penalties for violations of geographic targeting orders and certain recordkeeping requirements, and lengthening

- effective period of geographic targeting orders.
- Sec. 354. Anti-money laundering strategy.
- Sec. 355. Authorization to include suspicions of illegal activity in written employment references.
- Sec. 356. Reporting of suspicious activities by securities brokers and dealers; investment company study.
- Sec. 357. Special report on administration of bank secrecy provisions.
- Sec. 358. Bank secrecy provisions and activities of United States intelligence agencies to fight international terrorism.
- Sec. 359. Reporting of suspicious activities by underground banking systems.
- Sec. 360. Use of authority of United States Executive Directors.
- Sec. 361. Financial crimes enforcement network.
- Sec. 362. Establishment of highly secure network.
- Sec. 363. Increase in civil and criminal penalties for money laundering.
- Sec. 364. Uniform protection authority for Federal Reserve facilities.
- Sec. 365. Reports relating to coins and currency received in nonfinancial trade or business.
- Sec. 366. Efficient use of currency transaction report system.
- Subtitle C--Currency Crimes and Protection
- Sec. 371. Bulk cash smuggling into or out of the United States.
- Sec. 372. Forfeiture in currency reporting cases.
- Sec. 373. Illegal money transmitting businesses.
- Sec. 374. Counterfeiting domestic currency and obligations.
- Sec. 375. Counterfeiting foreign currency and obligations.
- Sec. 376. Laundering the proceeds of terrorism.
- Sec. 377. Extraterritorial jurisdiction.

#### TITLE IV--PROTECTING THE BORDER

##### Subtitle A--Protecting the Northern Border

- Sec. 401. Ensuring adequate personnel on the northern border.
- Sec. 402. Northern border personnel.
- Sec. 403. Access by the Department of State and the INS to certain identifying information in the criminal history records of visa applicants and applicants for admission to the U.S.
- Sec. 404. Limited authority to pay overtime.
- Sec. 405. Report on the integrated automated fingerprint identification system for ports of entry and overseas consular posts.

##### Subtitle B--Enhanced Immigration Provisions

- Sec. 411. Definitions relating to terrorism.
- Sec. 412. Mandatory detention of suspected terrorists; habeas corpus; judicial review.
- Sec. 413. Multilateral cooperation against terrorists.
- Sec. 414. Visa integrity and security.
- Sec. 415. Participation of Office of Homeland Security on Entry-Exit Task Force.
- Sec. 416. Foreign student monitoring program.
- Sec. 417. Machine readable passports.
- Sec. 418. Prevention of consulate shopping.

##### Subtitle C--Preservation of Immigration Benefits for Victims of Terrorism

- Sec. 421. Special immigrant status.
- Sec. 422. Extension of filing or reentry deadlines.
- Sec. 423. Humanitarian relief for certain surviving spouses and children.
- Sec. 424. ``Age-out'' protection for children.

- Sec. 425. Temporary administrative relief.
- Sec. 426. Evidence of death, disability, or loss of employment.
- Sec. 427. No benefits to terrorists or family members of terrorists.
- Sec. 428. Definitions.

TITLE V--REMOVING OBSTACLES TO INVESTIGATING TERRORISM

- Sec. 501. Attorney General's authority to pay rewards to combat terrorism.
- Sec. 502. Secretary of State's authority to pay rewards.
- Sec. 503. DNA identification of terrorists and other violent offenders.
- Sec. 504. Coordination with law enforcement.
- Sec. 505. Miscellaneous national security authorities.
- Sec. 506. Extension of Secret Service jurisdiction.
- Sec. 507. Disclosure of educational records. [See Appendix B.]
- Sec. 508. Disclosure of information from NCES surveys.

TITLE VI--PROVIDING FOR VICTIMS OF TERRORISM, PUBLIC SAFETY OFFICERS,  
AND THEIR FAMILIES

Subtitle A--Aid to Families of Public Safety Officers

- Sec. 611. Expedited payment for public safety officers involved in the prevention, investigation, rescue, or recovery efforts related to a terrorist attack.
- Sec. 612. Technical correction with respect to expedited payments for heroic public safety officers.
- Sec. 613. Public safety officers benefit program payment increase.
- Sec. 614. Office of Justice programs.

Subtitle B--Amendments to the Victims of Crime Act of 1984

- Sec. 621. Crime victims fund.
- Sec. 622. Crime victim compensation.
- Sec. 623. Crime victim assistance.
- Sec. 624. Victims of terrorism.

TITLE VII--INCREASED INFORMATION SHARING FOR CRITICAL INFRASTRUCTURE  
PROTECTION

- Sec. 701. Expansion of regional information sharing system to facilitate Federal-State-local law enforcement response related to terrorist attacks.

TITLE VIII--STRENGTHENING THE CRIMINAL LAWS AGAINST TERRORISM

- Sec. 801. Terrorist attacks and other acts of violence against mass transportation systems.
- Sec. 802. Definition of domestic terrorism.
- Sec. 803. Prohibition against harboring terrorists.
- Sec. 804. Jurisdiction over crimes committed at U.S. facilities abroad.
- Sec. 805. Material support for terrorism.
- Sec. 806. Assets of terrorist organizations.
- Sec. 807. Technical clarification relating to provision of material support to terrorism.
- Sec. 808. Definition of Federal crime of terrorism.
- Sec. 809. No statute of limitation for certain terrorism offenses.
- Sec. 810. Alternate maximum penalties for terrorism offenses.
- Sec. 811. Penalties for terrorist conspiracies.
- Sec. 812. Post-release supervision of terrorists.
- Sec. 813. Inclusion of acts of terrorism as racketeering activity.
- Sec. 814. Deterrence and prevention of cyberterrorism.
- Sec. 815. Additional defense to civil actions relating to preserving records in response to Government requests.

