



Mid-Mississippi Regional Library System

PUBLIC RECORDS POLICY

System Board adopted on-October 25, 2010

A. PUBLIC ACCESS TO INFORMATION

In accordance with §39-3-365, records maintained by the Mid-Mississippi Regional Library System which contain information related to the identity of a library user, relative to the user's use of books and other materials in the agency's library are confidential and shall only be released with the express consent of the user or as a result of a court order.

The Mississippi Public Records Act of 1983, as found in §25-61-1 to §25-61-17, is hereby adopted and incorporated by reference. Unless exempted by §25-61-9, §25-61-11, §39-3-365, or in this section, all public records held by the Mid-Mississippi Regional Library System are hereby declared to be public property, and any person shall have the right to inspect, copy, or mechanically reproduce or obtain a reproduction of any such record in accordance with the procedures outlined below.

Records furnished to the Mid-Mississippi Regional Library System by a third party, unless declared exempt in this section, shall also be released in accordance with these rules. A third party shall be notified of public records requests impacting the records of the third party.

1. Exemptions - Public Records Act of 1983

The availability of all records in the possession of the Mid-Mississippi Regional Library System shall be subject to the following limitations:

- a) Personnel records and applications for employment and letters of recommendation for employment in the possession of the Mid-Mississippi Regional Library System, except those which may be released to the person who made the application or released upon the prior written consent of the person who made the application, shall be exempt from the provisions of the Act. (§25-1-100)
- b) Test questions or answers which are used in employment examinations and in the possession of the Mid-Mississippi Regional Library System except that which may be released to the person who made the application or released upon the prior written consent of the person who made the application, shall be exempt from the provisions of the Act. (§25-1-100)
- c) Records which represent and constitute the work product of any attorney, district attorney or county prosecuting attorney representing the Mid-Mississippi Regional Library System and which are related to litigation made by or against the Mid-Mississippi Regional Library System, or in anticipation of prospective litigation, including all communications between such attorney made in the courses of an attorney-client relationship shall be exempt from the provisions of the Act. (§25-1-102)
- d) Records in the possession of the Mid-Mississippi Regional Library System which would disclose information about a person's individual tax payment or status shall be exempt from the provisions of the Act. (§27-3-77)

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- e) Appraisal information in the possession of the Mid-Mississippi Regional Library System which concerns the sale or purchase of real or personal property for public purposes prior to public announcement of the purchase or sale, where the release of such records could possibly have a detrimental effect on such sales or purchases shall be exempt from the provisions of the Act. (§31-1-27)
- f) Test questions and answers in the possession of the Mid-Mississippi Regional Library System which are to be used in future academic examinations and letters of recommendations respecting admission to any educational agency or institution, shall be exempt from the provisions of the Act. (§37-11-51)
- g) Records in the possession of the Mid-Mississippi Regional Library System which contain information about the location of any specific archaeological site and which in the opinion of such agency possessing such records, would, upon the disclosure thereof, create a substantial risk of damage or destruction to the historical value of such archaeological site or create a substantial risk of damage or destruction the private property rights, shall be exempt from the provisions of the Act. (§39-7-41)
- h) Records in the possession of the Mid-Mississippi Regional Library System which are not otherwise protected by law, that (1) are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, disclosure of which would harm such investigation; (2) would reveal the identity of informants; (3) would prematurely release information that would impede the Mid-Mississippi Regional Library System's enforcement, investigation or detection efforts in such proceedings (4) would disclose investigatory techniques; (5) would deprive a person of a right to a fair trial or impartial adjudication; (6) would endanger the life or safety of any Mid-Mississippi Regional Library System personnel; (7) are matters pertaining to quality control or PEER review activities, shall be exempt from the provisions of the Act. (§45-29-1)

2. Procedures for Requesting Access to Records

Public access to Mid-Mississippi Regional Library System non-exempt records shall be governed by the following procedures:

a) Written Request

Individuals desiring to obtain access to public records information held by the Mid-Mississippi Regional Library System should make a written request, signed by the individual or duly authorized agent, either by mail to the Executive Director or in person at the Mid-Mississippi Regional Library System offices during normal working hours. Requests for public records shall be received and the request acted upon during the regular business hours. The written request and the envelope must be plainly marked "Request for Public Records." Failure to so mark the request may delay the Mid-Mississippi Regional Library System's response.

