



Confidentiality of Records Policy

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PURPOSE:

This policy provides information regarding the laws and regulations that libraries must follow to ensure privacy and confidentiality. Violation of this policy is considered a serious offence and will be dealt with as such.

SCOPE:

This policy applies to the library director, all staff members both full and part-time and to all board members. It also applies to volunteers and others who support that library that may have access to confidential information.

STATEMENT:

The confidentiality policy of the Harlan Community Library is based on the First and Fourth Amendments of the U.S. Constitution, the Iowa Code, and professional ethics of the American Library Association.

U.S. Constitution

First Amendment: Congress shall make no law...abridging the freedom of speech...

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Iowa Code 22.7 Confidential records

22.7 The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information...:

22.7.13. The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item or information from the library. The records shall be released to a criminal or juvenile justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.

22.7.18. Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination.

Professional Ethics of the American Library Association

We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted.

POLICY:

- Confidentiality is essential to protect the exercise of First and Fourth Amendment rights. In accordance with First and Fourth Amendments of the U.S. Constitution, the Iowa Code and professional ethics, the Board of Trustees of the Harlan Community Library respects the privacy of users and recognizes its responsibility to protect their privacy.
- The library will not reveal the identities of individual users nor reveal the information sources or services they consult unless required by law. Confidentiality extends to information sought or received and materials consulted, borrowed or acquired. Confidentiality includes database search records, reference interviews, interlibrary loan records, computer use records, and all other personally identifiable uses of library materials, facilities or services.
- The following information will only be shared with designated officials in the prescribed manner.
 - The Library Director is designated as the official custodian of the library's public record.
 - If the Library Director is not available (such as during evenings or weekends or away on business) inform the requestor when the Director will be available. If pressed to act sooner, contact the Director immediately whether the Director is away on business or at home. In the event the Director cannot be reached, the highest-ranking person on duty is responsible for working with the requestor.
 - Access to the records shall only be granted during the hours the library is open.
 - At no time will the custodian of records (the Library Director) or other staff members release records of circulation transactions or information requests except under court order.
 - Without a court order, neither the FBI nor local law enforcement has authority to compel cooperation with an investigation or require answers to questions, other than the name and address of the person speaking to the agent or officer. If the agent or officer persists, the director or designee should 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.
 - The Board of Trustees will resist the issuance or enforcement of any such process, order or subpoena, until such time as a proper showing of good cause has been made in a court of competent jurisdiction.

- All library employees should be aware that confidentiality of circulation transactions and information requests are both library policy and state law.
- Failure to comply with this policy may result in termination.
- The library contracts with third party vendors and library consortia that distribute electronic content through licensing agreements. The library cannot guarantee the confidentiality of information sought or received, or materials consulted or borrowed from these vendors. Some vendors may gather information about library patrons through the registration process and/or library transactions for their own marketing purposes. Customers using these resources are subject to the individual third-party terms and privacy policies.
- The library will release information to the parent or guardian of a minor child for the purpose of recovering overdue materials and settling accounts for lost, late, or damaged material, and for other matters related to the recovery of material or charges incurred by minor children for which a parent or guardian may be considered liable. However, information will not be provided to the parent or guardian who is merely attempting to determine what library materials a minor child is using.
- The library will not release registration, circulation or other records protected under the Iowa Code unless it is required by law to release the information. If the records requested cover registration, circulation or other records protected under the Iowa Code, and the Director is uncertain about whether the order, or subpoena presented to the library Director is sufficient to require release of the records, the library Director may immediately consult with legal counsel to determine if such process, order, or subpoena insufficient to require release of the records. Circumstances which may require the library to release that information include the following:
 - If the court order is in the form of a subpoena:
 - Library 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 a defect exists, counsel will advise on the best method to resist the subpoena.
 - 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.
 - Require that the agent, officer, or party requesting the information submit a new subpoena in good form and without defects.
 - 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 library director or designee is served with the court's order.
 - Ask to have library 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. The court order must have been entered for good cause.
 - 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 either a subpoena or a search warrant issued under the Foreign Intelligence Surveillance Act (FISA) (USA PATRIOT Act amendment):
 - The recommendations for regular subpoenas and search warrants still apply. However, subpoenas and search warrants issued by a FISA court also contain 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.
 - If it is a FISA subpoena, then the FISA judge is supposed to fix a "time to respond", which may be a period of days or may be immediately. Like other search warrants, FISA warrants are executable immediately.
 - 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 subjects of the search warrant.
 - 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 court order and request that the library's legal counsel be present during the actual search and execution of the court order.
 - FISA orders may be challenged in court. Librarians should seek legal counsel to determine if circumstances support such a challenge.

- If the order is a National Security Letter (NSL) issued under Section 505 of the USA PATRIOT Act:
 - The recommendations for a regular subpoena still apply. However, like a FISA order, an NSL also contains a gag order. That means that no person or institution served with the NSL can disclose that the NSL has been served or that records have been produced pursuant to the NSL. The gag order does not prevent consultation with legal counsel. NSLs may be challenged in court. Librarians should seek legal counsel to determine if circumstances support such a challenge.