

Pewaukee Public Library

Privacy of Library Records and Library Use

The Pewaukee Public Library protects the privacy of library records including Internet use records and the confidentiality of patron use of the library as required by relevant laws. In addition, the Pewaukee Public Library Board supports the principle of freedom of inquiry for library patrons, 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 of any library, which is in whole or in part supported by public funds, that 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) By court order, or
- (2) To persons acting within the scope of their duties in the administration of the library or library system, or
- (3) To persons authorized by the individual to inspect such records, or
- (4) Upon the request of a custodial parent (*includes any parent other than a parent who has been denied periods of physical placement with a child under s. 767.41 (4)*) or guardian of a child who is under the age of 16, or
- (5) To other libraries (under certain circumstances) for interlibrary loan purposes [see ss. 43.30(2) and (3)], or
- (6) (a) Upon the request of a law enforcement officer who is investigating criminal conduct alleged to have occurred at the library, the library shall disclose to the law enforcement officer all records pertinent to the alleged criminal conduct that were produced by a surveillance device under the control of the library.
(b) If a library requests the assistance of a law enforcement officer, and the director of the library determines that records produced by a surveillance device under the control of the library may assist the law enforcement officer to render the requested assistance, the library may disclose the records to the law enforcement officer.

The Pewaukee Public Library is a member of the CAFÉ Catalog Consortium. Policies regarding the retention of Library Records are determined by the members of the CAFÉ Council.

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."

Records indicating the identity of library users include a library users name, 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 six exceptions provided by Section 43.30 (see above).

Rules to be followed by library staff

- (1) Library staff must refer ALL requests for library records and all requests for information about particular library users to the Library Director or the Librarian-in-Charge.
- (2) As required by state law, library staff may only disclose library records indicating the identity of library users under the following conditions:
 - a) disclosure pursuant to court order (see below for the handling of different types of court orders)
 - b) disclosure as authorized by the individual library user
 - c) disclosure to staff members of the Pewaukee 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
 - d) disclosure to a custodial parent or guardian of a child who is under the age of 16
 - e) disclosure of all records pertinent to the alleged criminal conduct that were produced by a surveillance device under the control of the library requested by a law enforcement officer
- (3) Library staff members are not allowed to share 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 of requests by a custodian parent or guardian

If a request for the library records of a child who is under the age of 16 is made by a custodial parent or guardian:

- (1) Notify the Library Director or the Librarian-in-Charge.
- (2) The Library Director or Librarian-in-Charge will verify that the individual is a custodial parent or guardian by requesting to see a photo ID and checking that the address of the custodial parent/guardian matches that of the child. At the Director's or Librarian-in-Charge's discretion additional documents may be requested such as a copy of the child's birth certificate or a copy of a court order of divorce which names the child. Relevant court orders may also be located using the Consolidated Court Automation Programs (CCAP) Case Management system (available at <http://wcca.wicourts.gov/>).
- (3) The request must be acted upon as soon as practicable and without delay.

Handling of court orders

[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.]

If a law enforcement officer (or anyone else) brings a subpoena¹ directing library staff to produce library records:

- (1) Notify the Library Director, or if the Director is not available, notify the Librarian-in-Charge.
- (2) The Library Director or Librarian-in-Charge should ask the library attorney or if unavailable the municipal attorney to review the subpoena.
- (3) If the subpoena has any legal defects, require that the defects be cured before records are released.
- (4) 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.
- (5) Follow legal counsel's advice for compliance with the subpoena.

If law enforcement officers bring a court order in the form of a search warrant ²:

- (1) 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.
- (2) Notify the Library Director or Librarian-in-Charge immediately about the search warrant.
- (3) Request that the law enforcement officers wait until the library attorney or municipal attorney is present before the search begins in order to allow counsel an opportunity to examine the search warrant and to assure that the search conforms to the terms of the search warrant. (The law enforcement officials are *not* required to accede to your request to delay the search.)
- (4) Cooperate with the search to ensure that only the records identified in the warrant are produced and that no other users' records are disclosed.

¹ 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. The library's attorney 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.

² 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.

If FBI agents bring a court order in the form of a search warrant issued under the Foreign Intelligence Surveillance Act (FISA)³:

- (1) 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.
- (2) Notify the Library Director or Librarian-in-Charge immediately about the search warrant.
- (3) Request that the law enforcement officers wait until the library attorney or municipal attorney is present before the search begins in order to allow counsel an opportunity to examine the search warrant and to assure that the search conforms to the terms of the search warrant. (The law enforcement officials are *not* required to accede to your request.)
- (4) Cooperate with the search to ensure that only the records identified in the warrant are produced and that no other users' records are disclosed.
- (5) 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 Federal Bureau of Investigation has sought or obtained records or other items under the Foreign Intelligence Surveillance Act (FISA). This includes the patron whose records are the subject of the search warrant.

Drafted by Mike Cross, Wisconsin Division for Libraries, Technology, and Community Learning
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Sally Ruf, Library Board President

³ 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..."