

PRIVACY AND CONFIDENTIALITY OF LIBRARY RECORDS

Policy Statement

Privacy is essential to the exercise of free speech, free thought, and free association. Courts have upheld the right of privacy based on the Bill of Rights of the U.S. Constitution. Confidentiality of library records is a core value of library service nationwide. The Bucks County Free Library (BCFL) endorses the American Library Association's Code of Ethics, which states: "We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired, or transmitted."

BCFL is governed by the Pennsylvania Library Code, Title 24, Chapter 16-Libraries. Article IV, Section 428 of the Code states: "Records related to the circulation of library materials which contain the names or other personally identifying details regarding users... shall be confidential and shall not be made available to anyone except by a court order in a criminal proceeding."

Regulations

The library maintains a database of user information as part of its automated circulation system. The database contains personal information such as user's name, address, phone and cell numbers, date of birth, e-mail address, driver's license number, gender, and library card number. BCFL retains no records of books and other materials borrowed and returned in the past, only items currently checked out or with outstanding bills.

The library maintains limited information about computer signups in its automated signup system, such as the library card number used to log on to a public computer at a certain time of day. All data related to computer signups is purged daily.

The library and its staff do not disclose or distribute borrower circulation records, computer signup information, or other personal information to outside parties except as required by law or with the user's authorization. This includes disclosure or distribution of information upon request by a parent or guardian for a child's records or a family member for another family member's records.

User information will be accessed by library staff internally and with the staff of other libraries only as part of the necessary performance of their job duties.

User information may be compiled for required statistical reporting to federal, state, local and private funding bodies. BCFL may also use these files for building relationships and communicating with library users in order to enhance and improve library services. These files do not contain user borrowing or circulation information. BCFL will respect and follow users' wishes regarding how and if they prefer to receive library communications.

Only the BCFL Executive Director or the Executive Director's designee is authorized to comply with requests from law enforcement officers submitted in the form of a court order, subpoena, or Foreign Intelligence Surveillance Act (FISA) order. All such requests received by any branch of BCFL must be

forwarded to the administrative offices in Doylestown for consideration and review.

Procedures

Upon request for information in a child's record by a parent/caregiver:

- Explain the library's Privacy Policy to the requestor. Inform the requestor that the library's policy is guided by law, which the library must follow. Offer to provide a copy of the policy for review.
- Provide information about the library's lawful recommendations from the library's Circulation Policy/ Procedures for those who would like to closely monitor a child's library use.
- Give the requestor the option to appeal the library's decision in writing to the library board.

Upon request for information in a family member's record by another family member:

- Explain the library's Privacy Policy to the requestor. Inform the requestor that the library's policy is guided by law, which the library must follow. Offer to provide a copy of the policy for review.
- Provide information about the library's lawful recommendations from the library's Circulation Policy/ Procedures for those who would like to access another's library record.
- Give the requestor the option to appeal the library's decision in writing to the library board.

Upon request by a law enforcement officer:

- Explain the library's Privacy Policy to the requestor. Inform the requestor that the library's policy is guided by law, which the library must follow. Offer to provide a copy of the policy for review.
- Inform the requestor that the library will respond to law enforcement requests for records that are submitted in the form of a court order, including subpoenas or search warrants, or a Foreign Intelligence Surveillance Act (FISA) order.
- Give the requestor the option to discuss the Library's decision and policy with a higher ranking staff person, including the Executive Director.

Upon receipt of a subpoena:

A subpoena is a call to come before a court, and may include a direction to bring specified records. Not all subpoenas are self executing court orders. In addition, even a valid subpoena may be overly broad or otherwise subject to negotiation with the issuing authority. The library's attorney can determine if a particular subpoena must be complied with as is or whether it is subject to negotiations with the issuing authority. A subpoena normally indicates that a response is required within a certain number of days. Under Pennsylvania law, the library is not permitted to disclose library records in response to a subpoena that is

not a court order.

Inform the requestor that the following steps (2-5) will be taken as a response to the subpoena.

Notify the Executive Director, or if the Executive Director is not available, notify the highest ranking staff person who can be reached.

The Executive Director or the highest ranking staff person will ask the library's attorney to review the subpoena.

The library's attorney will represent the library's interest, including a requirement that any legal defects be cured before records are released.

If appropriate, the library's attorney will draft a protective order and/or Motion to Quash to be submitted to the court keeping the requested information confidential and limiting its use to the particular case.

Search Warrants:

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. All search warrants are court orders. Under Pennsylvania law, the library is required to disclose library records in response to court orders, which means that the library is required to disclose library records in response to search warrants.

Unlike a subpoena, a search warrant is executable immediately. Law enforcement officers may begin a search of library records as soon as they enter a library. Ask for a copy of the search warrant. Notify the Executive Director, or if the Executive Director is not available, notify the highest ranking staff person who can be reached. That person will attempt to contact the library's attorney immediately.

Request that law enforcement officers wait until the library's attorney is present before the search begins in order to allow counsel an opportunity to examine the search warrant and assure that the search conforms to the terms of the search warrant. Law enforcement officials are not required to agree to the library's request to delay the search.

Cooperate with the search and make no effort to hinder the search. Keep as complete notes as possible as to what is accessed/taken to ensure that only the records identified in the warrant are produced and that no other library user's records are disclosed. But even if the law enforcement officer wants access to, or to take, records that you do not believe are covered by the search warrant, cooperate. Failure to do so could result in you being arrested. Whether or not a document taken was subject to the search warrant can be addressed by the library's counsel after the search is over.

Foreign Intelligence Surveillance Act (FISA) Orders:

A FISA order is a search warrant under the umbrella of the Foreign Intelligence Surveillance Act. The USA



Patriot Act amended 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 . . .” If the library receives a FISA order it will be presented by an FBI agent.

Unlike a subpoena, a search warrant is executable immediately. FBI agents may begin a search of library records as soon as they enter a library. Ask for a copy of the search warrant. Notify the Executive Director, or if the Executive Director is not available, notify the highest ranking staff person who can be reached. That person will attempt to contact the library’s attorney immediately.

Request that the FBI agents wait until the library’s attorney is present before the search begins in order to allow counsel an opportunity to examine the search warrant and assure that the search conforms to the terms of the search warrant. FBI agents are not required to agree to the library’s request to delay the search.

Cooperate with the search and make no effort to hinder the search. Keep as complete notes as possible as to what is accessed/taken to ensure that only the records identified in the warrant are produced and that no other library user’s records are disclosed. But even if the law enforcement officer wants access to, or to take, records that you do not believe are covered by the search warrant, cooperate. Failure to do so could result in you being arrested. Whether or not a document taken was subject to the search warrant can be addressed by the library’s counsel after the search is over.

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 FISA.

Adopted by the Board of Directors June 12, 1979

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