

Privacy of Library Records and Library Use Policy

Fond du Lac Public Library

Board approved: June 15, 2003

Previous policy dated:

The Fond du Lac Public Library protects the privacy of library records and the confidentiality of patron use of the library as required by relevant laws. Information regarded as confidential under Wisconsin law includes, but is not limited to, borrower's registration information, information regarding items checked out, information regarding items requested through interlibrary loan, reference or readers' advisory questions, and attendance or participation in library programs. In addition, the Fond du Lac Public Library Board supports the principle of freedom of inquiry for library patrons and has adopted this policy to protect against the unwarranted invasion of the personal privacy of library users.

Legal Requirements

The relevant Wisconsin laws concerning the confidentiality of library records are Wisconsin Statutes Section 43.30 and the Wisconsin Personal Information Practices Act (Sections 19.62 to 19.80).

Under Section 43.30, library records which indicate the identity of any individual who borrows or uses the library's documents or other materials, resources or services may only be disclosed:

- (1) with the consent of the individual library user
- (2) by court order
- (3) to persons acting within the scope of their duties in the administration of the library or library system, or
- (4) to other libraries (under certain circumstances) for interlibrary loan purposes [see ss.43.30(2) and (3)].

Wisconsin's Personal Information Practices Act (Sections 19.62 to 19.80) requires all state and local government organizations to develop procedures to protect the privacy of personal information kept by the organization. Libraries are required to develop rules of conduct for employees involved in collecting, maintaining, using, and providing access to personally identifiable information.

Records indicating the identity of library users include records that include a library user's name, social security number, telephone number, street address, post-office box number or 9-digit extended zip code.

Any library employee who receives a request---or who is served with a subpoena, court order, or search warrant---to release or disclose any library record shall promptly notify the director.

Under ordinary circumstances the library director will be the designated contact with law enforcement officials and others seeking disclosure. In the immediate absence or unavailability of the director, all requests for information will be referred to the library director's designee, who will notify the director of the circumstances, and of any actions taken, as soon as possible.

In accordance with Wisconsin Statute, confidential information may not be released unless the request is accompanied by a court order.

The library director shall, in a timely manner, review all requests and orders, consult with the library's attorney as necessary, and respond in an appropriate manner to each request and order.

To preserve the confidentiality of library records, the director should, if possible, gather exact information instead of permitting officers or agents to examine library records or databases. If library records are examined or removed the library shall request that access be restricted to those persons working directly on the case and that only records of the person being investigated be examined.

Library Procedures

General information:

- Those seeking disclosure could approach anyone on staff, and may approach people who are not in supervisory positions.
- The FBI *generally* is involved only if a terrorism/international matter is at stake; otherwise, local law enforcement or private parties may be involved.
- Requests for information typically take place during regular business hours.
- The director should document all disclosure activity. In the case of Patriot Act-related concerns, any costs incurred by the library should be documented.
- Court orders and subpoenas will likely specify a time period within which information or other materials are to be provided; library staff should not feel hurried into providing materials or information.
- Search warrants are to be acted upon immediately, and should state what is being requested, and that the warrant involves removing items from the premises.

During the visit:

- The director or designated contact person should meet with the agent with library legal counsel or a colleague in attendance in some conveniently private location.
- If the officer or agent does not have a court order compelling the production of records, the director or designated contact person should inform the officer or agent that in compliance with Wisconsin statute library records may not be released without a person's consent except when a court order has been presented.
- Emergency situations which law enforcement officials determine may require immediate action or involve immediate danger if their efforts are delayed might prevent the immediate production of search warrants. Staff members should ask that the documents be produced at a later time and take careful note of the names of agents and the reasons given by them for conducting the search before presenting court documents.

- If library property is removed as the result of a search, library staff should make a complete list of all items removed, including serial numbers if possible. Library staff will request a receipt, or receipts, for any property removed. Staff should attempt to work in an atmosphere of mutual respect for the law.
- The following request might be received in an investigation.
 - Request to see list of Internet users.
 - Request to see list of registered borrowers.
 - Request to see list of items checked out by borrower.
 - Asking of general questions by agents about any suspicious persons or activities in the Library.
 - Questions about seeing a specific person or persons using the library.
 - Removal of library property.

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

- If a court order is served the director or designated contact person will accept the order and immediately refer it to legal counsel for review.
- Legal counsel should examine the subpoena for any legal defect, including the manner in which it was served on the library and the breadth of its request.
- If time permits, review the information that may be produced in response to the subpoena before releasing the information.

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

- A search warrant can be executed immediately. The officer or agent may begin a search of library records as soon as the director or designated contact person is served with the court's order.
- Even if there is an immediate demand to remove materials or information, library staff may reasonably request time to attempt to contact legal counsel, for legal council to have time to examine the warrant, and for legal counsel to be present during a search.
- Library staff should cooperate with the search to ensure that only the records identified in the warrant are produced and that no other users' records, or other library equipment are viewed, scanned, or confiscated.

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

- General regulations for a search warrant apply. However a search warrant issued by a FISA court will likely contain a "gag order." No person or institution served with such a 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, including the patron whose records are the subject of the search warrant.
- The gag order does not eliminate the 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.

- Any questions about the incident from the press or any other individuals should be referred to the Library Director.

If the court order requests a list of patrons who have checked out certain items, or information regarding what a patron has checked out in the past:

- Once an item has been checked in the link between the patron record and the item record is broken and this information cannot be retrieved by library staff.

If the court order requests information on web sites a patron may have visited or email they may have used:

- A record of past internet use----web sites visited and web-based email services accessed---is not saved on the WALIS servers.