

## Empire State Library Network

## Patrolling the Stacks

A presentation courtesy of ESLN

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She got her start working with libraries as a page during high school.

Her law office in Buffalo offers legal advice, services, and representation to help libraries and library workers provide their communities with information access.



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This presentation is NOT legal advice.

### Goals for Today

- 1. Review every question that was sent in advance.
- 2. Review critical information for libraries, library leaders, and workers at this special time.





Black Frizzled Fowl and White Leghorn Hen, from the Prize and Game Chickens series (N20) for Allen & Ginter Cigarettes; Publisher Allen & Ginter American; Lithographer The Gast Lithograph & Engraving Company American; 1891; Images courtesy of Metropolitan Museum of Art Open Access

## Introduction

Libraries are special places, and library users—even those accused or convicted of crimes—have rights.

One of the most important of these rights is privacy, which includes confidentiality of library user records and use of library services.

This means that any person should be able to use a library without fear that the information generated by such use will be used against them without the due process of law.

How this right is assured varies from library to library. Each library has discretion to adopt policies to meet this obligation, and every library has different considerations when doing so, such as:

- **Public libraries** must balance the assurance of confidentiality with their role as quasi-governmental entities, which include obligations under the Freedom of Information Law.
- · Libraries at schools must follow relevant education laws.
- · **Association libraries**, even though private, must abide by duly issued warrants and subpoenas.
- Special libraries at hospitals, prisons, court houses, and governmental agencies have to balance their obligations with additional regulations.
- Historical societies, genealogical societies, and other institutions maintaining research libraries and archives will face similar considerations.

Because 2025 is bringing a particular focus to immigration-related and speech-chilling actions by law enforcement in libraries and other public spaces, this Guide has been created to assist libraries and workers with managing their obligations, policies, and response plans.

For trustees and other library leadership, this Guide will lead you through the laws that you, as a fiduciary, must ensure your institution follows.

**For workers**, this Guide will lead you through the laws that your employer must follow and provide guidance on how to prepare in the event your conscience, safety, or other factors result in you having to depart from the policy and protections of your employer.

This Guide considers that employees who "depart from the policy" of their employer may face disciplinary action and includes preparing for the same.

This Guide is divided into **five sections.** 

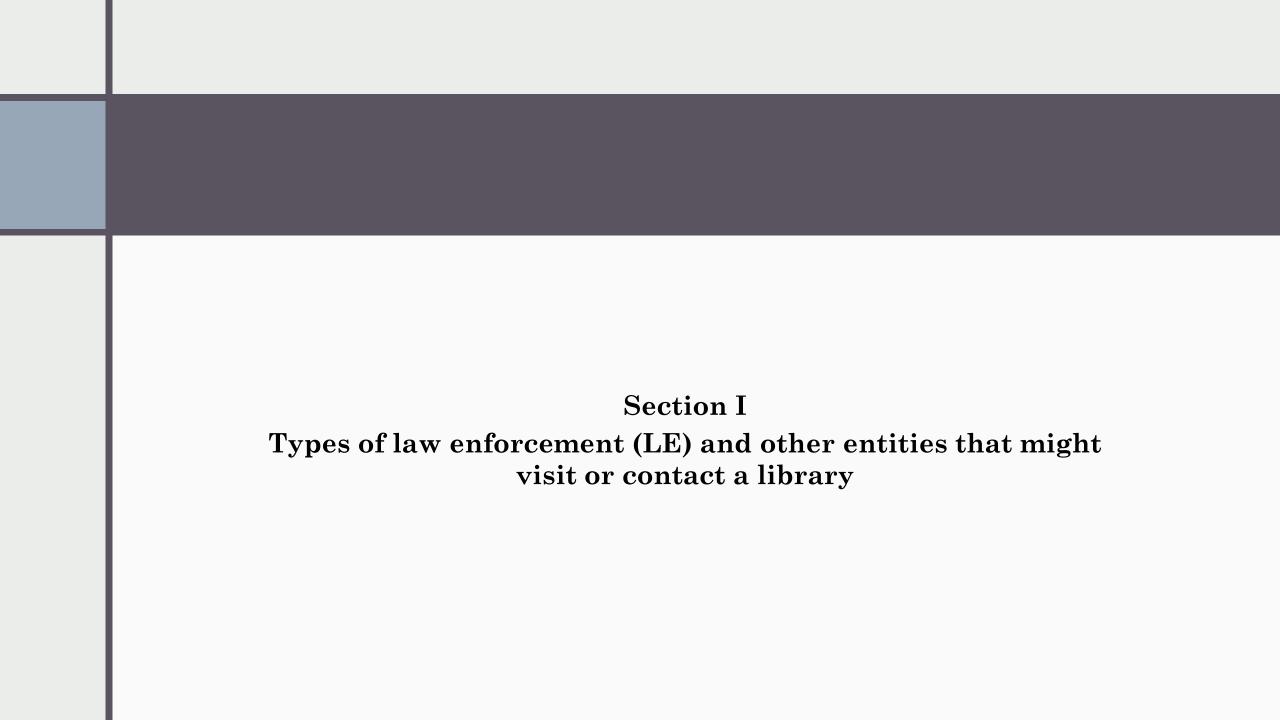
In **Section I**, this Guide reviews the most common types of law enforcement ("LE") and other third parties who typically demand library access and information in the context of an investigation. This is to ensure users of the Guide are familiar with the different types of entities, how such entities may request/demand information, and to provide a shared language for communicating about them.

In **Section II**, this Guide reviews the various types of libraries in New York State and the laws that impact their obligations with respect to LE investigations.

In **Section III**, this Guide uses the information in Sections I and II to guide a governing board through identifying an "LE Response Philosophy." This is an important position for a board to articulate so it can develop policy consistent with its overall goals with respect to working with LE.

In Section IV, this Guide sets out policy and risk mitigation actions library leadership can take to implement or further develop their LE Response Philosophy.

In **Section V**, this Guide reviews what library workers in New York can do to support their library and themselves, including in the event that their conscience, safety, or another factor requires them to depart from the policies of their employer.



Type of LE (or other personnel)	Ways they can investigate;
	Library considerations
LOCAL	
1.1. Local police department	Presence and observation in all public areas.
Jurisdiction:  Criminal activity and violations within the legality	Obtain evidence with appropriate permission.
Criminal activity and violations within the locality	Arrest, search, and/or seizure with a court order or wa
	Arrest, search, and/or seizure with probable cause.
1.2. Local building inspectors	Presence and observation in all public areas.
Jurisdiction: Building code violations within the locality	Inspection upon invitation by building owner or tenan
Dulluling code violations within the locality	Inspection with a court order.
1.3 Local permits officers	Presence and observation in all public areas.
Jurisdiction:	
Violations of permitted activity within the locality.	

COUNTY	
1.4 County Sheriff	Presence and observation in all public areas.
Jurisdiction: Criminal activity and violations	Obtain evidence with appropriate permission.
within the locality	Arrest, search, and/or seizure with a court order or warrant.
	Arrest, search, and/or seizure with probable cause.
1.5 County Health Department	Presence and observation in all public areas.
Jurisdiction:	Obtain evidence with appropriate permission.
Known or suspected violations of state and local health codes.	Obtain evidence with a subpoena, court order or warrant.
1.6 County Social Services	Presence and observation in all public areas.
Jurisdiction: Within context of providing	Obtain evidence with appropriate permission.
Within context of providing services and supervision.	Obtain evidence with a subpoena.

STATE		
1.7 New York State Police ("State	Presence and observation in all public areas.	
Troopers")		
	Obtain evidence with appropriate permission.	
Jurisdiction:		
Criminal violations in the State	Arrest, search, and/or seizure with a court order or warrant.	
of New York.		
	Arrest, search, and/or seizure with probable cause.	
1 0 D 0 CC		
1.8 Peace Officers	Because of the broad array of LE that has this status, and because of	
	the ease with which it can be faked, any library approached by a person	
There are over 70 categories of	claiming to be a "Peace Officer" should request the credentials and	
"peace officer," ranging from	immediately contact their attorney to verify them with the issuing	
officers from the New York State	authority.	
Department of Taxation & Finance to "animal control	Poses Officers have the outhority to expect without a warment but this	
officers in the City of Elmira."	Peace Officers have the authority to arrest without a warrant, but this authority is limited to <b>felonies</b> the Peace Officer either personally	
officers in the Oity of Elimia.	witnessed OR are within their "special duties" (for instance, a Peace	
For this reason, not all peace	Officer from the state tax department can arrest on a felony related to	
officers are listed in this chart,	taxes, even if they did not witness the crime).	
but a few of the more typical ones		
are.	For this reason, Peace Officers, with very few exceptions,	
	cannot arrest people for immigration law violations.	

1.9 Department of Agriculture and Markets "Confidential	Presence and observation in all public areas.
Investigator" (Peace Officer)	Obtaining evidence with appropriate permission.
Jurisdiction: Farming, food control in New	Arrest, search, and/or seizure with a court order or warrant.
York.	Arrest, search, and/or seizure with probable cause, related to "special duties."
FEDERAL	
1.10 U.S. Department of Justice,	Presence and observation in all public areas.
including:	
· Federal Bureau of Investigation	Obtaining evidence with appropriate permission.
(FBI)	
Bureau of Alcohol, Tobacco,	Arrest, search, and/or seizure with a court order or
Firearms, & Explosives (ATF)	warrant.
• Drug Enforcement Agency	
(DEA)	Arrest, search, and/or seizure with probable cause.
• U.S. Marshals Service	
· Etc.	