The written request should describe in reasonable detail the records sought. The request should include, if possible, a description of the type of records, dates, title of a publication, and other information which may aid in locating the records.

The written request shall: specify whether the requestor proposes to access the record by inspection or copying; state the date and time for the proposed activity; state the

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number of persons scheduled to participate; and provide the name, address, and home and office telephone number of the requestor.

b) Production of Records or Denial of Access

The Executive Director shall determine whether the records sought are exempt and shall either produce records or access to records or deny access to or production of the records sought within seven (7) working days of the receipt of the request.

If the Executive Director determines that the records requested are exempt or privileged under the law, the Executive Director shall deny the request and send the requesting individual a statement of specific reasons for the denial. Where possible, nonexempt material shall be separated from exempt material and only the exempt material shall be withheld. (§25-61-9) Such denials shall be kept on file for a period of three (3) years and be made available for inspection and/or copying during regular working hours by any person upon written request. (§25-61-5)

Individuals provided access to the records may do so within normal working hours, in the Mid-Mississippi Regional Library System offices, and under the supervision of a staff member. Those records which an individual wishes to have copied shall be marked by the individual, and the staff member shall attend to the reproduction of those documents. No records, only reproductions, shall leave the building.

c) Appeal of a Denial

In the event a public records request is denied, the requesting individual may appeal the decision using the following procedures:

- (1) A requesting individual has thirty (30) calendar days from receipt of the Mid-Mississippi Library System's response to appeal the denial.
- (2) The appeal shall be submitted in writing to the Executive Director for consideration by the Board for a final administrative determination.
- (3) The appeal should contain a copy of the original request, the denial, and the justification for reconsideration.
- (4) The appeal and the envelope shall be plainly marked "Public Records Appeal." Failure to so mark the appeal may delay the response from the Board.
- (5) The Board shall issue a written decision granting or denying the appeal within sixty (60) working days after receipt of the appeal unless, after showing good cause, the Board extends the sixty (60) day period. If the appeal is granted, the procedures outlined in "Procedures for Requesting Access to Public Records" shall be initiated. If the appeal is denied, in whole or part, the decision shall set forth reasons for the denial.

3. Reference Requests as Public Records Requests

As a resource library with a large bibliographic collection, the Mid-Mississippi Regional Library System routinely receives reference requests for information. On occasion, a request submitted as a reference request is in actuality a public records request. In such cases, the following procedures shall be initiated:

- a) The reference request in question shall be referred to the Executive Director for review and validation of the public records issue.

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- b) Upon validation that the reference question is actually a public records request, the reference question shall be returned to the requestor with instructions as to how to resubmit the question as a public records request.
- c) The individual resubmitting the reference request as a public records request shall be required to follow the procedures outlined in "Procedures for Requesting Access to Public Records."

4. Cost Reimbursements

The Mid-Mississippi Regional Library System hereby establishes a schedule of cost reimbursements to compensate the agency for the costs associated with searching, reviewing, overseeing, duplicating and if applicable, mailing copies of public records. Fees shown herein are subject to change. (§25-61-7)

