

## Frances Banta Waggoner Community Library Confidentiality of Library Records Policy

The Board of Trustees of the Frances Banta Waggoner Community Library recognizes the responsibility to protect the privacy of library users. Confidentiality is essential to protect the exercises First and Fourth Amendment rights.

This policy is meant to protect the privacy of library users while complying with the Constitution of the United States of America, federal statutes, and the Code of Iowa.

Library records are treated specifically in Code of Iowa 22.7 "Examination of Public Records (Open Records)", paragraphs 13,14 and 18.

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.

Code of Iowa 22.7 Confidential records.

- 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:
- 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.
- 14. The material of a library, museum or archive which has been contributed by a private person to the extent of any limitation that is a condition of the contribution.
- 18. Communications not required by law, rule, or procedure 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 reasonable believe that those persons would be discouraged from making them to that government body if they were available for general public examination.

In keeping with the protections afforded by the Waggoner Community Library shall hold confidential:

- a. Information sought or received and materials consulted, borrowed or acquired, database search records, reference interviews, interlibrary loan records, computer use records, and all other personally identifiable uses of library material, facilities or services.
- b. The names of card holders and their registration information are not for private, public or commercial use. Release of such information, not attached to a circulation record, could discourage people from applying for library cards.

In keeping with the above statements, the following shall be the policy for the Frances Banta Waggoner Community Library:

1. The lawful custodian of the records is the director of the library and legal counsel is the City Attorney. Every effort shall be made to reach the director if court orders are to be served, whether the director is present in the building or not. In the director's absence, the assistant director shall serve as

temporary custodian of the records. If both are absent, the director shall appoint a temporary custodian of the records.

2. Frances Banta Waggoner Community Library registration records and circulation shall be kept confidential.

3. If there is a reasonable basis to believe library circulation records are necessary to the progress of an investigation or prosecution, the request for such records including the justification for the request, shall be made to the Director, in writing on official letterhead by an official of the investigation or prosecution workforce, who has provided necessary identification.

4. If there is a reasonable basis to believe library circulation records are necessary to the progress of an investigation or prosecution, the judicial system provides the mechanism for seeking release of such confidential records: the issuance of a court order, following a showing of good cause based on specific facts, by a court of competent jurisdiction. Such court orders shall be presented to the library director.

5. Circulation and Registration records shall not be made available to any agency of local, state, or federal government except pursuant to such process, order or subpoena as may be authorized under the authority of, and pursuant to, local, state, or federal law relating to civil, criminal, or administrative discovery procedures or legislative investigative power.

6. The issuance or enforcement of any such process, order or subpoena shall be examined by the library director in consultation with legal counsel and resisted until such time as a proper showing of good cause has been made in a court of competent jurisdiction.

The following is suggested for Board information as staff procedure.

Procedures for enforcing the policy on confidentiality of library records.

1. The library staff member receiving a request to examine or obtain information relating to registration records or circulation records or other records identifying the names of library users, will immediately ask for identification and then immediately refer the person making the request to the director, the official custodian of the records.

2. The library director shall meet with the agent with library counsel or another colleague in attendance. If the agent or officer does not have a court order compelling the production of records, the library director shall explain the 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.

3. The Patriot Act does not impose any duty on libraries to collect or retain confidential information about its patrons for law enforcement purposes; therefore, staff shall not alter library record-keeping procedures as the result of a court order for existing information.

