

## **POLICY AND PROCEDURES FOR CONFIDENTIALITY OF RECORDS/USA PATRIOT ACT KIMBALL PUBLIC LIBRARY**

Confidentiality of library records is a basic principle of librarianship. This principle is reflected in Article III of the *Code of Ethics*, which states that “librarians must protect each library user’s right to privacy and confidentially with respect to information sought or received, and resources consulted, borrowed, acquired, or transmitted.”

Nebraska law on confidentiality of library records is found in the REVISED NEBRASKA STATUTES, Chapter 84, Article 7, Section 84-712.05.

According to this statute, confidential records are records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library’s materials or services.

Library records are *foremost used* for the sole purpose of maintaining and conserving public property and are not to be used for identifying the titles or kinds of material or equipment used by individual library patrons. *Consent of obtaining the information is provided by the patron at the time of registration. In the event of a minor, consent is obtained from the appropriate guardian or parent. Any individual may choose not to allow the collection of information, but it may hinder the ability to use library services.*

*Records are also used for the purpose of non-identifying statistical purposes; informing individuals about outstanding library materials, fines, or fees; program registration; room or equipment rentals; alerts to special programs or services; electronic communications; and electronic newsletters.*

Confidential library records *will* not be released or made available in any format to a federal agent, law enforcement officer, or other person unless a court order in proper form has been entered by a court or competent jurisdiction after a showing of good cause by the law enforcement agency or person seeking the records.

The following items should be considered when maintaining a patron’s confidentiality:

- \*The information on the patron’s application card is confidential. Information from this card cannot be given to other people.

- \*Information about current or past checkouts is confidential and will only be given to law enforcement with the proper legal papers.

- \*The staff will be sensitive and discreet to patrons with respect to their requests for materials and will conduct conversations in a manner that maintains confidentiality.

- \*The staff will not comment on what materials patrons are using or checking out.

- \*Telephone messages *will inform the patron* that a reserve or Interlibrary Loan books is ready for them, but not the title.

- \*Library staff *will* not talk about library patron’s requests or use of materials outside of the library environment.

- \**No identification numbers or “cookies” are kept in the library’s electronic browser database.*

The USA PATRIOT ACT, passed by Congress in 2001, expanded the powers of federal law enforcement agencies investigating cases involving foreign intelligence and international terrorism.

If a law enforcement *request* confidential records of the library the following steps should be taken:

- \*The staff should immediately ask for identification from the official and then refer the official to the Library Director or designated officer of the institution (Assistant Library Director, then the President of the Library Board), if the Director is not available.

- \*The Director or designated officer should meet with the official, with library counsel present. The Director or designated officer can seek legal advice concerning the court order and request that the library's legal counsel be present during the actual search provided by the court order.

- \*If the official does not have a court order compelling the production of records, the Director or officer 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.

- \*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 official. If the official persists, or makes an appeal to patriotism, the Director or officer 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.

- \*If the official presents a court order, the Library Director or officer should immediately refer the court order to the library's legal counsel for review.

## **DIFFERENT COURT ORDERS**

**Subpoenas** - Subpoenas allow a party a period of time to respond to and contest the court's order. Contact counsel to 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.

**Search Warrants** – A search warrant is executable immediately, unlike a subpoena. The official may begin a search of library records as soon as the library director or officer 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.

- \*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.

**Search Warrant issued under the Foreign Intelligence Surveillance Act** – The recommendations for a regular search warrant still apply. However, a search warrant issued by the **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.

\*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.

\*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 library does not have legal counsel, contact the Freedom to Read Foundation's legal counsel, Jenner & Block. Call the Office for Intellectual Freedom (1-800-545-2433, ext. 4223) and inform the staff that you need legal advice. You should not inform OIF staff of the existence of the warrant, only the attorney you speak to.

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