

ITEM NUMBER: 7.50 a-h
CHAPTER 7: Administrative
Management
CODE: Policy
COMPUTER ID: AMFIS-7

Title: Privacy of Library Records and Library Use
Effective Date: 5-21-07
Authorized By: Library Board of Trustees
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The Marathon County Public Library protects the privacy of library records and the confidentiality of customer use of the Library as required by relevant laws. In addition, the Marathon County Public Library Board supports the principle of freedom of inquiry for library customers, and has adopted 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, 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) with the consent of the individual library user, 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)].

Wisconsin's Personal Information Practices Act (Sections 19.62 to 19.80) requires all state and local government organizations (including public libraries) to develop procedures to protect the privacy of personal information kept by the organization. Libraries (and all other government organizations) 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."

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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 Section 43.30 (see above).

Wisconsin Statutes Section 43.30 provides that public library records indicating the identity of any individual library user may not be disclosed except by court order, or to persons acting within the scope of their duties in the administration of the Library, to persons authorized by the individual to inspect the records, to custodial parents of children under the age of 16, or to other libraries for purposes of interlibrary loan.

Library video surveillance records do not fall within the protections of s. 43.30. Library staff shall disclose surveillance records to a law enforcement official, if the law enforcement official is investigating criminal conduct alleged to have occurred at the library. Any request by a law enforcement official for video surveillance records shall be specific as to incident, date, time, and scope of the request.

Wisconsin Statute Section 43.30 does not preclude library staff from reporting to police observations of criminal activity in the Library. If staff observe possible criminal activity on videotape after the fact, staff shall disclose detailed information regarding the crime to law enforcement officials including release of video surveillance records to law enforcement offices.

Procedures 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 the Marathon County 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 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 Item Number 7.50 d for handling of requests from custodial parents or guardians)

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- 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 order¹
- (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.
- (3) Library staff are not allowed to share information about use of library resources and services by identified library customers except as necessary for the performance of their job duties and in accordance with procedures approved by the library director and/or board.

Unique management Services Inc. has been designated by the Library Board as the debt collection agent for Marathon County Public Library. The contract in effect between Unique Management Services Inc. and Marathon County Public Library provides that Unique Management is acting as a collection agent for the Library and that Unique management is required to observe confidentiality of library records as established in Wisconsin Statutes 43.30. A statement of Unique Management's company confidentiality policy is on file in the Library Administration Office

Handling requests from custodial parents or guardians of children under the age of 16

It is the policy of the Marathon County Public Library Board to protect the privacy of any person who uses the Library and to make no inquiry into the purposes for which a user requests information or books. Records which may be required in controlling the possession or use of books, whether on or off the premises of the Library, are for the sole purpose of protecting public property. Such records are not to be used directly or indirectly to identify the kinds of materials used by individual library users, except insofar as the Library may be helpful to such users.

In accordance with Wisconsin law, custodial parents or guardians of children under age 16 may, upon request, review library records pertaining to their children's use of the Library's documents or other materials, resources, or services. Custodial parents and guardians must sign the Marathon County Public Library form certifying that the requester is the custodial parent or guardian of the child whose records have been requested before the Library will provide those records to the parent or guardian.

Furthermore, it is the policy of the Marathon County Public Library Board never to yield any information about its users or their reading to any agency of government whether local, state, or federal except upon an order from a court of competent jurisdiction. Costs incurred by the library in any search through user records, under a court order, shall be billed to the agency conducting such search.

Except as above, the staff of the Library shall not provide to a third party, information about what a user of the Library is reading or calling for from the Library's collection.

See also:

Procedures for Implementing Policy Concerning Confidentiality of Personally Identifiable Information About Library Users Item Number 4.30 a-b.

Act 207

Upon the request of a custodial parent or guardian of a child who is under the age of 16, a library supported in whole or part by public funds shall disclose to the custodial parent or guardian all library records relating to the use of the library's documents or other materials, resources, or services by that child.