- a) Reimbursement schedule:
 - (1) No charges, except for packing and handling fees, shall be applied for searching, reviewing and/or duplicating public records if the query requires one (1) hour or less or if the number of copies required is thirty (30) pages or less.
 - (2) If the query requires more than one (1) hour, \$10.00 per hour per person may be charged for searching, reviewing, and/or duplicating public records. Any part of an hour spent in such activities shall be charged at the full hourly rate.
 - (3) If the query requires more than one hundred (100) pages of copies, \$0.15 per page shall be charged for each copy. Copies of pages printed on both front and back shall be considered as two pages for copy charge purposes.
 - (4) A \$5.00 packing and handling fee shall be charged on all requests for copies of public records to be shipped or mailed.
 - (5) Mailing cost shall be calculated at the applicable rate for each such mailing. If the request involves notice to be given to a third party, the cost of mailing such notice via certified mail return receipt requested shall be charged to the person requesting such public records.
- b) Prior to complying with a request for public records, the Mid-Mississippi Regional Library System shall estimate the anticipated time and charges that may be required, and the requesting individual shall reimburse the Mid-Mississippi Regional Library System for the estimated costs, according to the reimbursement schedule. If actual costs exceed estimated costs, the individual shall remit the difference prior to the Mid-Mississippi Regional Library System releasing the public records. Cost reimbursements shall apply even if the search is unproductive.

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B. SUBPOENA PROCEDURES

A subpoena is a writ for the summoning of witnesses or the submission of evidence, as records or documents, before a court or other deliberative body. A subpoena does not require an immediate response from the library.

- 1) Branch Manager or current staff personnel in charge should be presented the subpoena. Thank the officer in charge serving the subpoena and inform him or her that the library will respond to the subpoena within the time allotted and in conformity with the law.
- 2) Immediately call the MMRLS Executive Director and MMRLS Attorney. Fax a copy of the subpoena to the director and attorney. The attorney should examine the subpoena for any legal defect, including the manner in which it was served on the library, the breadth of its request, its form, or an insufficient showing of good cause made to a court. If a defect exists, counsel will advise on the best method to resist the subpoena.
- 3) Through legal counsel, insist that any defect be cured before records are released and that the subpoena is strictly limited to require release of specifically identified records or documents. If there does not appear to be good cause for the subpoena, or if it seems too broad or intrusive, ask the attorney to file a motion to suppress the subpoena in its entirety.
- 4) Require that the agent, officer, or party requesting the information submit a new subpoena in good form and without defects.
- 5) If the Branch Librarian decides to comply with the subpoena after consulting with the MMRLS Attorney and MMRLS Executive Director, review the information that may be produced in response to the subpoena before releasing the information. Follow the subpoena strictly and do not provide any information that is not specifically requested in it.
- 6) If disclosure is required, ask the court to enter a protective order (drafted by the library's attorney) keeping the information confidential and limiting its use to the particular case. Ask that access be restricted to those persons working directly on the case.

C. SEARCH WARRANT PROCEDURES

A search warrant is a court order issued by a judicial officer – a judge or magistrate. It can be federal, state or local. **Unlike subpoenas, in which there is always time to contact the library's attorney, search warrants are immediately executable.** Library staff should request a brief delay to call the MMRLS Executive Director and MMRLS Attorney, but **all in-charge staff should familiarize themselves with the process in the unlikely event that law enforcement cannot wait.**

Under the PATROIT Act, **national search warrants** (also known as "single jurisdiction search warrants") are authorized, complicating verification and greatly increasing the reach of a single warrant. If foreign intelligence is involved the threshold is much lower: there need only be probable cause that the target is a foreign agent. The likely result: an increase in search warrants served in libraries and other places.

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A court order may require the removal of a computer workstation or other computer storage device from the library.

Branch Manager or other library staff on duty contacts the following:

Richard O. Greene, MMRLS Executive Director
(Office) 662-289-5151 or (Cell) 662-417-7130

Carolyn Steen, MMRLS Technology Coordinator (if computers or computer data is involved)
(Office) 662-289-5151 or (Cell) 662-417-7132

David E. Bane, MMRLS Attorney
(Office) 662-773-5775

Search Warrant Procedures – Library Staff Role

Branch Manager or current library personnel in charge should immediately ask for identification if they are approached by an agent or law enforcement officer, and then record the information. Verify his/her identity by calling the local office.

