

## **NJLA PRIVACY STATEMENT**

The New Jersey Library Association affirms the right of each individual, regardless of age, to open inquiry, and to read, view, listen and use resources without fear of scrutiny by others.

## **NJLA POLICY ON CONFIDENTIALITY OF LIBRARY RECORDS**

Confidentiality exists when a library is in possession of personally identifiable information about users and keeps that information private on their behalf.

### **State Law Requires Confidentiality**

Libraries should consult with legal counsel to ensure their policies are based upon and consistent with applicable federal, state, and local law concerning the confidentiality of library records, the disclosure of public records, and the protection of individual privacy.

The New Jersey, library confidentiality statute, N.J.S.A. 18A:73-43:2 states:

Library records which contain the names or other personally identifying details regarding the users of libraries are confidential and shall not be disclosed except in the following circumstances:

- a. The records are necessary for the proper operation of the library;
- b. Disclosure is requested by the user; or
- c. Disclosure is required pursuant to a subpoena issued by a court or court order.

L.1985, c 172, s. 2, eff. May 31, 1985

### **Suggested Procedures for Implementing NJLA Policy on Confidentiality of Library Records**

1. Every request for information relating to circulation or other records identifying the names of library users must be referred to the responsible officer of the institution, who shall explain the confidentiality policy. For example, if a staff member receives a request for a library record, the staff member should immediately refer the request to the library director or the director's designee.
2. The director, upon receipt of a subpoena issued by a court, or a court order, should contact an attorney who is familiar with library law to determine if the subpoena (or order) is in good form. For example, a subpoena will always have the word "subpoena" written at the top, and will always give the library a few days to comply with (or challenge) the request.
3. If the library receives a search warrant, the director should allow the search to proceed immediately.

4. If a subpoena is not in proper form, the library with advice of its attorney should insist that all defects be cured before any records are released. A motion to quash the subpoena may be appropriate in some cases.
5. Staff should be trained and required to report any threats or unauthorized demands concerning circulation and other records to the director (e.g., if the demands are not supported by a search warrant, subpoena issued by a court, or a court order).
6. Any problems relating to the privacy of circulation and other records identifying the names of library users that are not provided for above shall be referred to the director.

**NOTE:** The NJ library confidentiality law supersedes the Open Public Records Act. OPRA specifically provides that records should not be disclosed if the records are protected by another law like the confidentiality statute. [N.J.S.A. 47:1A et seq.](#)

**SAMPLE CONFIDENTIALITY POLICY** The Board of Trustees of the \_\_\_\_\_ Library believes it is the basic right of every individual to read what he or she wishes without fear of censure or legal consequence. It also affirms the right of every person to privacy. The library will do everything in its power to protect each user's right to privacy with respect to all information required for registration and for information sought or received, and materials consulted, borrowed or acquired. Such records will not be made available to any individual, organization or government agency except pursuant to N.J.S.A. 18A:73-43.2 which reads: "Library records which contain the names or other personally identifying details regarding the users of libraries are confidential and shall not be disclosed except in the following circumstances: a. The records are necessary for the proper operation of the library; b. Disclosure is requested by the user; or c. Disclosure is required pursuant to a subpoena issued by a court or court order. L.1985, c 172, s. 2, eff. May 31, 1985."

## **Guidelines to assist libraries with requests for confidential library records**

### **Before the Police Ever Arrive:**

Adopt a board policy regarding procedures for working with law enforcement authorities. Retain an attorney who is familiar with library law. As autonomous agencies, library boards are entitled to lawyers who are independent of municipal administration.

### **When the Police Do Arrive and Ask for Library Records:**

All requests should be referred to the library director or the director's designee.

The director should give the police a copy of New Jersey's Confidentiality of Library Records Law (NJSA 18A:73-43.1). The statute states that:

Library records which contain the names or other personally identifying details regarding the users of libraries are confidential and shall not be disclosed except in the following circumstances:

- The records are necessary for the proper operation of the library,
- Disclosure is requested by the user, or
- Disclosure is required pursuant to a subpoena issued by a court or court order.

Emphasize that the library wishes to cooperate with the police. Our goal is to comply with the law.

Ask the police if they have a search warrant, a subpoena issued by a court, or other court order. This is important because without properly executed documents, a defendant may be able to escape conviction on a technicality.

If the police have a search warrant, the director should allow the search to proceed immediately. The police will provide a receipt for anything they take away from the library.

If the police have a subpoena, the director should contact an attorney who is familiar with library law. If your attorney is not familiar with library confidentiality issues, please refer her/him to the NJLA office and our attorney will assist her/him. Also notify your local administration (library board president, county library commission chairperson, or college leadership such as the president or provost).