U.S. Immigration & Customs rcement (ICE)	Presence and observation in all public areas.
	Obtaining evidence with appropriate permission.
Jurisdiction: Homeland security and immigration law.	Arrest, search, and/or seizure with a court order or warrant.
	Arrest, search, and/or seizure with probable cause.
	Authority to examine a copy of each employee's Form I-9 ("I-9 review") within 3 days of presenting an appropriate notice, which should be reviewed by an attorney for sufficiency upon receipt.
U.S. Customs & Border ection (CBP) or U.S. Border ol	Immigration and customs violations, generally limited to within 100 miles of an international border or 12 miles of a navigable waterway.
sdiction: Homeland security, er control, and immigration	

1.13 U.S. Citizenship and Immigration Services (USCIS) officer	Immigration services and benefits.
Jurisdiction: Naturalization and immigration	
1.14 U.S. Secret Service	Presence and observation in all public areas.
Jurisdiction: security of federal administration, financial and cybercrime	Obtaining evidence with appropriate permission.
	Arrest, search, and/or seizure with a court order or warrant.
	Arrest, search, and/or seizure with probable cause.
1.15 U.S. Department of Agriculture (USDA) inspector	Agricultural and livestock investigations, food safety enforcement.
Jurisdiction: Farm bill and regulations	
1.16 U.S. Coast Guard officer	Enforcement actions by Coast Guard officers will hopefully not
Jurisdiction: All federal laws in the context of navigable waters	be a concern for your institution, but it remains a possibility.

OTHERS	
1.17 Prosecutor (e.g. District Attorneys or U.S. attorneys)  Jurisdiction: Violations of permitted activity within the locality.	Presence and observation in all public areas.  Obtaining evidence with appropriate permission.  Via a PD, sheriff, FBI, or other LE's arrest and seizure of evidence per a court order or warrant.  Subpoena.
1.18 Attorney (not a prosecutor)  Jurisdiction: Active criminal and civil cases.	Presence and observation in all public areas.  Obtaining evidence with appropriate permission.  Duly issued court order or subpoena.

1.19 Campus police officer  Jurisdiction: criminal activity and	Campus police making inquiries of an academic library within their institution must abide by FERPA and the library's obligations under CPLR 4509.
violations within a college or university.	
1.20 Campus safety employee  Not law enforcement.	Campus safety making inquiries of an academic library within their institution must abide by both FERPA and the library's obligations under CPLR 4509.
1.21 Licensed security guard	A licensed security company has no authority to demand or seize evidence.
Not law enforcement.	
1.22 Licensed private investigator	A licensed security company has no authority to demand or seize evidence.
Not law enforcement.	
1.23 Utility company employee	Utility employees may inspect meters per an easement.
Not law enforcement.	

Section II

Various types of libraries in New York State

and
laws that impact their positions vis-à-vis LE investigations

Type of Library	Obligations or	Considerations
	Awareness Point	
2.1. ALL	Ethical obligation to	When responding to LE or third-party requests
	protect library user	for information, the institution should never
	confidentiality.	provide more access or information regarding
		use of library services than is required by law.
2.2. Public libraries	Comply with the New	Some information sought may be subject to
and other "quasi-	York Freedom of	FOIL. For this reason, FOIL policies should be
governmental"	Information Law	up to date, with a clear designation of the
libraries and	(FOIL)	Records Access Officer and the person/entity
institutions		considering FOIL appeals.
(community colleges,		
etc.)		
2.3. Indian libraries*	The obligation to	Confer with legal counsel for sovereignty issues
	cooperate with LE will	raised by immigration investigations and
	vary based on the LE's	enforcement.
	jurisdiction and purpose	
	of investigation.	
* This is the name used in the Education Law; these currently include the Akwesasne Cultural		

\* This is the name used in the Education Law; these currently include the Akwesasne Cultural Center & Library and the Seneca Nation Library.

2.4. Public school library (K-12)	Schools are keenly aware of the impact of this issue on students and their families.	Coordinate the library's position with that of the school district while emphasizing additional privacy obligations pertaining to student library records.
2.5. Library within federal agency	Comply with the Freedom of Information Act (FOIA)	Some information sought may be subject to FOIA. For this reason, FOIA policies should be up to date, with a clear designation of the FOIA Contact and the FOIA Liaison.
		Will be expected to be consistent with position of agency they operate within.

	2.7. Library within 100 miles of an international border.	Libraries within 100 miles of an international border are unambiguously within the jurisdiction of the U.S. Customs and Border Protection.	May be more likely to be the site of a CBP investigation.
	2.8. Library in a designated "sanctuary" jurisdiction.	May be subject to greater scrutiny by LE and elected leadership due to location.	This makes the need for clear policy even greater.
number of community a		This increases both the likelihood and the pressures of immigration-related LE activity.	This makes the need for clear policy even greater.

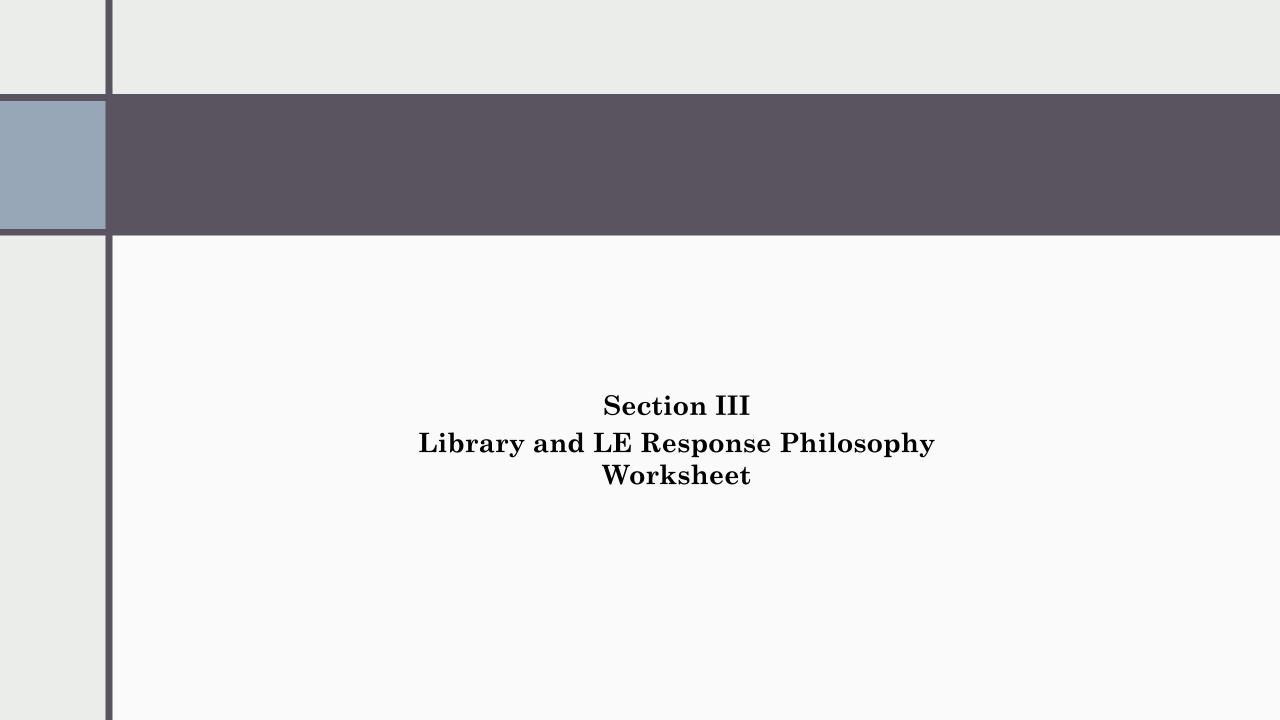
2.10. Academic library at institution facing threat of loss of grant funding conditioned on cooperation with heightened immigration enforcement.

Governing boards should be meeting to develop a strategy on addressing this concern, and should be aware that the institution's library has an ethical and legal obligation to protect the confidentiality of library user information.

While an academic library has discretion within legal limits to set policy on how it works with LE, such action should be based on values, not threats or coercion.

2.11. Municipal library in municipality with stated official position to use local resources to aid federal immigration enforcement efforts.

Some libraries may develop consistent policy within the allowed parameters; others may find themselves partly or fully at odds with such a stance. Regardless of how consistent a library is with the approach of its municipality, it should have clear policy and procedure; libraries at odds with local policies must take extra measures to assert the library's autonomy and independence.



Important position factors	Impact on philosophy
3.1. Hardest question first:	If your library only assists to the bare minimum required, you are a "Minimum LE Cooperation" library. Sample
If LE arrives at your library to	position language for this is:
seek information on a matter in	
which your library is not a	"Library user records and use of library services are
complainant, does your library:	confidential. For this reason, the [NAME] library provides
	investigating Law Enforcement with only information
1) Assist only to the bare	required by law."
minimum required, after	
appropriate authentication of	If your library helps to the maximum allowed, your library is
credentials and compelling	a "Maximum LE Cooperation library." Sample language for
documents by the library's	this is:
attorney?	
OR	"Library user records and use of library services are confidential. For this reason, while the [NAME] library will assist to the extent allowed by law, a duly authorized warrant,
2) Help to the maximum allowed with minimal authentication?	court order, or subpoena will be required prior to release of library user information."

3.2. Does your library know where its property (owned or leased) begins and ends?  Hint: This should be on a	If YES, your library is a "Property Known" library.  If NO, your library is a "Unsure About Property" library.  If SORTA, your library runs the risk of being considered an
3.3. Does your library have clearly designated "non-public"	"Unsure About Property" library.  If YES, your library is a "Restricted Area" library.
spaces?	If NO, your library is a "No Restricted Areas" library.  If SORTA your library runs the risk of being considered a "No Restricted Areas" library.
3.4. Does your library deny services to residents within the area of service based on	If YES, your library is risking a case of discrimination under the NYS Human Rights Law and both the NY and US Constitutions.
citizenship and/or immigration status?	If NO, good, because YOU CAN'T DO THAT.

