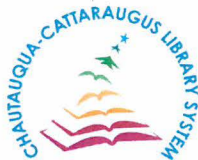


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Confidentiality of Patron Records

SUMMARY

The role of the library in protecting the confidentiality of patron records is fundamental to providing free access to information. Patron records, including personal information and information about information seeking behavior, is protected by state law.

POLICY ACTIVITY

Create a two paragraph Confidentiality of Patron Records policy affirming the rights of patrons to confidentiality.

POLICY CONSIDERATIONS

A patron's right to confidentiality affects many library activities, from circulation, to computer use, to programming and more. A good policy will be grounded in ethical and legal reasons for protecting that right. It will be broad, but unambiguous.

When creating your policy:

- Point to the State law(s) that provide the legal basis for confidentiality (see below).
- Be clear about how patron information can be used and if there are any reasons

PROCEDURE ACTIVITY

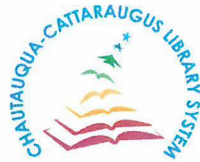
Write a procedure for Responding to Law Enforcement Inquiries. What steps should happen when an officer walks in your door and asks a staff member for patron records?

STATUTES

§ 2307. Books, papers and other things of a library, department or bureau of a municipal corporation or of the state. Issuance by court. A subpoena duces tecum to be served upon a library, or a department or bureau of a municipal corporation or of the state, or an officer thereof, requiring the production of any books, papers or other things, shall be issued by a justice of the supreme court in the district in which the book, paper or other thing is located or by a judge of the court in which an action for which it is required is triable. Unless the court orders otherwise, a motion for such subpoena shall be made on at least one day's notice to the library, department, bureau or officer having custody of the book, document or other thing and the adverse party. Such subpoena must be served upon such library, or such department or bureau of such municipal corporation or of the state or an officer having custody of the book, document or other thing and the adverse party at least twenty-four hours before the time fixed for the production of such records unless in the case of an emergency the court shall by order dispense with such notice otherwise required. Compliance with a subpoena duces tecum may be made by producing a full-sized legible reproduction of the item or items required to be produced certified as complete and accurate by the person in charge of such library, department or bureau, or a

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designee of such person, and no personal appearance to certify such item or items shall be required of such person or designee, unless the court shall order otherwise pursuant to subdivision (d) of rule 2214 of this chapter. Where a stipulation would serve the same purpose as production of the book, document or other thing and the subpoena is required because the parties will not stipulate, the judge may impose terms on any party, including the cost of production of the book or document, and require such cost to be paid as an additional fee to the library, department or officer.

§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.

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ALA GUIDANCE (Excerpts)

Library Bill of Rights

(<http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/intfreedom/librarybill/lbor.pdf>)

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

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 person's right to use a library should not be denied or abridged because of origin, age, background, or views.

Resolution on the Retention of Library Usage Records

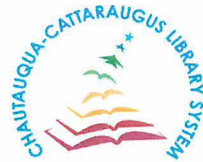
(<http://www.ala.org/advocacy/intfreedom/statementspols/ifresolutions/libraryusagerecords>)

RESOLVED, That the American Library Association urges all libraries to:

- Limit the degree to which personally identifiable information is collected, monitored, disclosed, and distributed; and
- Avoid creating unnecessary records; and
- Limit access to personally identifiable information to staff performing authorized functions; and
Dispose of library usage records containing personally identifiable information unless they are needed for the efficient and lawful operation of the library, including, but not limited to data-related logs, digital records, vendor-collected data, and system backups; and
Ensure that the library work with its organization's information technology unit to ensure that library usage records processed or held by the IT unit are treated in accordance with library records policies; and
- Ensure that those records that must be retained are secure; and
- Avoid library practices and procedures that place personally identifiable information on public view; and
- Assure that vendor agreements guarantee library control of all data and records; and
Conduct an annual privacy audit to ensure that information processing procedures meet privacy requirements by examining how information about library users and employees is collected, stored, shared, used, and destroyed; and, be it further
- RESOLVED, That the American Library Association urges all libraries to adopt or update a privacy policy protecting users' personally identifiable information, communicating to library users how their information is used, and explaining the limited circumstances under which personally identifiable information could be disclosed; and, be it further

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SAMPLE POLICIES/PROCEDURES

Heermance Memorial Library: Policy on Confidentiality of Library Records

The Heermance Memorial Library supports and complies with New York State Law (New York State Civil Practice Law & Rules 4508, Chapter 112, Laws of 1988) with respect to the confidentiality of library records. All library records relating to an individual patron's use of the library and its resources are confidential. These records may be consulted and used by library staff in the course of carrying out library operations, but will not be disclosed to others except upon the request or consent of the library user, or pursuant to subpoena, court order, or otherwise required by law. Such disclosure may be made only by the library director in consultation with legal counsel.