A subpoena will have the word “subpoena” written on the first page. It will also provide a date by which you must respond. Typically you should have a few days to respond. Notify an attorney familiar with library law, who will review the subpoena to determine if it complies with the confidentiality statute. If the subpoena is not valid, its defects can be cured, or it can be withdrawn. In some cases it may be appropriate to go to court to file a motion to quash the subpoena.

**PLEASE NOTE:** The New Jersey Library Association, in support of the right to read, the right to privacy conferred by the NJ Constitution, and the 4th Amendment to the U.S. Constitution, interprets the phrase “a subpoena issued by a court” to mean that the signature of a judge is required to validate a subpoena that demands personally identifying details regarding library users. This interpretation of the statute has not been adjudicated.

## **Frequently Asked Questions Regarding Confidentiality of Library Records**

A. To whom is a subpoena addressed? Must it be made out to a specific individual?

A subpoena is a command to appear at a certain time and place to provide evidence on a certain matter. A subpoena can be addressed to a specific individual or to an organization, like a library. It may command a witness to bring certain documents, books, papers and other things (including computers). Typically, you will get five days to respond.

- B. Can library personnel show the library record to their library board or college administration?

If the records are "necessary for the proper operation of the library," then yes, library staff can show the library record to the board or administration. But not if the board is merely curious about the reading habits of a particular patron, or wishes to use the records for some purpose unrelated to the proper operation of the library.

- C. What is the difference between a subpoena and a search warrant?

A search warrant is an order issued by a judge, authorizing a law enforcement officer to search for and seize any property that constitutes evidence of the commission of a crime, property used as the means of committing a crime, contraband, etc. Law enforcement officers cannot obtain search warrants unless they convince a judge that there is probable cause to believe that a crime has been committed. Search warrants are virtually always granted, so it is not particularly difficult for law enforcement officers to get them. Criminals can escape conviction if evidence is seized without a warrant or properly executed subpoena or court order.

A subpoena will have the word "subpoena" written on the first page, and it will give you a few days advance notice about when and where to produce the records being sought. A library can move to "quash" a subpoena to protect the confidentiality of innocent patrons. The attorney will advise how to comply.

A search warrant, by contrast, permits the police to conduct a search on the spot.

- D. If the police show up with a search warrant what is the library to do?

If the police have a search warrant, they should be permitted to conduct the search.

- E. Can the police take a library computer without a subpoena?

Yes, if they gave you a valid search warrant. If they have only a subpoena, which must be issued ahead of time, your lawyer, with your approval, can move to "quash" the subpoena to protect the confidentiality of innocent patrons. The subpoena can command the library to make the library computer available at a particular place and time. If it would be disruptive to have law enforcement personnel examine the computer at the library, it might make sense to make the computer available elsewhere or after hours.

What if the police have a search warrant and say they need to take the computer away with them on the spot? Ordinarily, the library must comply.

F. Will the library ever get the computer back?

Probably. The police are required to leave a receipt for anything they remove from the premises.

G. Will the subpoena ask for specific information?

Yes, a subpoena will usually ask for specific information. The library may or may not have the information. It is appropriate to make sure the subpoena is valid (i.e., issued by a court), before retrieving library records.

H. There has been new security legislation on both the federal and state level. Would these new laws suspend the Confidentiality of Library Records Law and permit police access to records without a subpoena?

The library confidentiality statute is consistent with the USA Patriot Act and other similar statutes. For example, a FISA order issued under the USA Patriot Act is a "court order." Under the confidentiality law, libraries are permitted to disclose records pursuant to a court order.

I. Where can I find information about the USA PATRIOT Act?

The American Library Association has provided an analysis of the USA PATRIOT Act and guidelines for libraries on its web site at [www.ala.org/offices/oif/ifissues/usapatriotact](http://www.ala.org/offices/oif/ifissues/usapatriotact)

J. Should I notify the target of a subpoena?

You can. Contact an attorney familiar with library law.

## **ALA RESOURCES**

ALA on Confidentiality and Coping with Law Enforcement Inquiries: Guidelines for the Library and its Staff: <http://www.ala.org/offices/oif/ifissues/confidentiality>

ALA Suggested Procedures for Implementing "Policy on Confidentiality of Library Records" <http://www.ala.org/advocacy/intfreedom/statementspols/otherpolicies/suggestedprocedures>

ALA Statement on the Use and Abuse of National Security Letters

<http://www.ala.org/offices/oif/statementspols/ifresolutions/nationalsecurityletters>