3.5. Does your library have a policy or other document assuring all library users that it follows a code of ethics that guarantees private, confidential, and unbiased library services?	If YES, have a copy of the Code of Ethics on hands when any LE arrive.  If NO, library leadership may want to discuss if now is the time to adopt one.
3.6. Does your library have a	If YES, your library is a "4509 Complaint" library.
policy or other document assuring all library users that it	If NO, or WE CAN'T FIND A RECORD OF THAT, your
follows CPLR 4509, restricting access to library user records?	library may want to consider adopting such a policy, to ensure the law is known and followed.
3.7. Does your library have a	If you have a written agreement, you are an "LE Formal Relationship" library. Review the agreement to ensure it
written agreement or established practice with LE	reflects the library's current needs.
enforcement for addressing library concerns (criminal	If your library uses LE but it's informal, consider if the
conduct at the library).	current approach needs to be revisited.

3.8. Does your library want to have a policy of alerting workers and others when LE is present on the property?

NOTE: Unless the library is presented with known credentials by the LE, and those credentials are vetted by a person trained to assess them, it is wise to not do this.

If YES, make sure workers are trained on what to say and how to say it.

If NO, that is fine, your library is not required to do this.

If your library never considered this before: Yes, you can do that, but there should be clear language, and to avoid panic, persons authorized to make such a pronouncement should be trained to request and recognize credentials.

If your library does this, it is an "LE Presence Alerting" library.

3.9. Does your library have alternate egress in the event a particular agency arrives at the main entrance?

If YES, you are a "Casablanca" library.

If NO, it's good for workers to know that.

If your library can't physically do that, it is wise to consider this factor.

3.10. Does your
library have a
surveillance system
that would record
LE activity?

If YES, bear in mind that the recording might be evidence and take steps to preserve it. It might also be subject to request under FOIL, unless such records are specifically regarded as "user records" (which they can be).

If NO, one less thing to worry about!

Should you have one? That is a question only your library can answer.

# 3.11. Does your library want to require workers to document LE activity?

If YES, bear in mind that, if the documentation is made as a work requirement, it will likely be subject to disclosure under FOIL (even if made using a personal device). In addition, the policy should address how such recordings are made without risking a charge of interfering with LE actions.

If NO, one less thing to worry about!

Should you have one? That is a question only your library can answer. When developing such a policy, careful consideration of the application of FOIL and whether or not employee-owned devices should be used are top considerations.

3.12. Does the library want to prohibit workers from personally recording LE activity in areas where recording is not prohibited?

While this type of prohibition should not be made, if your library has elected to not record LE activity, it should be clear that workers doing so are doing it on their own time and only in areas where recording is allowed.\*

3.13. Does your library want to encourage use of library resources by alerting the public (and LE) to its particular stance on this?

If YES, your library should develop a short statement of its philosophy, in a way that will be meaningful to library users, and release it.

If NO, your library should develop a short statement of its philosophy, in a way that will be meaningful to library workers, but not promulgate it.

<sup>\*</sup> Yes, this is the same type of rule that governs First Amendment Auditors People Recording in the Library.

3.14. Does your library know the answers to these questions but want to keep them "unofficial" due to the fear that taking a position would result in retaliation and scapegoating?

If NO, good. Fear is not the basis for policy (or lack thereof).

If YES, while that is understandable, having "unofficial" positions can be risky upon an investigation, as actions will not be aligned with policy or directives, risking both due process and insurance coverage in a worst-case scenario.

This is not a trick question! While your institution might not want to take a loud and overt stance, it is wise to take a stance, even if you do not publicize it.

3.15. Are you a library leader who sees a board meeting discussing these things turning ugly?

If NO, great.

If YES, consider conducting your meeting with local legal counsel, so the attorney can help the board focus on the legal factors.

#### Sample LE Response Philosophies (all of which are legal in NYS)

EXAMPLE 1 "The Victor"

The mission of the [NAME] Library is [INSERT]. As required by law, the Library serves all residents of [PLACE] without regard to citizenship or immigration status. As required by law, the Library keeps library user records confidential and releases such information to law enforcement agencies only to the degree required after appropriate authentication of credentials, warrants, court orders, and/or subpoenas. To maximize the confidentiality of services, employees are trained to alert all present in the library when law enforcement has been verified as present, and we record instances of on-site arrest or seizure of evidence whenever possible. To assist users who do not want to be at the Library when law enforcement is present, the Library has several means of egress. To enhance the Library's ability to maintain confidentiality, "private" areas where only library officials and their invitees may enter are designated with signage.

#### EXAMPLE 2. "The Rick"

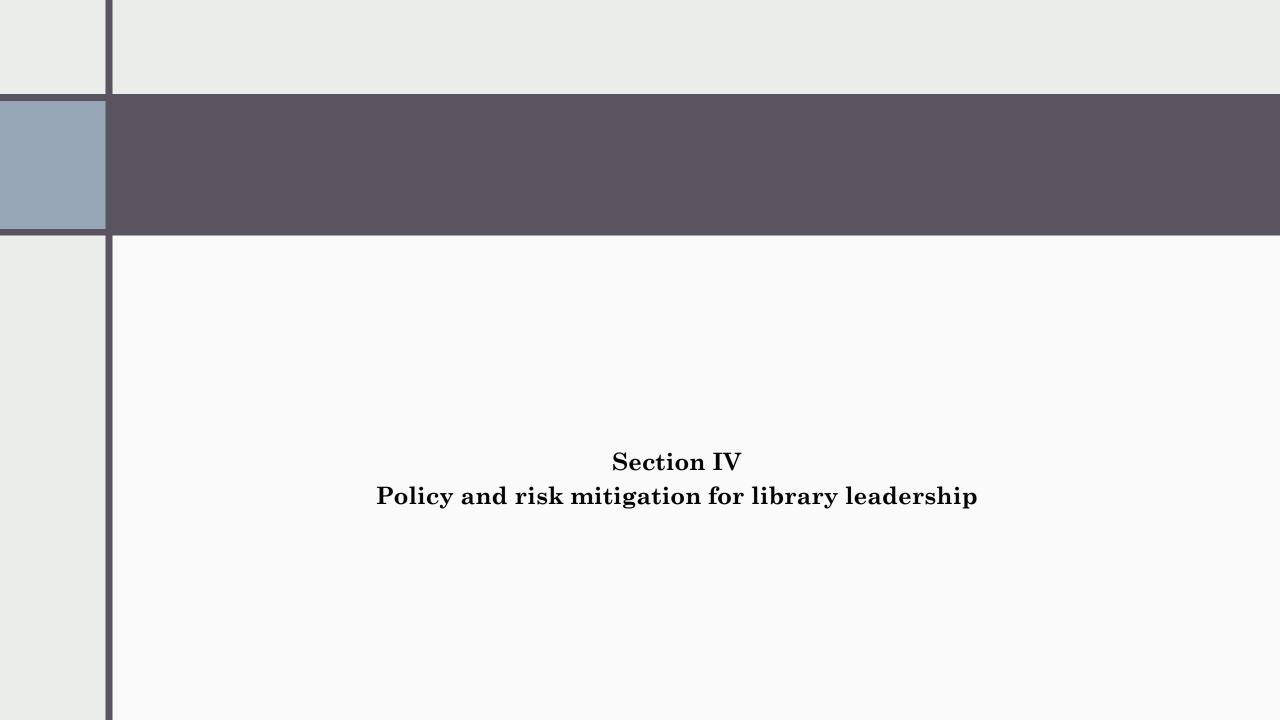
The mission of the [NAME] Library is [INSERT]. As required by law, the Library serves all residents of [PLACE] without regard to citizenship or immigration status. As required by law, the Library keeps library user records confidential and releases such information to law enforcement agencies only to the degree required after appropriate authentication of credentials, warrants, court orders, and/or subpoenas. For the protection of the Library, we record all seizures of evidence and arrests made on site; such recordings pertaining to library users are confidential library records.

EXAMPLE 3 "The Louie"\*

The mission of the [NAME] Library is [INSERT]. As required by law, the Library serves all residents of [PLACE] without regard to citizenship or immigration status. As required by law, the Library keeps library user records confidential but will release such information to law enforcement agencies and other third parties per duly issued warrant, court order, and/or subpoena. The Library may also elect to release any library record it determines must be released for the proper operation of the Library.

As shown by the diversity in these policies, libraries have a great deal of latitude in how they choose to interact with law enforcement. What is important is that library policies be applied consistently.

<sup>\*</sup>Yes, I am naming these approaches after different heroes in "Casablanca." Each of these approaches—or a different combination—is legal. It is not until a library starts handing over records and calling ICE on library users that it becomes "The Collaborator" (I am not providing model language for that one).



Policy or risk mitigation action leadership can take	What it Can Do	How to Implement
4.1. Know your library's position.	Even if you don't widely publicize it, a library must know where it stands on these issues.	Use Section III to identify (and regularly re-evaluate) where your library stands.
4.2. Evaluate your library's insurance.	If there is any accusation by LE or a government agency of wrongdoing by employees or leadership, the library's board should know if there is coverage.  If workers <i>are</i> covered for alleged legal	Review the current insurance policy to see what "criminal" accusations are covered, and who is covered for them.
	violations, consider letting them know the extent of the coverage (and that it only applies if they are following library policy). This can ease tensions.	

4.3. Ensure your	This is to ensure there is a clear basis to	Adopt or amend a policy to
library's definition of	deny access to protected library user	include a complete list of
"library user records" is	records.	record types.
up to date and reflects		
all records your		
institution keeps and		
regards as confidential		
user information.		
4.4. Evaluate your	Make sure the policy and signage are clear	The director should assess
library's designation of	and reflect actual restricted use terms.	current needs and practices
private space.		against the library's needs,
	NOTE: "Restricted use" can include	and the board should adopt
	invited people (for example, the computer	or revise the policy
	repair person going into an otherwise	accordingly.
	restricted server room).	
4.5. Reach out to legal	This will enhance the services offered by	If not already in place,
or immigration	the library.	consider a formal or
advocacy organizations		informal partnership with
for "Know Your Rights"		such an organization in
information to provide		your area.
to library users.		

