



# OWWL LIBRARY SYSTEM

## EXTERNAL REVIEW: SYSTEMS ACCESS AND CONFIDENTIALITY OF LIBRARY RECORDS POLICY

### INTRODUCTION

Following a challenge of the Systems Access and Confidentiality of Library Records Policy, the OWWL Library System Board of Trustees authorized the creation of an external peer review to examine the policy and how it is applied to data requests from member libraries.

This external review committee met on Friday, March 3, 2023. Beginning on page 3 of this document is a summary of their conversation.

### ISSUE

The policy challenge came from a member library that claimed the Systems Access Policy allows the System to withhold information from libraries that would violate New York State Section 4509: Library Records Law.

*§ 4509. Library records. Library records, which contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems of this state, including but not limited to records related to the circulation of library materials, computer database searches, interlibrary loan transactions, reference queries, requests for photocopies of library materials, title reserve requests, or the use of audio-visual materials, films or records, shall be confidential and shall not be disclosed except that such records may be disclosed to the extent necessary for the proper operation of such library and shall be disclosed upon request or consent of the user or pursuant to subpoena, court order or where otherwise required by statute.<sup>1</sup>*

The library claims the patron data reports that the System is unwilling to produce based on the Systems Access and Confidentiality of Library Records Policy are essential to the “proper operation of a library.” Their justification is that the fundraising this data would be used for is an essential income stream, and they need this data to reach their fundraising goals.

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<sup>1</sup> SECTION 4509, Library records, Civil Practice Law & Rules (CVP) CHAPTER 8, ARTICLE 45, <https://www.nysenate.gov/legislation/laws/CVP/4509>

The information requested by the member library has been historically provided up to the approval of the Systems Access and Confidentiality of Library Records Policy.

The System understands that the library uploads the patron data to a third-party service to generate fundraising mailing lists without explicit consent.

The System practices follow the American Library Association's Privacy statements as interpreted using the Library Bill of Rights<sup>2</sup>.

Below is an explanation of explicit consent by the American Library Association:

*What is explicit consent and how is it different from opt-out?*

*Explicit consent means that users are given an option to agree or disagree with the collection of their data. The user must be informed in a specific and unambiguous manner regarding how their data will be collected, used, and/or shared. Users should be given the choice before choosing to access a service rather than have to opt-out later. Libraries should ensure their online services do not default to opt-out. Opt-out requires action from the user to remove themselves from data collection. This does not allow a user to learn about the specific details of how their data will be utilized<sup>3</sup>.*

It is the System's opinion that member libraries should be using a local opt-in procedure to use patron data for fundraising.

*Can circulation or registration information be used for other library purposes, such as to generate mailing lists for fund-raising by the library or its Friends group?*

*The Fair Information Practice Principles of "Notice and Openness" and "Choice and Consent" should be reflected in library privacy policies. See the "Privacy Policies" Field Guide.*

*Some states impose restrictions on the use of personally identifiable information (PII) for any purposes other than circulation or administration. In other states it is illegal to provide library user PII to any third party except under court order. See "State Privacy Laws Regarding Library Records." In all states, regardless of the status of the law, library policies regarding the collection, use and dissemination of PII should be carefully formulated and administered to ensure that they do not conflict with the ALA Code of Ethics that states "we protect each user's right to privacy and confidentiality." Libraries choosing to use PII for any library-related purpose other than for which the PII was gathered should consider the following standard "opt-in" practices:*

- *Notice should be provided to all users of any library use of PII.*

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<sup>2</sup> ALA, Privacy: An Interpretation of the Library Bill of Rights, <https://www.ala.org/advocacy/intfreedom/librarybill/interpretations/privacy>

<sup>3</sup> ALA, Privacy and Confidentiality Q&A, "What is explicit consent and how is it different from opt-out?" <https://www.ala.org/advocacy/intfreedom/privacyconfidentialityq&a>

- *Any use of PII beyond circulation or administration should be authorized only on an opt-in basis. At the time of registration, users should be asked to opt-in to additional and specifically enumerated uses of their PII (e.g., for fund-raising appeals). The PII of those who decline to 'opt-in' should not be made available for any additional uses.*
- *Any time a library decides to extend use of PII in ways not already authorized, it must seek user opt-in. Libraries should presume that all non-responders wish to opt out of the new use<sup>4</sup>.*

The System upholds the American Library Association’s stance that patron information should only be used for fundraising activities if there is a local opt-in procedure.

