WAUKESHA PUBLIC LIBRARY

POLICY: **PRIVACY OF LIBRARY RECORDS AND LIBRARY USE**
Approved by Library Board: ~~7/14/16~~ 1/12/17 Number: A-9

The Waukesha Public Library protects the privacy of library records and the confidentiality of patron use of the library as required by ~~relevant~~ law~~s~~. In addition, Waukesha Public Library Board supports the principle of freedom of inquiry for library patrons, and ~~has adopted~~ adopts 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, Wis. Stats., 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) to persons authorized by the individual to inspect such records, or
(2) by court order, or
(3) to custodial parents or guardians of children under the age of 16, or
(4) to persons acting within the scope of their duties in the administration of the library or library system, or
(5) to other libraries (under certain circumstances) for interlibrary loan purposes [see ss. 43.30(2) and (3)], or
(6) to a collection agency, or
(7) to a law enforcement agency~~, but only if the value of the individual's delinquent account is at least $50~~ under certain circumstances.

Wisconsin's Personal Information Practices Act (Sections 19.62 to 19.80) requires ~~all~~ every state and local government ~~organizations~~ authority (including public libraries) to develop procedures to protect the privacy of personal information kept by the organization. Libraries (and all other government ~~organizations~~ authorities) are required to develop rules of conduct for employees involved in collecting, maintaining, using, and providing access to personally identifiable information. Libraries are also required to ensure that employees handling such records "know their duties and responsibilities relating to protecting personal privacy, including applicable state and federal laws." Sec. 19.65(2), Wis. Stats.

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

Records held by the library that include personally identifiable information about library users may also contain information that must be provided to those who request that information, as required by Wisconsin's public records law. Personally identifiable information about library users must be redacted from any records that are publicly disclosed, except as the records are disclosed under one of the ~~four~~ exceptions provided ~~by~~ in Section 43.30, Wis. Stats. ~~(see above).~~

Rules to be followed by library staff

(1) As required by state law, library staff may only disclose library records indicating the identity of library users under the following conditions:

~~a) disclosure to staff members of Waukesha Public Library, and the staff of other libraries and library systems only according to written procedures that comply with the laws cited above and that are approved by the Library Director~~
~~b) disclosure as authorized by the individual library user~~
~~c) disclosure to custodial parents or guardians of children under the age of 16 [ss. 43.30(4)] (see below for handling of requests from custodial parents or guardians)~~
~~d) disclosure pursuant to court order (see below for handling of different types of court orders)~~
~~e) if someone's life or safety is at risk, library records may be released to appropriate individuals or officials without a court order~~[1]

a) disclosure as authorized by the individual library user
b) disclosure pursuant to court order (see below for handing of different types of court orders)
c) disclosure to custodial parents or guardians of children under the age of 16 [sec. 43.30(4), Wis. Stats.] (see below for responding to requests from custodial parents or guardians)
d) disclosure to staff members of Waukesha Public Library, and the staff of other libraries and library systems only according to written procedures that comply with the laws cited above and that are approved by the Library Director
e) disclosure to other libraries (under certain circumstances) for interlibrary loan purposes [see sec. 43.30(2) and (3), Wis. Stats.]
f) disclosure to a collection agency
g) disclosure to a law enforcement agency under certain circumstances

If someone's life or safety is at risk, library records may be released to appropriate individuals or officials without a court order.

(2) Library staff must refer all requests for library records and all requests for information about particular library users to the Library Director or the Library Director's designee except requests from custodial parents or guardians of children under the age of 16 as described below.

~~[1] The Attorney General's office opined, in a response dated November 27, 2006 to questions submitted by State Superintendent Elizabeth Burmaster, that "…if someone's life or safety is at risk, for example, if there was a child abduction at the library, the law would not require the police to obtain a court order before being allowed to view any relevant [surveillance] tapes."~~

(3) Library staff are not allowed to ~~share~~ disclose information about use of library resources and services by identified library patrons except as necessary for the performance of their job duties and in accordance with procedures approved by the Library Director and/or board.