4.6. Provide short scripts to workers to reflect policy positions.

When LE arrives is not the time for an employee to be paging through a 10-page policy!

Practice using these scripts under stressful situations.

Examples:

"Please provide your credentials, and I'll immediately connect you with the library director."

"We have verified that [agency] is in the building."

"The exits are at LOCATION."

"I have been trained to not share information about library users."

"The New York State Constitution allows me to record this activity."

4.7. Ensure your library's scripts and policies are up-to-date, concise, and clear.	This will help your workers follow policy in the moment.	Have legal counsel review the policies and scripts to ensure your unique approach is consistent with the requirements at your library.
4.8. Polish up the relationship with local LE to the maximum extent possible.	Ensure local LE knows the ethical and legal restraints libraries operate under; to the degree practical, ensure the local LE is aware of your library's philosophy.	This should be carefully planned and should almost always start with a face-to-face discussion between leaders.
4.9. Let employees know that if they face a negative consequence for following library policy (arrest, harassment, etc.), the library will assist with addressing it.	This encourages workers to learn and follow policy. It can also reassure them that, if they take action under policy, the library will have their back.	Put that assurance in the policy, a FAQ, or another document.

4.10. Engage a local criminal defense attorney to advise on this topic.

If a local criminal defense attorney wants to provide this service *probono*, great!

This does not need to be a "library attorney;" just a lawyer on retainer who knows local LE and can assist if a situation emerges. This lawyer should be open to connecting with library advocacy organizations so their local knowledge can be combined with library-focused knowledge.

Put out an RFP as follows:

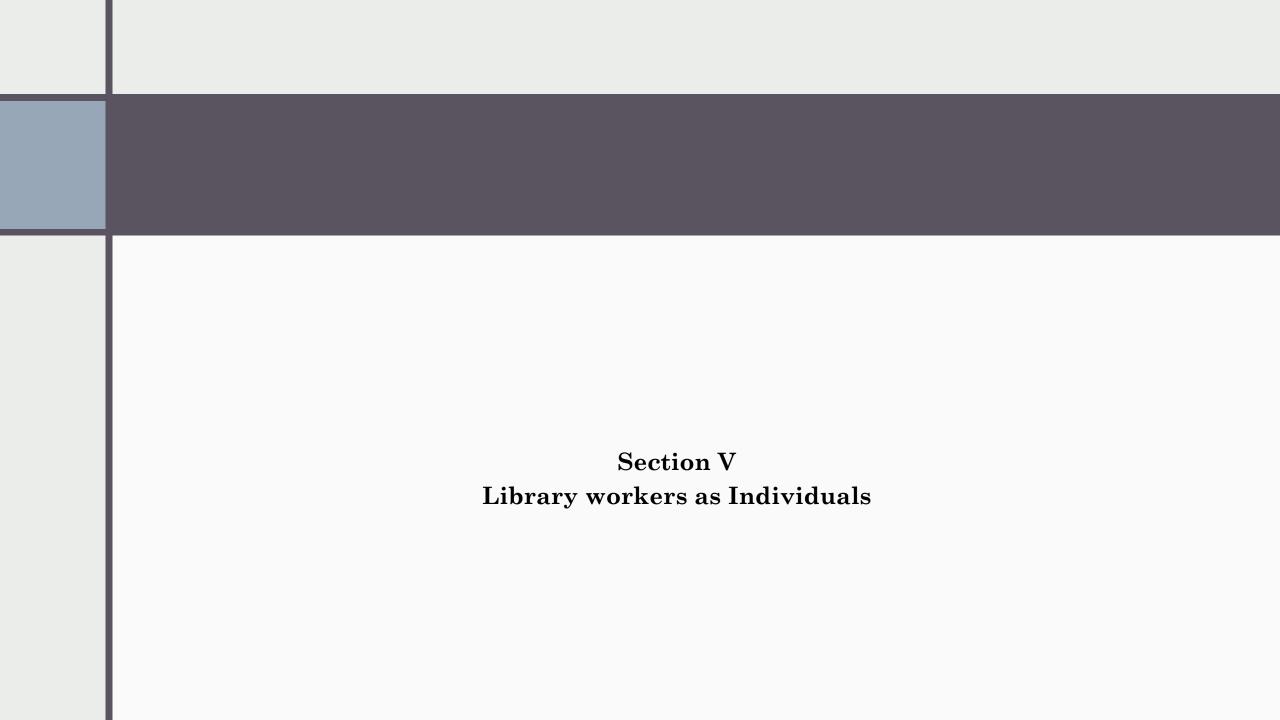
"The [NAME] Library seeks a criminal defense attorney in [NAME] county to advise the library board and director on matters related to civil liberties on an on-demand, hourly basis. Experience should include felony and misdemeanor cases in federal and state courts. Experience with immigration a plus."

4.11. Prepare workers for this fact: No matter how strong the library's position and preparation are, it might not prevent an illegal arrest or seizure of evidence.

LE can overstep boundaries (accidentally or otherwise). While being ready can reduce the likelihood of an unconstitutional arrest or seizure, that is not assured. Make sure workers know that what they do in the moment might become part of how the wrongful action is fought.

This should be part of a policy:

"In the event library user records are taken or an agency remains in the library in a manner that violates the law or this policy, the library shall take action to address the violation."



What an employee can do	How it can be done
5.1. Respectfully ask the library director what the library's positions are as listed in Section III.	Be patient; the board might not give the director timely input.
5.2. If your employer doesn't provide answers, develop a personal response plan.	Review Section III and identify what YOU think should be done.* Discuss this with your lawyer (prior to an incident).
5.3. Use the tools of your trade to identify the best resources to refer people to with respect to immigration enforcement.	Resources from local bar associations and legal clinics, immigration and resettlement agencies, and civil liberties groups are best, the more local the better.

<sup>\*</sup> Library leaders who are reading this: if you just cringed at the thought of your workers winging this stuff, you have felt how critical it is that your library identify and articulate a position on each item.

5.4. If your employer has a position you DEEPLY DISAGREE\* with, pre-identify what you will do in the moment.

## For example:

If your library has a "maximum cooperation" stance, and you disagree with that, will you provide more than the bare minimum when directed to help LE?

If your library has a policy of announcing the presence of LE, and you disagree with that, will you assist with the announcement?

If your library has a "no recording LE" policy, but you feel compelled to bear witness during an arrest, would you record anyway?

Identify why you disagree, and how you will not follow it. Discuss this with your personal lawyer (prior to an incident).

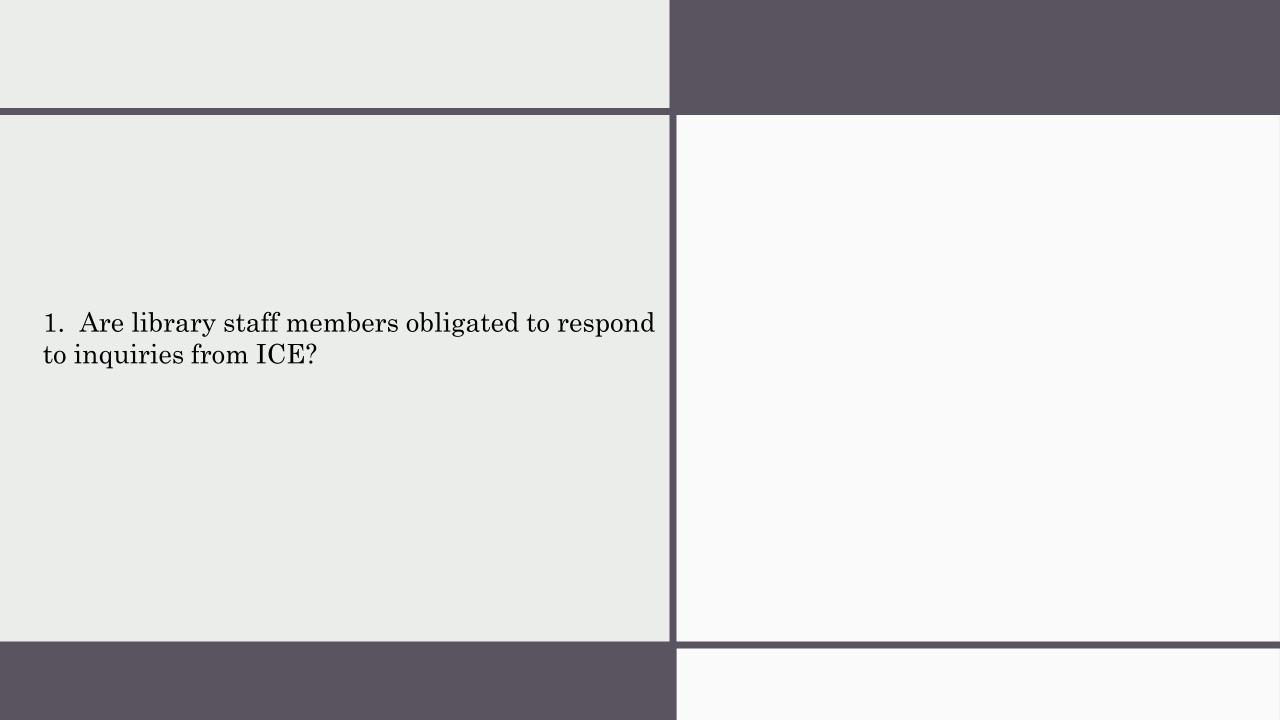
Your lawyer can help you identify the best way to not follow the directive or policy.

It is important to know that your lawyer may counsel you that failure to follow your employer's policies may result in termination.

<sup>\*</sup> By "DEEPLY DISAGREE," I don't mean you think it's a bad idea… I mean that when push comes to shove, you know you won't be able to do it.

