



Approved 9/26/2002

# Policy on the Confidentiality of Library Records

## Confidentiality

Confidentiality of library records is a basic principle of librarianship. Confidentiality exists when a library is in possession of personally identifiable information about users and keeps that information private on their behalf. In a library, the right to privacy is the right to open inquiry without having the subject of one's interest examined or scrutinized by others. When users recognize or fear that their privacy or confidentiality is compromised, true freedom of inquiry no longer exists. It is the Library's intention to uphold these rights of privacy and confidentiality by policy, procedure and practice. Users should be advised, however, that because complete security is technically difficult to achieve, the privacy of electronic transactions and files cannot be absolutely guaranteed. The Library will provide information to law enforcement agencies when legally required.

- It is the policy of the Teton County Library that confidentiality extends to information sought or received, and materials consulted, borrowed or acquired, and includes database search records, reference interviews, circulation records, registration records, interlibrary loan records, Internet use, and other personally identifiable uses of library materials, facilities or services.
- Such records will not be made available to any individual, agency of state, federal or local government except pursuant to such process, order or subpoena as may be authorized under the authority of and pursuant to, federal, state or local law relating to civil, criminal, or administrative discovery procedures or legislative power.
- Upon receipt of such process, order or subpoena, the library's officers will consult with their legal counsel to determine if such process, order or subpoena is in proper form and there is a showing of good cause of its issuance by a court of competent jurisdiction.

This policy is in accordance with Wyoming Statute 16-4-203 regarding the right of inspection of public records as well as the American Library Association's *Library Bill of Rights* (1948, amended 1980, 1996), *Librarian's Code of Ethics* (1995), *Policy on Confidentiality of Library Records* (1986), *Policy Concerning Confidentiality of Personally Identifiable Information About Library Users* (1991), *Access to Electronic Information, Services, and Networks: an Interpretation of the Library Bill of Rights* (1996), and *Privacy: An Interpretation of the Library Bill of Rights* (2002).

## Procedures for Law Enforcement Visits

All law enforcement requests for confidential information must be handled by the Library Director. When the Library Director is out of town, she will designate one staff member (designee) to act in her stead in the event of any law enforcement requests. Otherwise, Library staff, including volunteers, should understand that it is lawful to refer the agent or officer to the Library Director and that they do not need to respond immediately to any request.

### **During the visit:**

- Staff should ask for identification if they are approached by an agent or officer, and then immediately refer the agent or officer to the Library Director or designee. Staff does not have authority to release confidential information.
- The Library Director should meet with the agent with library counsel or another colleague in attendance.
- If the agent or officer does not have a court order compelling the production of records, the Director should explain the Library's confidentiality policy and the State's confidentiality law, 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 the agent or officer presents a court order, the Library 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 duces tecum* (subpoena to obtain records):**

- Counsel 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 defects are found, legal counsel should insist that any defect be cured before the records are released and that the subpoena is strictly limited to require release of specifically identified records or documents.
- 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.
- If disclosure is required, ask the court to enter a protective order (drafted by the library's counsel) 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.

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

- A search warrant is executable immediately, unlike a subpoena. The agent or officer may begin a search of Library records as soon as the Director is served with the court's order.
- Library Director should ask to have counsel present before the search begins in order to allow Library counsel an opportunity to examine the search warrant and to assure that the search conforms to the terms of the search warrant.
- Director should 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.

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

- Procedures for a regular search warrant still apply. Staff should refer the agent to the Director or designee, and no other staff is authorized to release information. The staff should be cautioned that a search warrant issued by a FISA court also contains a "gag order." That means that no person or institution served with the warrant can disclose that the warrant has been served or that records have been produced pursuant to the warrant. Library staff must comply with this order. No information can be disclosed to any other party, including the patron whose records are the subject of the search warrant.

- The gag order does not change a library's right to legal representation during the search. The library should 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 legal counsel is not available locally, assistance can be obtained from Jenner & Block, the Freedom to Read Foundation's legal counsel. Call 1-800-545-2433, ext. 4223, inform the staff that you need legal advice, but do not inform staff of the existence of a warrant.