Please follow this procedure when parents request information about their child's library services:

1. Provide the form and ask the parent to fill it out. Explain that we are guarding the privacy of their child as well as other children.
2. Verify that the address of the child and the requesting adult is the same. Ask for identification.
3. If you feel there are no problems in filling the request, either in a timely manner, or with the work load at your desk at the time, you may provide the list to the parent.
4. If you are busy and feel that you cannot handle the request without interruption of service at the desk, you may tell the parent to pick up the information in one day, but not more than 3 days, or it may be sent in the mail. Print out the requested records as time permits. Attach the form.
5. Send a copy of the request to Administration

**Marathon County Public Library
CUSTODIAL PARENT/GUARDIAN CERTIFICATION
FOR ACCESS TO CHILDREN'S RECORDS**

I, _____, hereby certify that I am the
custodial parent (Requestor's Name)

or guardian for _____
(Child's Name, Address, and Date of Birth)

and pursuant to 43.30 Wisconsin Statutes, hereby request to review the
following library records pertaining to _____'s
(Child's Name)
use of the Library's documents or other materials, resources, or services.

Requested Records: Current Items Checked Out
 Current Overdue Materials
 Outstanding Fines and Fees
 Current Holds
 Other _____

The Library will not release personal information about this child.

The Library maintains only current records on customer use of the Library.

Signed and certified by: _____
(Custodial Parent or Guardian) (Date)

Staff initial _____ Date _____

Based on an opinion from County Corporation Counsel, library staff may advise a parent that their child is on library property. The opinion states that,

“With respect especially to children, parents do have a right to know where their children are and what they are doing.”

“To interpret Chapter 43.30 Wis. Stats., to prohibit even advising parents whether or not their children are present at the Library would conflict with basic parental rights. To interpret that statute, as set forth above, balances the confidentiality of the “records” with the basic parent right of knowing where children are.”

Staff may inform a parent who contacts the Library whether or not their child is present in the Library.

HANDLING OF COURT ORDERS

The Library will maintain records of user’s personally identifiable information and records related to individual’s use of the Library only as needed for the efficient operation of the Library.

If the library staff receive a request from an agent or officer for information, the following procedures apply.

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 will ask for identification if they are approached by an agent or officer, and then immediately refer the agent or officer to the library director or designee.
2. The director or designee will meet with the agent with county corporation counsel or another colleague in attendance. If the agent or officer does not have a court order compelling the production of records, the director or designee will 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 agent or officer. If the agent or officer 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.

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If the process, order, or subpoena is not in proper form or if good cause has not been shown, insistence shall be made that such defects be cured before any records are released. (The legal process requiring the production of circulation or other library records shall ordinarily be in the form of subpoena duces tecum [bring your records] requiring the responsible officer to attend court or the taking of his/her deposition and may require him/her to bring along certain designated circulation or other specified records.)

3. If the agent or officer presents a court order of any type, the library director or officer will immediately refer the court order to the County Corporation Counsel for review.
4. Any threats or unauthorized demands (i.e., those not supported by a process, order, or subpoena) concerning circulation and other records identifying the names of library users shall be reported to the County Corporation Counsel.
5. Any problems relating to the privacy of circulation and other records identifying the names of library users which are not provided for above shall be referred to the Library Director.
6. County Corporation Counsel should be called at anytime if library staff cannot refer the agent or officer to the library director. On weekends or in the evening, staff should call the Sheriff's Department and ask to leave a pager message for the available Corporation Counsel for that time period.

If the court order is in the form of a subpoena:

- Counsel should 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.
- Through legal counsel, 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.
- Require that the agent, officer, or party requesting the information submit a new subpoena in good form and without defects.
- Review the information that may be produced in response to the subpoena before releasing the information. Follow the subpoena strictly and do not provide any information that is not specifically requested in it.
- If disclosure is required, ask the court to enter a protective order (drafted by the library's counsel) keeping the information confidential and limiting its use to the

- particular case. Ask that access be restricted to those persons working directly on the case.

If the court order is in the form of a search warrant:

- A search warrant is executable immediately, unlike a subpoena. The agent or officer may begin a search of library records as soon as the Library Director or officer is served with the court's order, but staff should ask to have County Corporation Counsel present before the search begins in order to allow County Corporation Counsel an opportunity to examine the search warrant and to assure that the search conforms to the terms of the search warrant.
- The Library Director and staff as required will 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.

If the court order is a search warrant issued under the Foreign Intelligence Surveillance Act (FISA) (USA Patriot Act amendment):

- Procedures listed above for a regular search warrant still apply. However, a search warrant issued by a 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 warrant.
- The gag order does not change a library's right to legal representation during the search. The Library will still seek legal advice concerning the warrant and request that the County Corporation Counsel be present during the actual search and execution of the warrant.

After the visit:

- Review the court order with County Corporation Counsel to ensure that the Library complies with any remaining requirements, including restrictions on sharing information with others.