5.5. If you are in a union, alert your union representative as to any concerns.	The union representative should be given enough information so they can advocate for employees in the unit.
5.6. Retain a personal attorney with relevant experience (employment law) to simply be "on standby."	Most attorneys can be retained and put "on standby" without the client(s) paying a large fee.
THIS DOES NOT HAVE TO COST A LOT OF MONEY.	Your local bar association can recommend an attorney with the right experience.
	Remember, the American Library Association's Merritt Fund is there to help defray costs of local counsel for librarians under attack for doing their jobs.
5.7. Assemble a trusted support group and have fun together from time to time.	This one is up to you. Take care of yourself so you can take care of others.

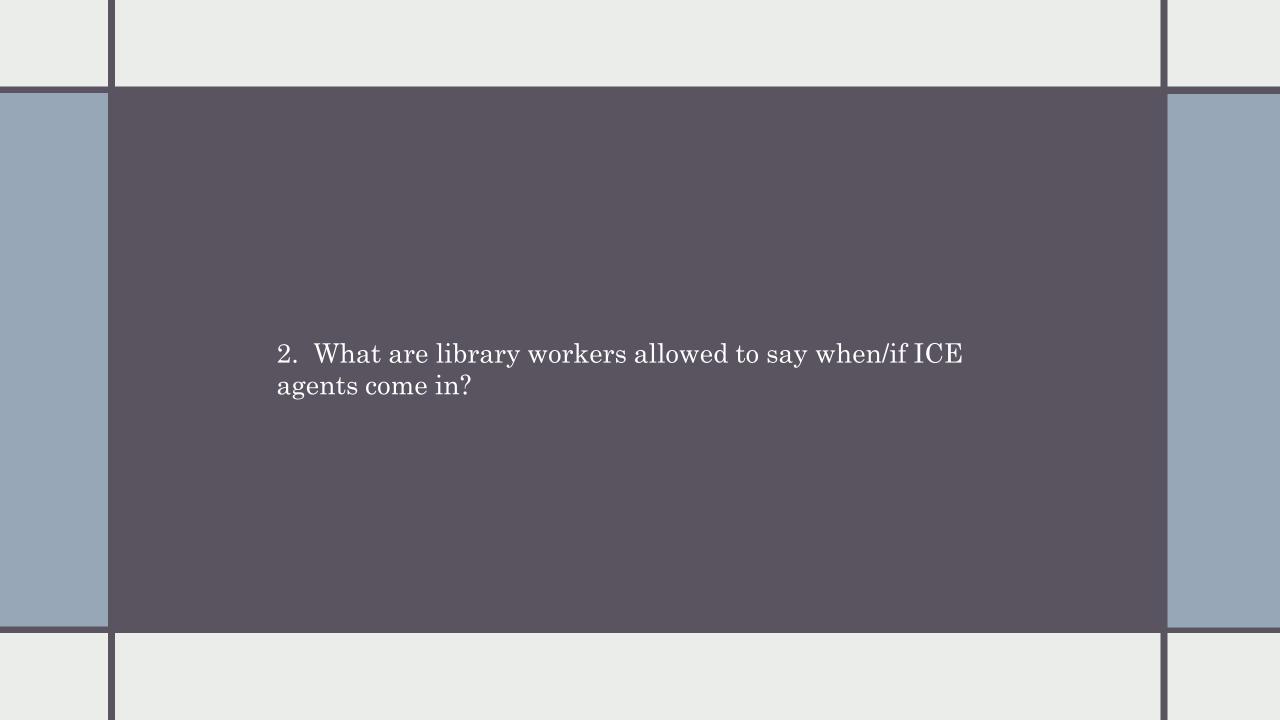
## Your Questions



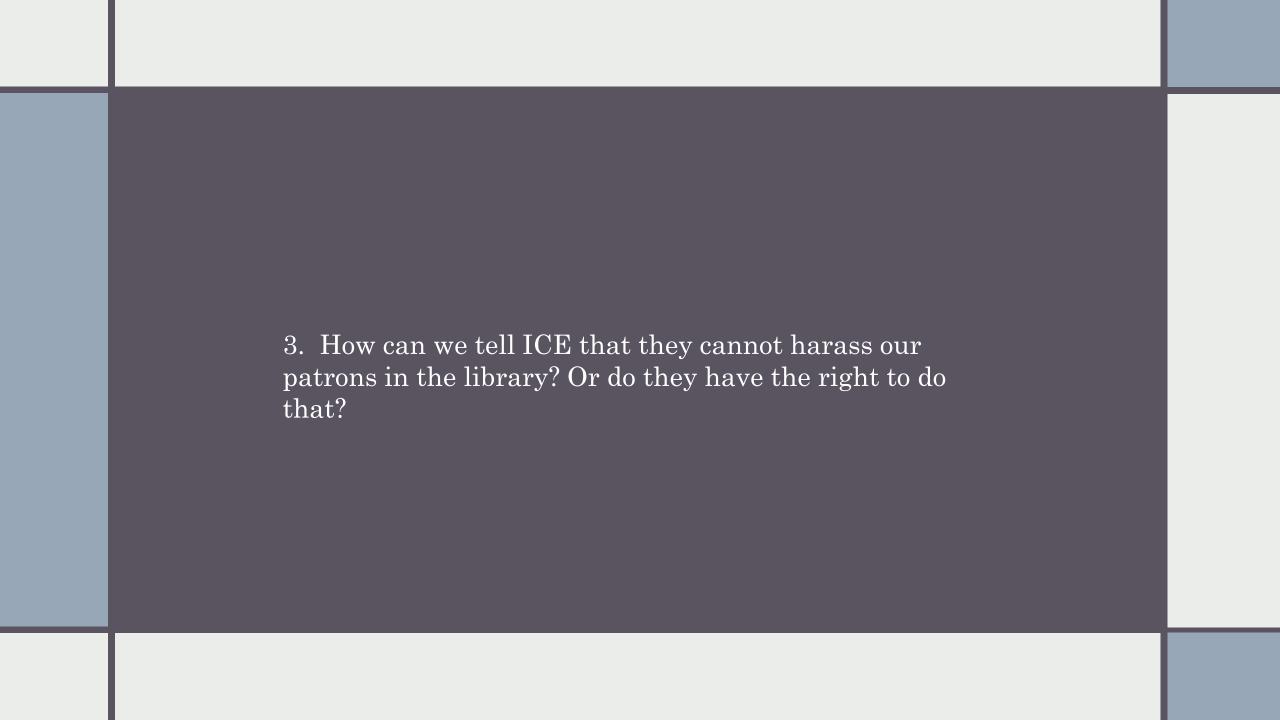
## ANSWER: NO.

That said, ICE has the authority to examine a copy of each employee's Form I-9 ("I-9 review") within 3 days of presenting an appropriate notice, which should be reviewed by an attorney upon receipt.

Library policies may prohibit staff from providing other information to law enforcement, including ICE, without a judicial warrant, subpoena, or court order. See: <a href="https://wnylrc.org/raq/responding-leo-others-requests-library-user-information">https://wnylrc.org/raq/responding-leo-others-requests-library-user-information</a>



ANSWER: Library policy may require employees to give a standard response referring law enforcement officers to the library director.



ANSWER: Every library should have a code of conduct. Law enforcement officers, including ICE agents, may be asked to leave a library if they violate the library's code of conduct, such as by harassing patrons.

4. If ICE enters your library without a warrant or explanation, just looking, is it a crime to hide a patron or student?

ANSWER: Hiding a subject of a federal law enforcement inquiry may constitute obstruction of justice or obstruction of a criminal investigation, which are federal crimes. See: 18 U.S. Code § 1503 and § 1510.

5. If we see an ICE agent talking to a patron, can we interrupt to hand the patron a Know Your Rights red card?	

ANSWER: Interrupting an ICE agent's inquiry could result in being accused of obstruction. While you may approach a law enforcement officer interrogating a patron and ask, "May I help you?" and offer resources, it is safer to keep your distance, take notes, and ensure that such encounters are recorded on video. It is important to note that ICE agents often wear plainclothes or clothes that simply read "POLICE." You may ask them for their name, badge number, and agency, which will allow you to contact the agency and confirm the identity of the agent. This information will be useful to attorneys in the event of an arrest or detention.

6. What is my role as a public librarian if an ICE agent comes in to search or even requests information about a patron?

ANSWER: ICE agents may not search anyone, search nonpublic areas, or obtain information from anyone without a judicial warrant, court order, or the consent of the subject of a search or request. Public library employees may direct all law enforcement requests to the library director, who may require a judicial warrant for a search and a court order or subpoena to disclose library records.

