

Confidentiality of Library Records CM 6/12/2013

I. Purpose:

II. Policy

The Ocean City Free Public Library Board of Trustees believes that it is the basic right of every individual to read what he or she wishes without fear of censure or legal consequence. The Board also affirms the right of every person to privacy. The library will do all within 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."

II. Procedures:

1. The library staff member receiving the request to examine or obtain information relating to circulation or other records identifying the names of library users must immediately refer the person making the request to the responsible officer of the institution, who shall explain the confidentiality policy.
2. The director, upon receipt of a search warrant, subpoena issued by a court, or a court order, shall contact an attorney who is familiar with library law to determine if such search warrant, subpoena issued by a court, or court order is in good form and if there is a showing of good cause for its issuance.
3. If the search warrant, subpoena issued by a court, or a court order is not in proper form or if good cause has not been shown, the library with advice of its attorney should insist that such defects be cured before any records are released.
4. The legal process requiring the production of circulation or other library records is ordinarily in the form of a subpoena duces tecum (bring your records) requiring the responsible library officer to attend court or to provide testimony at his or her deposition. It also may require him or her to bring along certain designated circulation or other specified records.

5. Staff should be trained and required to report any threats or unauthorized demands (e.g., those not supported by a search warrant, subpoena issued by a court, or a court order) concerning circulation and other records to the director.

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 director.

NJSA 18A:73-43:2 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

NOTE: NJ Open Public Records Act does not supersede NJSA 18A:73-43:2

If the police come to your library regarding access to library users' records:

1. 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."

This means that library records can only be disclosed if the police have a search warrant (a form of court order), subpoena issued by a court, or a court order.

2. Ask the police if they have a warrant, a subpoena issued by a court, or other court order. This is important because without properly executed documents, a defendant can escape conviction.

3. Immediately 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).

4. If police don't have the documentation, just wait.

5. If presented with a search warrant, review the documentation, making sure that it is specific regarding what records, computers, etc. are wanted. The requested information/materials must be turned over to law enforcement immediately. The police will give you a receipt; if not, ask for one. Notify an attorney familiar with library law.

6. If presented with a subpoena or other court order, you should have time before you must comply with its demands. Notify an attorney familiar with library law, who will advise how and when to comply.

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.