ALA: Confidentiality and Coping with Law Enforcement Inquiries: Guidelines for the Library and its Staff

(<http://www.ala.org/Template.cfm?Section=ifissues&Template=/ContentManagement/ContentDisplay.cfm&ContentID=21654>)

Your library needs to designate who should receive any court order. A person should be designated for every hour the library is open. If the Library Director is not there, someone present should be designated. All library staff should understand that it is lawful to refer the agent or officer to an administrator in charge of the library, and that they do not need to respond immediately to any request.

During a visit

Staff should:

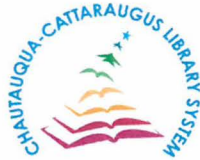
1. If anyone approaches a staff member alleging to be a law enforcement official requesting information, DO NOT DISCLOSE ANY INFORMATION.
2. Ask for identification and then immediately refer the agent or officer to the library Director or other designated staff. Photocopy identification or take business card.

Director or person designated should:

1. Ask to see the court order(s) (for example: search warrant, subpoena, National Security Letter) authorizing law enforcement.
 2. Call legal counsel.
- If the agent or officer does not have a court order compelling the production of records, the director or officer should explain the library's confidentiality policy and/or the state's confidentiality law (NYS 4509) and inform the agent or officer that users' records are not available except when a proper court order in good form has been presented to the library.
 - If there is no court order presented the FBI and /or local law enforcement has no authority to compel cooperation with an investigation or require answers to questions (other than the name and address of the person speaking to him/her). If the agent or officer makes an appeal to

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patriotism, the Director will explain that, as good citizens, the library staff will not respond to informal requests for confidential information, in conformity with professional ethics, First Amendment freedoms and state law.

- If the agent or officer does present a court order the Director should immediately refer the court order to the library's legal counsel for review.

If the court order is in the form of a subpoena:

- Counsel will 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.

- Through legal counsel the Director will 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.

Responding to Law Enforcement Inquiries

- The Attorney or Director will require that the agent, officer, or party requesting the information submit a new subpoena in good form and without defects.
- The Attorney and Director will review the information that may be produced in response to the subpoena before releasing the information. They will follow the subpoena strictly and will not provide any information that is not specifically requested in it.
- If disclosure is required the Library's Attorney will draft a request to the court to enter a protective order keeping the information confidential and limiting its use to the particular case. The document will ask that access be restricted to those persons working directly on the case.

If the court order is in the form of a search warrant:

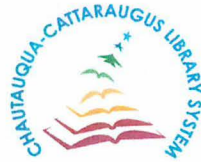
- Search warrants are executable immediately. However, ask to have library counsel present before the search begins to allow counsel to examine the warrant and assure that the search conforms to the terms of the warrant. This request may not be granted.
- Gather records identified in the warrant and present them rather than allowing non-library personnel to go through the Library's databases or records.

If the court order is a search warrant issued under the Foreign Intelligence Surveillance Act (FISA) (USA PATRIOT ACT amendment):

- The recommendations for a regular search warrant still apply. However, a search warrant issued by a FISA court also contains a "gag order." That means that no person or institution

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served with the warrant can disclose that the warrant has been served or that records have been produced pursuant to the warrant

- The library and its staff must comply with this order. No information can be disclosed to any other party or to the patron whose records are the subject of the search warrant. Under the March 9, 2006 reauthorization, the gag rule of who can be informed has been slightly loosened suggesting you can call anyone necessary to respond to the request. This could mean the library director or tech staff.
- The gag order does not change a library's right to legal representation during the search. The library can still seek legal advice concerning the warrant and request that the library's legal counsel be present during the actual search and execution of the warrant.

If the court order is a National Security Letter:

The procedure is the same as for a search warrant. However, a gag order applies. The Director will contact Library counsel. If the Director is not available, contact the Assistant Director or Librarian in charge. S/he may request that the Library's legal counsel be present during the search and that the search be delayed until counsel examines the court document. If law enforcement chooses to proceed, the Library must comply.

A library board should recognize that it is only through continued public confidence in the fact that these guidelines are being upheld that the public can maintain its confidence in the public library.