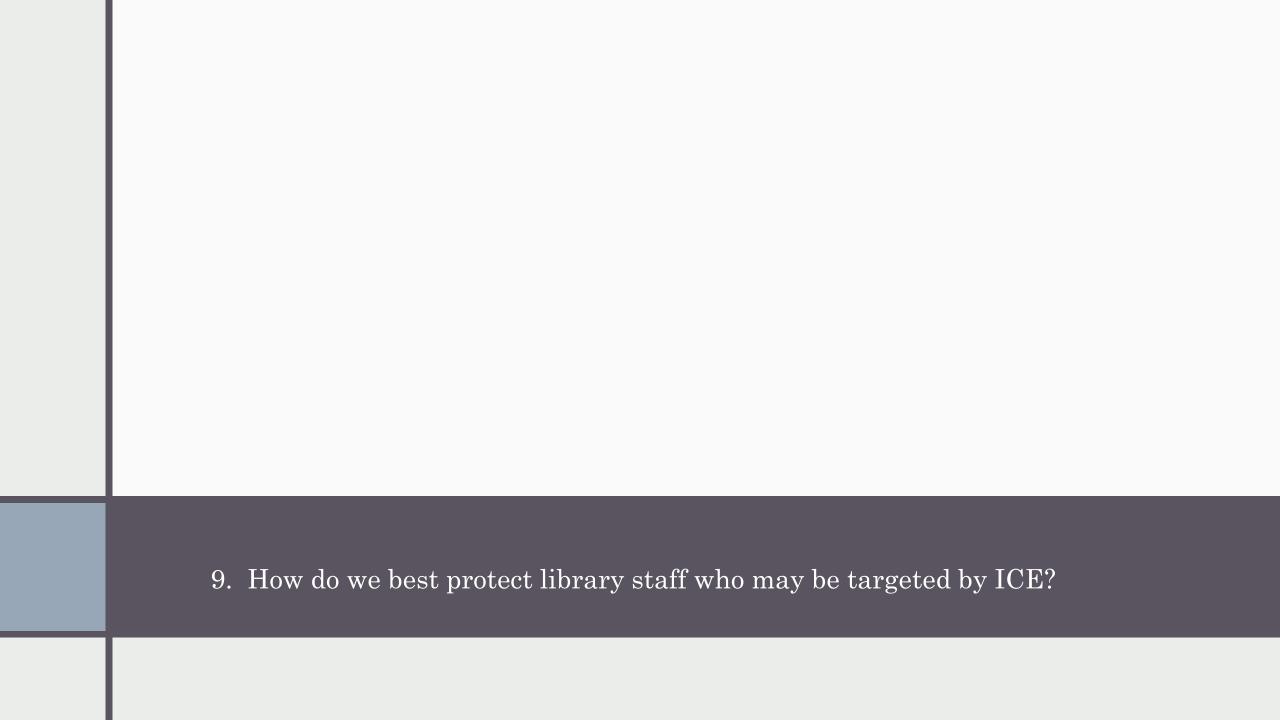


ANSWER: Law enforcement officers may arrest or detain anyone in public areas of the library. To access clearly marked nonpublic areas, the library may require a judicial warrant or court order. Arrests or detention require probable cause, a signed judicial warrant, or consent of the subject arrested or detained.

8. How can ICE visits be handled by the library when we are closed to the public, yet the building is in use by community partners? ANSWER: Public libraries may not be closed to the public when in use by community partners (as opposed to when the premises are rented out). Volunteers and employees are responsible for following library policies when leading such programs, including policies relating to law enforcement visits. See:

https://wnylrc.org/raq/use-meeting-rooms-outside-

library-hours.



ANSWER: ICE has the authority to examine a copy of each employee's Form I-9 within 3 days of of presenting an appropriate notice, which should be reviewed by an attorney upon receipt. Libraries can protect employees who are targeted by ICE by notifying them and their union representatives, consulting an immigration attorney, and taking all three days to carefully assemble the required I-9 forms.

Libraries can additionally protect employees and volunteers by training them to follow procedures that direct them to refer all inquiries to the library director. Finally, libraries may host "know your rights" training sessions for library staff. 10. How can I best protect myself?

ANSWER: See Section V of the "Guide."

11. If ICE visits the library and leaves with a person, what info should we record and who should we contact with that info?

**ANSWER:** Library staff may record all relevant information and attempt to contact the individual's family, attorney, and/or labor union. Especially useful information includes:

- · How many ICE agents were present (inside and outside)?
- · How were the agents dressed? How were they armed?
- · Did the agents make anyone believe they could not move or leave?
- · Did the agents mistreat anyone? If yes, how?
- · Where was the detained individual taken? (You may ask ICE agents this.)

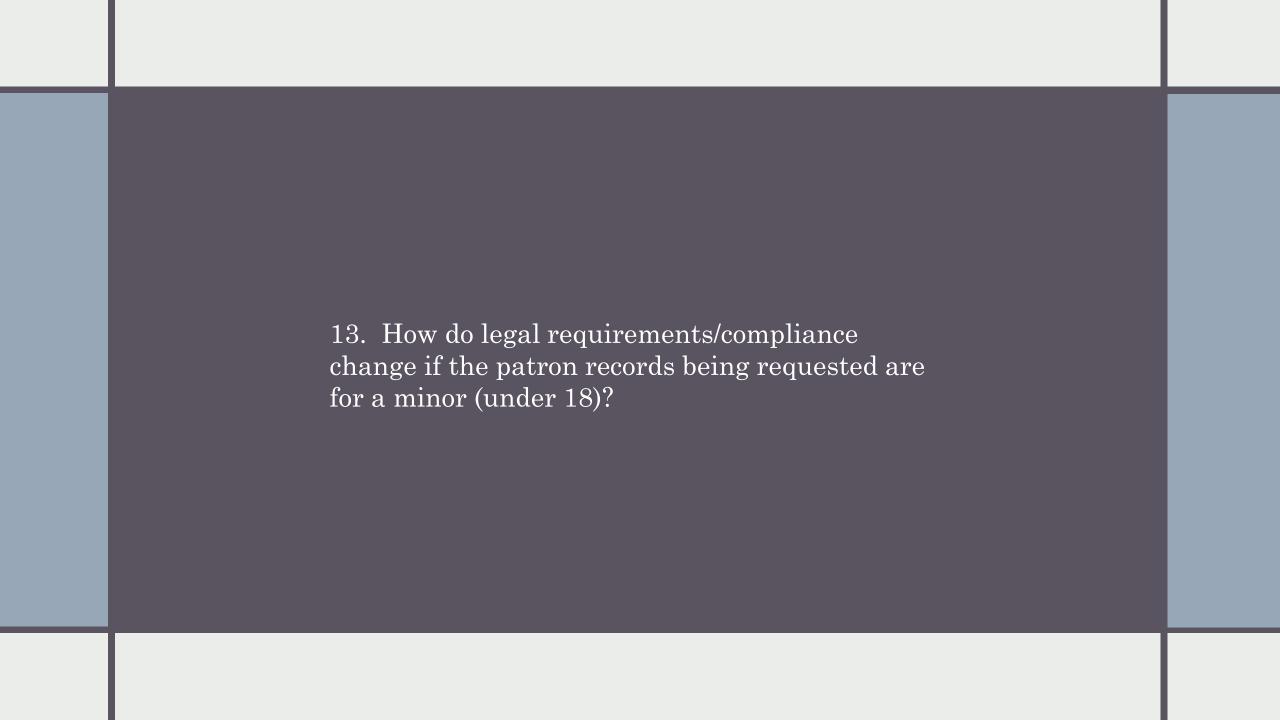
12. What if I want to record a Law Enforcement action in the Library on my personal cell phone?

**Answer**: It is not illegal to record law enforcement in the library, so long as the act of recording is not an obstruction.

Employees recording law enforcement in the library should take care to stay far enough away as to not impede the operation.

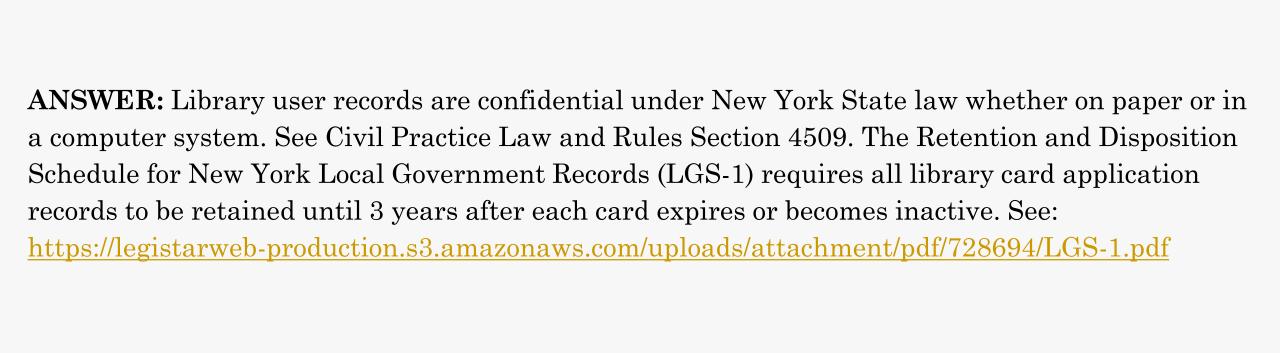
Employees creating such a recording should be ready for it to be demanded by lawyers for either side.

Recordings made by library staff while working may be subject to public disclosure under the Freedom of Information Law (FOIL). If a library is explicitly allowing and/or encouraging such recording, FOIL arguably applies to any such recording.



ANSWER: Library user records are confidential under New York State law regardless of patron age (see: Civil Practice Law and Rules Section 4509). Library user records from school, college, and university libraries are additionally confidential under the Family Education Rights and Privacy Act (FERPA) regardless of patron age.

14. What are the legal implications of retaining patron information submitted on paper applications for library cards?



15. What are my rights if I am approached by ICE or other law enforcement if I am a United States citizen?

ANSWER: When approached by an ICE agent, U.S. citizens have the same rights as anyone else in the U.S. and the same rights as when approached by any other law enforcement officer. You may declare your right to remain silent under the Fifth Amendment and ask for an attorney. You may also refuse to be searched or detained without probable cause or a signed judicial warrant.

16. What if someone is here illegally but they're a student attending a local college?

**ANSWER:** Anyone who is concerned about their own legal status should contact an immigration attorney. Students may apply for student visas to obtain legal status.

17. What if we are patrons in the public library? What options are available to us even if we don't work there?	

ANSWER: As a patron, you are free to leave the library at any time unless a law enforcement officer has probable cause to detain you. You may declare your right to remain silent under the Fifth Amendment and ask for an attorney. You may also refuse to be searched without probable cause or a signed judicial warrant.

18. Please discuss the difference between Article II and Article III warrants, and how one can identify them.

ANSWER: An "Article II" or "administrative" warrant is issued by an executive branch agency of the federal government, such as ICE. An "Article III" or "judicial" warrant is issued by a federal court. Judicial warrants must be signed by a judge in order to be enforceable. Administrative warrants are signed by a law enforcement agent, but this in itself does not confer authority to enter nonpublic areas without consent.