4. If the records requested cover registration, circulation or other records protected under the Iowa Code, upon receipt of a process, order, or subpoena, the library director shall immediately consult with legal counsel to determine if such process, order, or subpoena is in proper form and if there is a showing of good cause for its issuance.

a. If any written request, process, order, or subpoena is not in proper form or if good cause has not been shown, the library director shall insist that such defects be cured before any records are released.

b. If court order in the form and good cause has been shown,

1. A court order in the form of a subpoena:
  - a. Library counsel shall 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. The library may file a motion to quash the subpoena or a motion for a protective order. A court may then decide if good cause exists for the subpoena or if it is defective, and then decide whether the library must comply with the subpoena. Counsel shall be consulted on all issues, including the payment of costs if the library is the unsuccessful party.
  - b. Through legal counsel the library director shall 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.
  - c. The agent, officer, or party requesting the information shall submit a new subpoena in good form and without defects.
  - d. The library director shall review the information that may be produced in response to the subpoena before releasing the information. The subpoena shall be strictly followed and no information that is not specifically requested shall be provided.
  - e. If disclosure is required, the library director shall ask the court to enter a protective order (drafted by the library's counsel) to keep the information confidential and limit its use to the particular case. Legal counsel shall be instructed to ask that access be restricted to those persons working directly on the case.
2. A court order in the form of a search warrant:
  - a. Because a warrant is immediately executable, staff may permit the agent or officer to begin a search of library records while staff makes contact with the library director. Staff shall request that the library director be served with the court's order before the search begins. The library director shall request that legal counsel be present before the search begins.
  - b. As soon as the library director is served with the court's order, the library director shall contact legal counsel.
  - c. Legal counsel shall be requested to be present before the search begins in order to allow library counsel the opportunity to examine the search warrant and to assure that the search conforms to the terms of the search warrant.
  - d. The library director and legal counsel shall 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. The library director shall keep track of what is examined and what is taken. Effort shall be made to obtain a receipt from the person obtaining records acknowledging which specific records have been taken.
3. A court order as a search warrant issued under the Foreign Intelligence Surveillance Act (FISA) (USA Patriot Act amendment):
  - a. Only FBI agents can use the Patriot Act to request information. An FBI agent who wishes to obtain confidential patron information is still required to present a court order before legally obtaining these records
  - b. This search warrant will contain a "gag order." If someone other than the library director is served with the warrant, that person shall not disclose that the warrant has been served or that records have been produced pursuant to the warrant except to the library director and the library's legal counsel. This gag order makes it particularly important that the court order be served on the library director, the formal custodian of the records. The library director shall be notified and the director shall notify and consult with legal counsel.
  - c. Procedures followed those for a regular search warrant as outlined above in 2) a)-e).
  - d. **It is illegal to disclose to any other person (other than those persons necessary to produce the tangible things sought in the warrant) that the FBI**

**has sought or obtained records or other items under the Foreign Intelligence Surveillance Act (FISA).**

4. A court order including removal of hardware or software:

If the court order requires the removal of a computer workstation or other computer storage device from the library, the library director shall request that a backup tape be made before the device is removed and then the emergency service plan shall be used until the reinstallation of the confiscated equipment or software.

5. Any threats or unauthorized demands (i.e. those not supported by a written request, process, order, or subpoena) concerning circulation and other records identifying the names of library users shall be reported to the director. 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, or makes an appeal to patriotism, the director or other staff member 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.

6. Any problems relating to the privacy of registration, circulation and other records identifying the names of library users which are not provided for above shall be referred to the library director.

7. After any such visit,

a. The court order shall be reviewed with legal counsel to ensure that the library complies with any remaining requirements, including restrictions on sharing information with others.

b. Library policies and staff response shall be reviewed and revised if necessary.

c. Communication with the news media shall be planned. A public information statement detailing the principles upholding library confidentiality that includes an explanation of the chilling effect on First Amendment rights caused by public access to users' personally identifiable information shall be prepared for use if necessary

d. Notice, in keeping with the court order served, shall be sent to ALA by calling the Office for Intellectual Freedom at 800-545-2433, extension 4223; to ILA's Intellectual Freedom Committee; to the State Library of Iowa; and to the East Central Library Service Area.

A subpoena is a call to come before a court, and may include a direction to bring specified records. Not all subpoenas are court records. The city 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.

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.

The United States Patriot Act amended the Foreign Intelligence Surveillance Act 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...."

Approved by the Board of Trustees 12/2/03

Reviewed 10/8/2009