Handling ~~r~~Requests from custodial parents or guardians of children under the age of 16

Requestor must be the child's "custodial parent," defined as any parent other than a parent who has been denied periods of physical placement with a child under ~~s 767.24(4)~~ sec. 767.41(4) Wis. Stats. The Library staff ~~will~~ shall:

(1) request identification
(2) if the requestor is the parent or guardian listed on the child's library record and the requestor resides at the same address, the staff may provide the requested information; otherwise the staff will
(3) obtain a completed and signed "Request for Access to Child's Library Record" form to ~~help ensure~~ determine that the requestor is indeed the child's custodial parent or guardian and that the requestor has not been denied periods of physical placement with the child under ~~s 767.24(4)~~ sec. 767.41(4) Wis. Stats.
(4) The staff ~~may then~~ shall grant the request as soon as practicable and without delay. Normal photocopy/printing charges will be assessed to the requester for copies of records provided.

~~The Library staff will satisfy the request as soon as practicable and without delay.~~

~~Normal photocopy/printing charges will be assessed to the requester for copies of records provided.~~

Handling of ~~c~~Court orders, Subpoenas and Search Warrants

~~[Note: All search warrants are court orders, but *not* all subpoenas are court orders.~~ Library staff may not disclose library records in response to a subpoena that is not a court order if those records indicate the identity of library users.~~]~~

A. If a law enforcement officer ~~(or anyone else) brings~~ or other individual presents a **subpoena**~~[2]~~ or other court order directing library staff to produce library records:
    a. Notify the Library Director, or if the director is not available, notify the highest-ranking staff person on duty.
    b. The Library Director or the highest-ranking staff person ~~should ask~~ shall forward the subpoena or court order to the City Attorney ~~to~~ for review ~~the subpoena~~.

~~[2] A subpoena is a call to come before a court, and may include a direction to bring specified records. Not all subpoenas are court orders. Your municipal attorney (or library counsel) can determine if a particular subpoena is a court order. A subpoena normally indicates that a response is required within a certain number of days. Library staff may not disclose library records in response to a subpoena that is not a court order if those records indicate the identity of library users.~~

c. If the subpoena ~~has~~ contains any legal defects, require that the defects be cured before records are released.
d. If appropriate, ask legal counsel to draft a protective order to be submitted to the court keeping the requested information confidential and limiting its use to the particular case.
e. Follow legal counsel's advice for compliance with the subpoena.

B. If law enforcement officers ~~bring a court order in the form of~~ produce a **search warrant**[~~3~~]:
   a. A search warrant is executable immediately, unlike a subpoena. The law enforcement officers may begin a search of library records as soon as they enter the library.
   b. Request that the law enforcement officers wait until the City ~~a~~Attorney ~~has been~~ is contacted before the search begins in order to allow counsel an opportunity, if necessary, to examine the search warrant~~, and to~~ assure that the search conforms to the terms of the search warrant, and be present during execution of the search warrant. ~~(~~The law enforcement officials are *not* required to accede to your request to delay the search.~~)~~
   c. Cooperate with the search to ensure that only the records identified in the warrant are produced and that no other users' records are disclosed.
   d. Request a copy of the search warrant.

C. If FBI agents bring a court order in the form of a **search warrant issued under the Foreign Intelligence Surveillance Act (FISA) (US Patriot Act Amendment)**[~~4~~]:
   a. A search warrant is executable immediately, unlike a subpoena. The law enforcement officers may begin a search of library records as soon as they enter the library.
   b. Request that the law enforcement officers wait until the City ~~a~~Attorney ~~has been~~ is contacted before the search begins in order to allow counsel an opportunity, if necessary, to examine the search warrant~~, and to~~ assure that the search conforms to the terms of the search warrant, and be present during execution of the search warrant. ~~(~~The law enforcement officials are *not* required to accede to your request to delay the search.~~)~~

~~[3] A search warrant is an order signed by a judge directing a law enforcement officer to conduct a search of a designated person, a designated object or a designated place for the purpose of seizing designated property or kinds of property.~~

~~[4] The USA Patriot Act amended the Foreign Intelligence Surveillance Act (FISA) to allow the FBI to apply for a court order requiring the "production of any tangible things (including books, records, papers, documents and other items) for an investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment..."~~

c. Cooperate with the search to ensure that only the records identified in the warrant are produced and that no other users' records are disclosed.
d. ~~**It is illegal to disclose**~~ **The library and library staff are forbidden by law from disclosing to any other person (other than those persons necessary to produce the tangible things sought in the warrant) that the Federal Bureau of Investigation has sought or obtained records or other items under the Foreign Intelligence Surveillance Act (FISA).**