## Appendix A: Sample Judicial Warrant – AO 93 (Rev. 11/13) Search and Seizure Warrant

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

## UNITED STATES DISTRICT COURT

for the

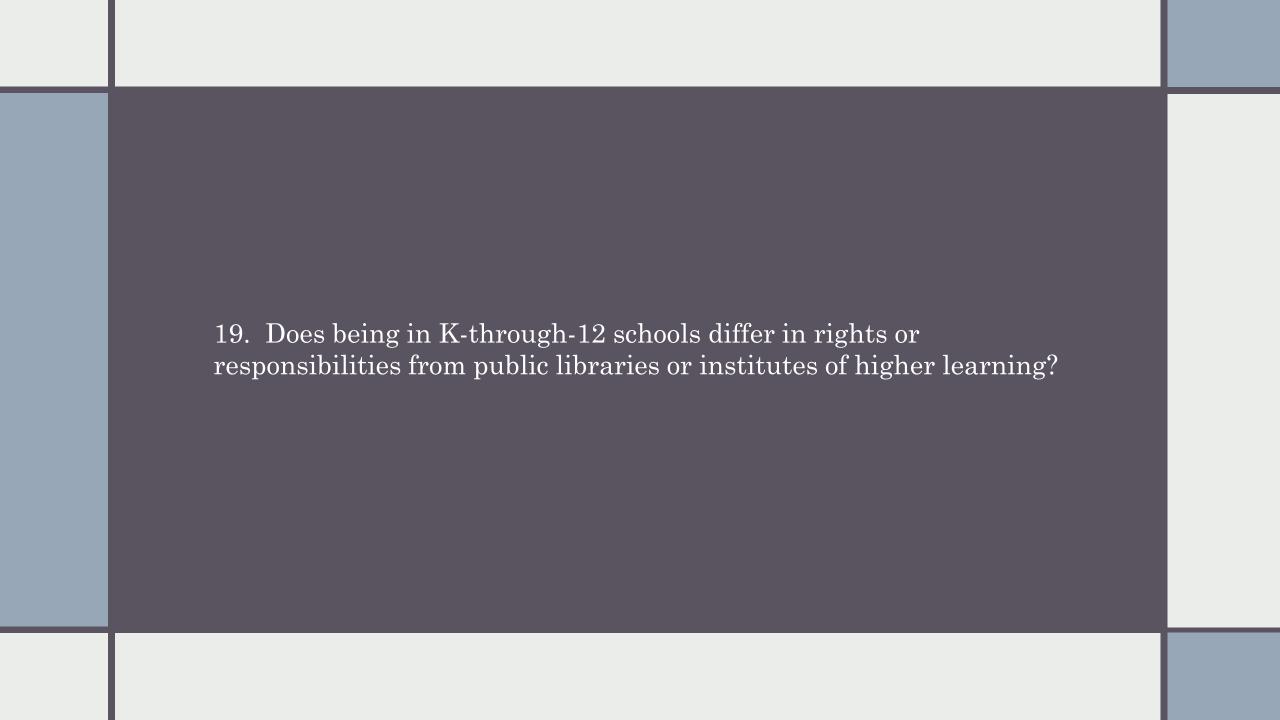
In the Matter of the Search of  (Briefly describe the property to be searched )  or identify the person by name and address) ) Case No. )  SEARCH AND SEIZURE WARRANT
To: Any authorized law enforcement officer
An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the
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 setzed):
YOU ARE COMMANDED to execute this warrant on or before
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
§ 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)  Grand advisers of the person who, or whose property, will be searched or seized (check the appropriate box)  until, the facts justifying, the later specific date of
Date and time issued:
City and state:

14

## Appendix B: Sample Immigration (DHS) Warrant – Form I-200 (Rev. 09/16)

	File No		
	Date:		
o: 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 is removable from the United States. The			
the execution of a charging docu	ment to initiate removal proceedings against the subject;		
the pendency of ongoing remova	al proceedings against the subject;		
the failure to establish admissibi	lity subsequent to deferred inspection;		
	e, by themselves or in addition to other reliable lacks immigration status or notwithstanding such status on law: and/or		
reliable evidence that affirmatively notwithstanding such status is remo YOU ARE COMMANDED to arrest an	the subject to an immigration officer and/or other indicate the subject either lacks immigration status or ovable under U.S. immigration law.		
reliable evidence that affirmatively notwithstanding such status is remo	the subject to an immigration officer and/or other indicate the subject either lacks immigration status or ovable under U.S. immigration law.  Indicate the subject either lacks immigration status or ovable under U.S. immigration law.		
reliable evidence that affirmatively notwithstanding such status is reme YOU ARE COMMANDED to arrest an Immigration and Nationality Act, the abo	the subject to an immigration officer and/or other indicate the subject either lacks immigration status or evable under U.S. immigration law.  Indicate the subject either lacks immigration status or evable under U.S. immigration law.  Indicate the subject to th		
reliable evidence that affirmatively notwithstanding such status is reme YOU ARE COMMANDED to arrest an immigration and Nationality Act, the abo	the subject to an immigration officer and/or other indicate the subject either lacks immigration status or oxable under U.S. immigration law.  In take into custody for removal proceedings under the ove-named alien.  (Signature of Authorized Immigration Officer)  (Printed Name and Title of Authorized Immigration Officer)  ertificate of Service  f Alien was served by me at		
reliable evidence that affirmatively notwithstanding such status is reme YOU ARE COMMANDED to arrest an Immigration and Nationality Act, the abo	the subject to an immigration officer and/or other indicate the subject either lacks immigration status or swable under U.S. immigration law.  Indicate the subject either lacks immigration status or swable under U.S. immigration law.  Indicate the subject either lacks immigration status or swable under U.S. immigration law.  (Signature of Authorized Immigration Officer)  (Printed Name and Title of Authorized Immigration Officer)  ertificate of Service		
reliable evidence that affirmatively notwithstanding such status is remote YOU ARE COMMANDED to arrest at Immigration and Nationality Act, the above the such as t	the subject to an immigration officer and/or other indicate the subject either lacks immigration status or obtaile under U.S. immigration law.  Indicate the subject either lacks immigration status or obtaile under U.S. immigration law.  Indicate the subject either lacks immigration status or obtaile under U.S. immigration law.  Indicate the subject either lacks immigration officer)  Indicate the subject to an immigration officer of the subject either lacks in the subject to the sub		
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reliable evidence that affirmatively notwithstanding such status is rend YOU ARE COMMANDED to arrest at Immigration and Nationality Act, the above the such as the	the subject to an immigration officer and/or other indicate the subject either lacks immigration status or obtaile under U.S. immigration law.  Indicate the subject either lacks immigration status or obtaile under U.S. immigration law.  Indicate the subject either lacks immigration status or obtaile under U.S. immigration law.  Indicate the subject either lacks immigration officer)  Indicate the subject to an immigration officer of the subject either lacks in the subject to the sub		

16



**ANSWER:** It could. School districts and higher education institutions may adopt policies extending to their libraries and governing how they respond to law enforcement. Also, colleges and universities are required to have relationships with law enforcement (see: <a href="https://wnylrc.org/raq/responding-leo-others-requests-library-user-information">https://wnylrc.org/raq/responding-leo-others-requests-library-user-information</a>).

20. What kind of board policy would strengthen the staff directive, "Only the library director should speak with law enforcement"?

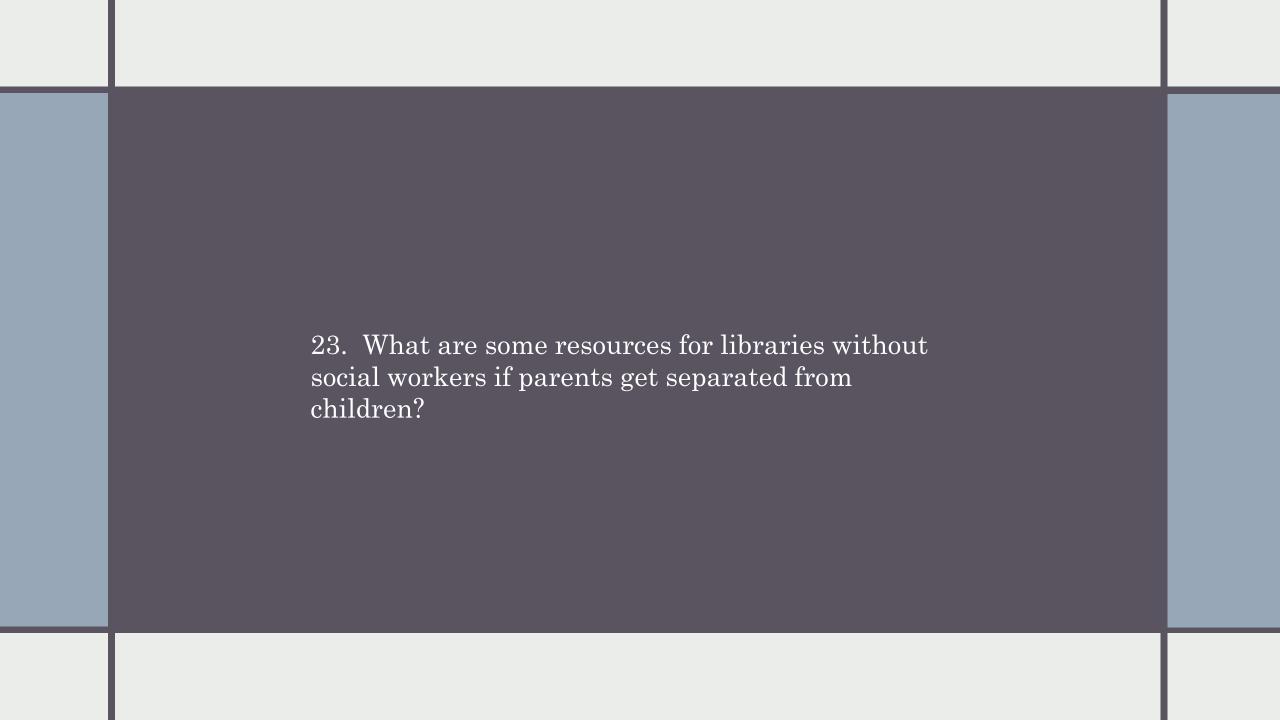
ANSWER: A board policy titled "Policy and Procedures for Responding to Law Enforcement Inquiries" could serve this purpose.

