

SQUARELY ON MY SHOULDERS?

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Whose responsibility is patron confidentiality, anyway? As Rhoda Garoogian stated in her ethical challenge case studies series, "[t]he public must believe that the library is a sanctuary where individuals can feel unconstrained by the possibility that the materials they use, the books they read, or the questions they ask will become public knowledge." This, of course, places the enormous responsibility of protecting the library patron's right to privacy squarely on the shoulders of the librarian.

BRIEF HISTORY

Until the late 1930s, the concept of personal privacy was used primarily to protect the interest of property holders. But by the mid-1960s, a new concept of privacy was introduced when the Supreme Court affirmed that the right to privacy included protecting the individual from the intrusion of others, including the government. In 1965, the Supreme Court also ruled that the Constitution of the United States guarantees this right to privacy.

By the early 1970s, America was undergoing a far-reaching social upheaval. There were many acts of terrorism and, in an effort to find those who were responsible, government agents even began to search the circulation records in public libraries. This resulted in a huge public outcry against the government and their search methods.

As record-keeping in libraries became automated, concern for patron privacy increased. By 1974, the Federal Government had passed the Privacy Act. This act specified that personal data could not be used for a purpose other than the one for which it had been collected. Also, data could not be disclosed to other agencies without the written consent of the subject.

The American Library Association also responded to the public's concerns with its Policy on the Confidentiality of Library Records. Briefly, this policy stated that library records were confidential and were to remain private until a court order or subpoena was presented.

As a result of the ALA policy, librarians across the country began to lobby their own state legislators to pass laws to protect patron confidentiality. In 1978, Florida was the first state to pass such a law. Ten years later, thirty-nine states provided some type of privacy protection for their library patrons. Today forty-nine states and the District of Columbia have library patron confidentiality protection. Only the state of Ohio does not. [Editor's note: legislation was pending in Ohio at the time this article was written.]

INDIANA LAW

Indiana Code 5-14-3-4 cover library records in Indiana. Part (b) of this section lists public records that can be excepted from disclosure at the discretion of a public agency. Library and archival records are covered under (16) with language as follows:

"Library or archival records:

- (A) which can be used to identify any library patron; or
- (B) deposited with or acquired by a library upon a condition that the records be disclosed only:
 - (i) to qualified researchers;
 - (ii) after passing of a period of years that is specified in the documents under which the deposit or acquisition is made, or
 - (iii) after the death of persons specified at the time of the acquisition or deposit." (sec. 5-14-3-4(b) (16)

It is important to note that in order to protect library and archival records from disclosure, the library must have a policy. Library records are not automatically protected, because they fall under the discretionary part of IC 5-14-3-4, part (b) rather than under part (a), which requires mandatory protection unless there are specific state or federal statutes that require disclosure or if disclosure is ordered by a court under the rules of discovery.

INDIANA LIBRARIES TODAY

Despite the best efforts of the legal community, questions of patron confidentiality still weigh most heavily on the shoulders of librarians. In an effort to determine how well Indiana libraries and librarians are shouldering the responsibility for patron confidentiality, the Intellectual Freedom Committee of the Indiana Library Federation conducted a survey in January of 1999. Information was gathered from public libraries across the state. The tabulated results indicated that 38% of the 204 libraries responding still did not address patron confidentiality in their policy manuals. Staff training concerning patron confidentiality was given in only 63% of responding libraries. Of those providing training, only 50% gave such training to their entire staff and very few gave this type of training to the library boards.

When librarians were queried about the type of information they would give out, the responses were:

- Patron's presence in the library – 71% Yes
- Number of items patron has checked out – 85% No
- Title of item(s) checked out – 87% No
- Patron's address – 93% No
- Patron's phone number 94% No
- Patron's employment information – 98% No

How accessible is patron information to library staff? The responses were divided on the question "Does your circulation system keep patron information accessible?" 46% of libraries responded affirmatively. Unsolicited information has been volunteered to a person or agency by 1% of responding libraries. Staff members were allowed to use patron information for non-library purposes in 3% of responding libraries. Amazingly, none of the libraries had patron records knowingly breached by outside sources.

Of those who responded to the question, "Does it make a difference if a family member requests patron information?" 50% indicated that it did make a difference. Likewise, responses were fairly evenly divided on the issue of confidentiality of children's library records, although 28 libraries declined to answer this question. If a parent requested information, 72% of the libraries

would comply. However, a shocking 17% of the responding libraries made no attempt to verify the requestor's identity.

Agency requests, for whatever reason, were believed to justify a release of information in 26% of responding libraries. Only 3% of libraries had received a court order for patron information. However, 84% responded that there had been no requests from outside agencies for confidential information.

CONCLUSION

We are reminded by James Huff in his recent article in *American Libraries*, "[t]he free flow of information - the life blood of a democracy - is seriously impaired if an individual cannot gain access to a library's resources without fear of being monitored and marked as a reader of questionable material."

How well are Indiana librarians shouldering their responsibility for patron confidentiality? Are we really making an effort? How strong are **your** shoulders?

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