- Sec. 816. Development and support of cybersecurity forensic capabilities.
- Sec. 817. Expansion of the biological weapons statute.

TITLE IX--IMPROVED INTELLIGENCE

- Sec. 901. Responsibilities of Director of Central Intelligence regarding foreign intelligence collected under Foreign Intelligence Surveillance Act of 1978.
- Sec. 902. Inclusion of international terrorist activities within scope of foreign intelligence under National Security Act of 1947.
- Sec. 903. Sense of Congress on the establishment and maintenance of intelligence relationships to acquire information on terrorists and terrorist organizations.
- Sec. 904. Temporary authority to defer submittal to Congress of reports on intelligence and intelligence-related matters.
- Sec. 905. Disclosure to Director of Central Intelligence of foreign intelligence-related information with respect to criminal investigations.
- Sec. 906. Foreign terrorist asset tracking center.
- Sec. 907. National Virtual Translation Center.
- Sec. 908. Training of government officials regarding identification and use of foreign intelligence.

TITLE X--MISCELLANEOUS

- Sec. 1001. Review of the department of justice.
- Sec. 1002. Sense of congress.
- Sec. 1003. Definition of ``electronic surveillance''.
- Sec. 1004. Venue in money laundering cases.
- Sec. 1005. First responders assistance act.
- Sec. 1006. Inadmissibility of aliens engaged in money laundering.
- Sec. 1007. Authorization of funds for dea police training in south and central asia.
- Sec. 1008. Feasibility study on use of biometric identifier scanning system with access to the fbi integrated automated fingerprint identification system at overseas consular posts and points of entry to the United States.
- Sec. 1009. Study of access.
- Sec. 1010. Temporary authority to contract with local and State governments for performance of security functions at United States military installations.
- Sec. 1011. Crimes against charitable americans.
- Sec. 1012. Limitation on issuance of hazmat licenses.
- Sec. 1013. Expressing the sense of the senate concerning the provision of funding for bioterrorism preparedness and response.
- Sec. 1014. Grant program for State and local domestic preparedness support.
- Sec. 1015. Expansion and reauthorization of the crime identification technology act for antiterrorism grants to States and localities.
- Sec. 1016. Critical infrastructures protection.

## Appendix B

### SEC. 215. ACCESS TO RECORDS AND OTHER ITEMS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT.

Title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) is amended by striking sections 501 through 503 and inserting the following:

#### SEC. 501.

(a)(1) The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

(2) An investigation conducted under this section shall--

(A) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and

(B) not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(b) Each application under this section--

(1) shall be made to a judge of the court established by section 103(a); or a United States Magistrate Judge under chapter 43 of title 28, United States Code, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

(2) shall specify that the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.

(c)(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application meets the requirements of this section.

(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a).

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

(e) A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.

SEC. 507. DISCLOSURE OF EDUCATIONAL RECORDS.

[FERPA] is amended by adding a new subsection (j) to read as follows:

(j) Investigation and Prosecution of Terrorism.--

(1) In general.--Notwithstanding subsections (a) through (i) or any provision of State law, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to--

(A) collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an [act of terrorism]; and

(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

(2) Application and approval.--

(A) In general.--An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A).

(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

(3) Protection of educational agency or institution.--An educational agency or institution that, in good faith, produces education records in accordance with an order issued under this subsection shall not be liable to any person for that production.

## Appendix C

### Library Bill of Rights

The American Library Association affirms that all libraries are forums for information and ideas, and that the following basic policies should guide their services.

- I. Books and other library recourses should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.
- II. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.
- III. Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.
- IV. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.
- V. A persons' right to use a library should not be denied or abridged because of origin, age, background, or views.
- VI. Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on an equitable basis, regardless of the beliefs or affiliations or individuals or groups requesting their use.

Adopted June 18, 1948.  
Amended February 2, 1961, and January 23, 1980,  
inclusion of "age" reaffirmed January 23, 1996,  
by the ALA Council.

## Appendix D

### Sample Policy of Iowa Association of School Boards

#### Student Library Circulation Records

Student library circulation records are designed to be used internally to assist in the orderly administration of the school district libraries and media center. As a general rule, student library circulation records are considered confidential records and will not be released without parental consent. Individuals who may access such records include a student's parents, the student, authorized licensed employees, authorized government officials from the U.S. Comptroller General, the Secretary of Education, the Commissioner and Director of the National Institute of Education, and the Assistant Secretary for Education and State Education Department. Appropriate authorities in a health or safety emergency may access the student's library circulation records without the approval or the notification of the student's parents. Parents may not access records, without the student's permission, of a student who has reached the age of majority or who is attending a post-secondary educational institution unless the student is considered a dependent for tax purposes.

It is the school librarian's responsibility, as the person maintaining the student library circulation records, to approve requests for access to student library circulation records. Students' library circulation records may be accessed during the regular business hours of the school district. If copies of documents are requested, a fee for such copying is charged.

It is the responsibility of the superintendent, in conjunction with the school librarian, to develop administrative regulations regarding this policy.

*NOTE: This is a mandatory policy and a reflection of federal and Iowa law.*

#### Legal Reference:

20 U.S.C. § 1232g  
34 C.F.R. Part 99  
Iowa Code §§ 22; 622.10  
281—IAC 12.3(6)  
1980 Op. Att'y Gen. 720, 825