For example, if an FBI agent comes in, verify his/her identity by calling the local office. Don't just call a number given to you by the agent.

Local FBI field office: 601-948-5000
Attala County Sheriff's Department: 662-289-5556
Holmes County Sheriff's Department: 662- 834-1511
Leake County Sheriff's Department: 601-267-7361
Montgomery County Sheriff's Department: 662-283-4612
Winston County Sheriff's Department: 662-773-5881

- 1) Tell agent-in-charge who is in charge at the library's end. Request (but do not demand) that the agent and his/her officers direct all inquiries through the person-in-charge. **Contact the MMRLS Executive Director and the MMRLS Attorney. Contact MMRLS Technology Coordinator if computers or computer data is involved.**
- 2) Branch Manager (Assistant Librarian or current on-duty staff person) should ask for a copy of the search warrant and its affidavit. A copy of the search warrant is essential, as the search must comply with its terms. The affidavit that law enforcement used to get the warrant may be helpful to you, but it may not be available.
- 3) Ask for a brief delay to notify the appropriate personnel (**MMRLS Executive Director, MMRLS Attorney, MMRLS Technology Coordinator.**) If possible, escort the law enforcement officers to a private area. Law enforcement has the discretion to grant this brief delay, or to execute the warrant immediately. As long as records are not in the process of being destroyed, and the library is an "innocent third party," it is likely that a brief delay will be granted. The library may be asked to "preserve evidence" (such as sign-up records) while the process unfolds. Together the library and law enforcement persons-in-charge will determine the most appropriate location to meet, i.e. the branch or the headquarters where the computer servers are located.

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- 4) The MMRLS Executive Director, MMRLS Technology Coordinator (**if time has been granted to assemble these personnel**) and Branch Manager should meet with the agent with another colleague in attendance if possible, so that one person can take notes if a record of the encounter is needed in the future. **Ask to have library attorney present before the search begins** in order to allow library attorney an opportunity to examine the search warrant and to ensure that the search conforms to the terms of the search warrant.
- 5) **If the agent/officer refuses to delay the search**, examine the warrant. Ensure that the warrant has been issued by a local or federal court in your state and is current and not expired. If you question the validity of the warrant, call the issuing court to confirm the validity of the warrant. The warrant will include information that identifies the premises to be searched and the items or records to be produced under the warrant. Ask that the agent/officer observe the boundaries set by the search warrant.
- 6) Call the MMRLS Board Attorney and MMRLS Executive Director (if you have previously been unable to do so) as soon as possible to notify them of the warrant. Fax a copy of the warrant to the attorney so he/she can review it. If the library is experiencing problems with their fax machine, verbally tell the attorney over the telephone the time of the warrant was served, which areas the warrant states are to be searched, the sorts of evidence the warrant states are to be seized, and the law enforcement agencies that are involved.
- 7) Cooperate with the search to ensure that only the records identified in the warrant are produced and that no other users' records are viewed or scanned.
- 8) Record and keep an inventory of the records or items seized from the library. If possible, keep the originals and provide the agent with copies (or make copies for the library's reference).
- 9) Remind library staff of their roles. Suggest to nonessential staff that they stay out of the way. They must not interfere with the search. Advise them that they are not required to answer questions from law enforcement. It is improper and may be illegal to instruct staff **not** to answer questions, but they should be advised of their right to decline to be interviewed, and their right to have an attorney present if they choose to be interviewed. Be sure staff understands that there is no such thing as an informal conversation or off-the-record comment with agents in such circumstances. It is also easy to inadvertently "consent" to a search broader than the warrant provides. Staff is not required to authenticate documents seized or otherwise respond to questions except as to the location of the items described in the warrant (and these inquiries should be directed to the person in-charge).

Caution on "CONSENT."