Our Integrated Library System is not configured to support distinguishing between patrons who have opted-in to library communications and patrons who have not, nor does the OWWL Library System wish to be involved with opt-in lists of patron data. However, a library may build an opt-in list by creating, storing, and managing the list locally.

## SUMMARY OF THE EXTERNAL REVIEW COMMITTEE

### Review of New York State Section 4509: Library Records Law

Arguments both for and against using patron data for fundraising were made by the committee. It is unclear from the committee’s conversation if New York State Section 4509: Library Records Law can provide clear guidance on this question. Case law would be required to solve this issue, especially considering that legal representatives of both the System and the member library interpret 4509 differently.

While the legal lines may be blurred, the review committee agreed that using patron data for fundraising without patrons’ explicit consent is inappropriate and possibly unethical.

### “Opt-In” for the Use of Patron Data

Practices on how a library could appropriately achieve consent through an “opt-in” procedure when collecting patron information were discussed in detail.

The committee suggested and explained procedures that included a consent option for patrons. For example, when signing up for a library card, a library could place a checkbox to “opt-in” to library communication on the registration form. This procedure could also be adapted for library card renewal: a patron could be asked if they would like to “opt-in” if they have not already done so already. This process would allow the library to capture patron information in its own external database that the local board’s privacy policies would govern. The library could then use this

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<sup>4</sup> ALA, Privacy and Confidentiality Q&A, 21. “Can circulation or registration information be used for other library purposes, such as to generate mailing lists for fund-raising by the library or its Friends group?” <https://www.ala.org/advocacy/intfreedom/privacyconfidentialityqga>

information within the context of the “opt-in” agreement between the individual library and the patron.

The review committee agreed that this was the most appropriate procedure to gain consent to use patron information for any communication beyond hold notifications, overdue notifications, and other circulation-related communication.

The committee also recommended that patrons should be given further information about how their data is used.

### Ownership and Responsibility of Patron Data

The ownership of patron data was discussed. The committee reviewed the WNYLRC Ask a Lawyer, which mentions the System’s ownership of patron data.

*Although a member library contributes information to an ILS, unless system bylaws or policies say otherwise, that information belongs to the system, who is just as ethically and legally bound to protect the information as a member library<sup>5</sup>.*

To date, the System has avoided using terms of ownership in relation to patron data as an argument for this policy. The review committee, however, discussed that for a library to participate in a cooperative library system, they would need to understand that the System is the steward of the data entered into the ILS. This would mean the System has the ability to set the rules and agreements needed to limit risks, the potential for data breaches, and inappropriate use of patron data. The committee discussed the possibility that inappropriate use of patron data by one member library may put not just the member library at risk, but also the System and other member libraries.

The ILS is a tool the System owns to facilitate circulation-related tasks conducted by member libraries. Any activity beyond this, including “mining the Evergreen database for fundraising,” was considered unethical and inappropriate by the committee.

Libraries should strive to protect patron information and avoid the commoditization that naturally occurs when data is used without prior, “opt-in,” consent.

### Recommendations for Amendments to the Policy

1. Specifically state that the System owns the patron data contained in the ILS.
2. List specific consequences if a library fails to uphold or refuses to comply with the Systems Access and Confidentiality of Patron Records policy.
3. Clarify the policy’s definition of “consent” to describe the appropriate use of patron data and what library services are expressly consented to.
4. Clarify the definitions of personally identifiable information (PII) and third-party services. Third-party services may access the information only when approved to do so by the System, such as OverDrive or the hosting services for Evergreen. In these instances, clarify

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<sup>5</sup> WNYLRC, Ask a Lawyer, <https://www.wnylrc.org/ask-the-lawyer/raqs/296>

that the System limits all access to patron data to only what is required for providing the service and that these third-party services only access data from patrons who have opted-in by using them.

5. Add an additional legal compliance piece where libraries are required to have their agreement to the policy notarized. This agreement would renew on an annual basis unless there have been changes to the policy or changes in library leadership.

These recommendations will be discussed with the OWWL Library System Policy Committee and reviewed for future amendments to the policy.