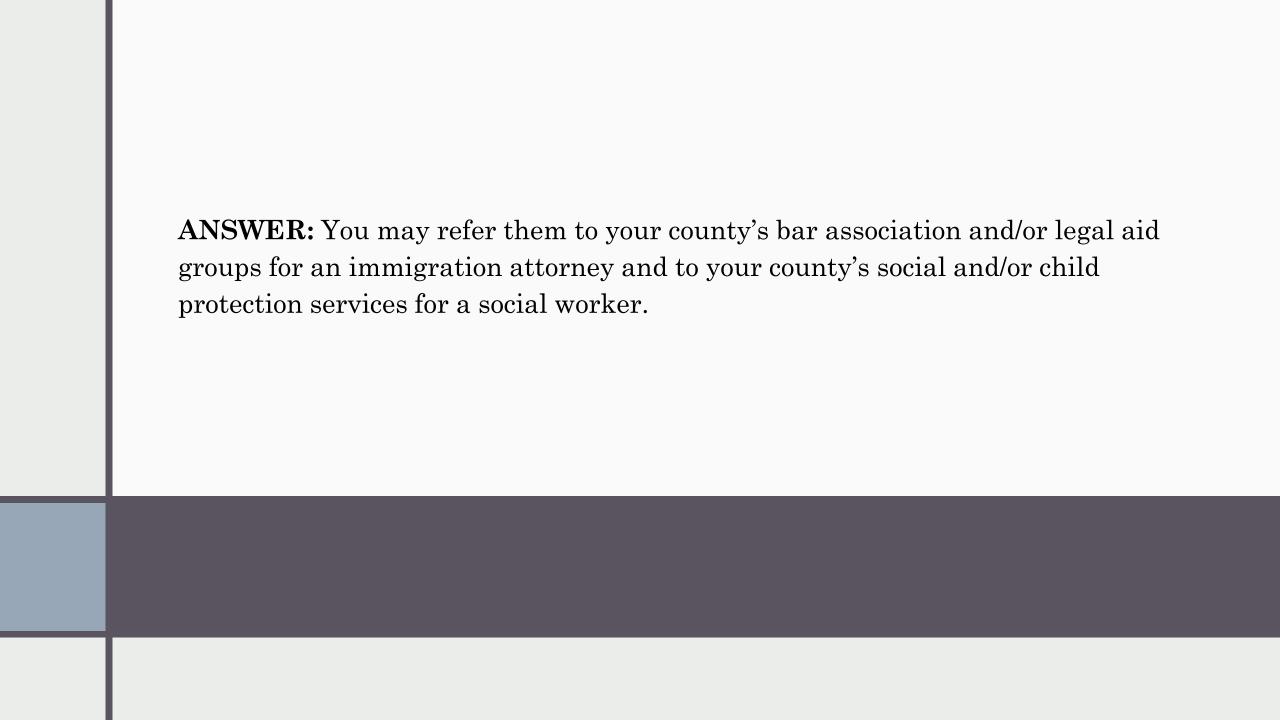
21. Can the library share security video with police to assist in a library problem like theft, altercation, or vandalism?

ANSWER: Yes, libraries may share security video footage and other library user records when making a police report necessary for the operation of the library. See: https://wnylrc.org/raq/responding-leo-othersrequests-library-user-information.

22. How do we take the fear away from patrons and everyday citizens?

**ANSWER:** Libraries may host "know your rights" training sessions for their communities, and library boards of trustees may adopt resolutions and policies affirming the confidentiality of patron records and prohibiting voluntary cooperation with law enforcement.





24. What happens when you reside in a MAGA community where the village mayor & trustees & the supervisor & 50% of library trustees are GOP?

ANSWER: Libraries in conservative communities should adopt and enforce policies and procedures for responding to law enforcement inquiries just as all other libraries should do.

25. How can I keep patrons and employees who are legal but may be targeted safe and legally "resist" ICE to help them?

ANSWER: If you are a library leader, follow Sections III and IV of the "Guide" and ensure your library's policies and training reflect the answers. If you are a library worker who does not set policy, follow Section V.

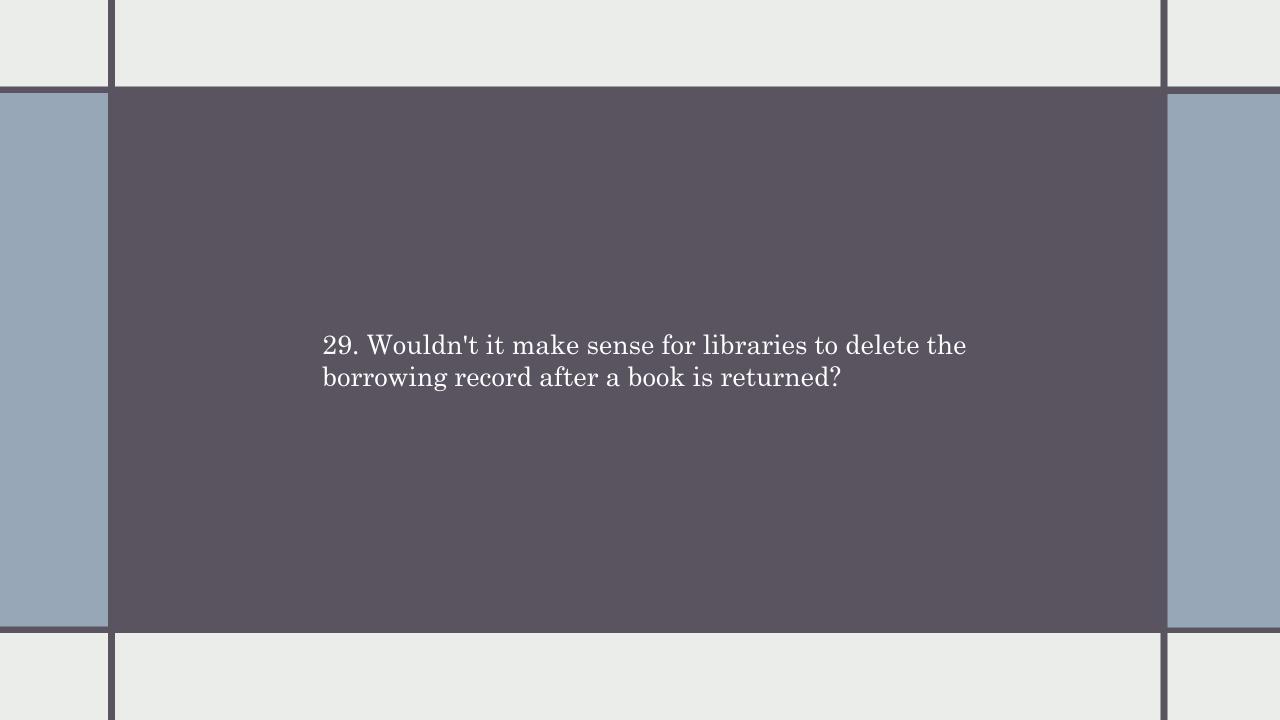
26. What do you think of sanctuary policies in libraries (i.e., policies for *not* collecting identification docs or personal info)? ANSWER: These are not "sanctuary policies" so much as having clear policy as to when library resources may be used onsite or remotely without a personal library record being developed. For confidentiality and privacy, this should be done whenever library operations do not require personal verification of the person being served.

27. What do the various warrants look like? What info can we give to someone being arrested, i.e. card with legal contact info?

ANSWER: The only way to know a warrant is valid is to identify not only the format (which can be easily duplicated... although that is a crime), but the source. This is why ALL warrants, court orders, subpoenas, and requests for I-9's should promptly be reviewed by the library director (or designee) and the library's legal counsel before being honored.

28. Are ESOL classrooms protected from ICE since they are classes that require registration?	

ANSWER: ESOL classes are offered by a variety of entities. If the classes are taught in a rented or reserved room that is limited to only the instructor and students during the class, a warrant or probable cause would be needed for LE to access the premises. If the class is in an open or unrestricted area, LE has the same access as the general public.



ANSWER: Great question...libraries should ALWAYS do that! As allowed by the LGS-1, even public libraries only have to retain borrowing records for so long as they are "useful." The retention period is "0" to protect borrower confidentiality!

# Any further questions?

## Law Enforcement Investigations in the Library Cheat Sheet

When law enforcement (LE) is on site and conducting an investigation:

- 1. Ask for their name(s) and agency/agencies to verify their identity.
- 2. Notify the library director and others, as trained.
- 3. Library workers should say: "We are referring you to our director, as we are trained to not disclose library information."
- Library leadership should PROMPTLY contact an attorney to evaluate warrants, court orders, subpoenas, and requests for I-9 forms per policy; sometimes, the attorney should be the one to reply to LE.
- 5. NO ONE should grant access to private areas or systems until an LE request is evaluated per library policy.
- 6. If LE attempts to obtain access after being denied, do not resist but clearly say: "ACCESS IS DENIED." This may be helpful later.
- 7. Document everything per library policy.

Never physically intervene or argue if search or seizure occurs without proper authorization, it will be more helpful to be able to say later: "We repeatedly said, 'Access is not granted."

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(For an explanation of the chicken, watch Stephanie "Cole" Adams' presentation, "Patrolling the Stacks" sponsored by ESLN.)

## Thank You

White Dorking Hen, from the Prize and Game Chickens series (N20) for Allen & Ginter Cigarettes; Publisher Allen & Ginter American; Lithographer The Gast Lithograph & Engraving Company American; 1891; Image courtesy of Metropolitan Museum of Art Open Access