If the library is asked for consent to search items beyond the scope of the warrant, decline. This includes **all staff**. The government could use any consent given as an alternative basis, in addition to the search warrant, for defending the legality of the search, e.g. to expand the search beyond the scope permitted by the search warrant.

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Search Warrant Procedures – MMRLS Attorney’s Role

- 1) The MMRLS Attorney will ask to speak to the agent-in-charge or lead government attorney handling the matter (by phone if necessary). The attorney will emphasize that the library will do everything it can to ensure that the search proceeds smoothly, but that you would like for them to wait until you and the appropriate personnel arrive (MMRLS Executive Director and MMRLS Technology Coordinator) to make sure that everything is in order.
- 2) The attorney will make sure the warrant is signed by a judge or magistrate. If there is a discrepancy, notify the agent-in-charge.
- 3) The attorney may ask for a delay long enough for the library to litigate the warrant’s validity. This is an unusual request, but has been done successfully in a case involving a bookstore in Colorado. If the library acts quickly, it may be possible to persuade the District Attorney or U.S. Attorney to direct the law enforcement officer not to execute the warrant until the library can litigate the validity of the warrant.
- 4) The attorney will examine the warrant to see if it is narrowly tailored. If not, the attorney may be able to negotiate a narrowing of terms. He will note the exact premises to be searched, exactly what is to be seized, who issued the warrant and any time limits for executing the warrant. Negotiation here may be possible, (such as one hour of records instead of 30 days). Make sure the search conducted does not exceed the terms of the document.
- 5) The attorney will delegate someone (other than the principal library team members) to take notes of the search. If law enforcement agents split into groups, additional staff may be needed to monitor each group. The monitoring staff member(s) should be courteous, cooperate and quiet. Calm monitoring and note taking can be helpful to recall what took place. Note down what questions were asked, such as where certain items can be found. Agents sometimes number the rooms that they enter. Record the numbering scheme. Record an inventory of the type and location of all evidence seized. Your inventory will make more sense to you later than the inventory that the officers give you. Try to observe the agents’ conduct, the places searched, and the time involved in each part of the search. The agents will probably be patient with this note taking and identification process. They are not likely, however, to slow down the process or allow staff to interfere with the search in any way.
- 6) If law enforcement goes beyond the scope of the warrant, the attorney may ask them to desist. **No one should grant consent to go beyond the scope of the warrant.** The attorney may call the District Attorney or U.S. Attorney to try to stop this. Do not, however, impede or obstruct. Take notes or even photos if this occurs.
- 7) The attorney will request backup copies of all documents (photocopies) and computer disks that are seized. Better yet, ask if you may keep the originals and turn over the photocopies. If the agent refuses you copies, record in further detail all items that are seized.

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- 8) The attorney will get an inventory of any items that are seized. This is important in recovering the items later. You are entitled to an inventory of all items seized. **Do not sign anything verifying the contents or accuracy.**

Follow-up Steps for the MMRLS Branch Manager

- 1) Keep track of expenses. In some cases the library may be able to be compensated, e.g. the library must rent computers to replace those seized.
- 2) Double check to see if a gag order has been included with the court order. You will be told if there is a gag or “sealed” order. If so, you must comply with the terms of the order. For example, Section 215 of the Patriot Act (and other sections of the Foreign Intelligence Surveillance Act) states that “No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the FBI has sought or obtained tangible things under this section.” Necessary persons will include an attorney and essential staff up the chain of command, but not nonessential staff, spouses, etc. Keep records of the incident in a secured location.
- 3) Inform governing authority. Although it is unlikely that there will be time to inform the governing authority before or during the search, be sure to brief them as soon as possible. They may be called by the press.
- 4) Draft “talking points” if the press calls. Stick to talking points. If you are bound by a gag order, talk to the attorney to help draft an appropriate “no comment” statement. Make sure that staff is briefed on these points or that they routinely refer all press inquiries to the Branch Manager.
- 5) Branch Manager should contact MMRLS Executive Director before making any statement to the press.