

Hales Corners Library Circulation Services – Confidentiality of Patron Records

State Law

Library circulation records must remain confidential according to Wisconsin Statutes §43.30 and the Wisconsin Personal Information Practices Act (§19.62 to 19.80).

Under §43.30, library records 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. with the consent of the individual library user
2. by court order
3. to persons acting within the scope of their duties in the administration of the library or library system
4. to custodial parents or guardians of children age 15 or younger [see §43.30(4)]
5. to other libraries (under certain circumstances) for interlibrary loan purposes [see §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 those employees handling such records "know their duties and responsibilities relating to protecting personal privacy, including applicable state and federal laws." Wisconsin Statutes §19.65 (West 2004)

Records indicating the identity of library users include a library user's 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 (removed) from any records that are publicly disclosed, except as the records are disclosed under one of the five exceptions provided by Section 43.30 (see above).

It is essential that all staff members maintain the confidentiality of patrons' records. Staff members are not to disclose the identity of any individual, or any information concerning that individual, which is maintained by the library system, except by court order or to persons acting within the scope of their duties in the administration of this library system. Unless there is a library-related reason to do so, staff members are never to access a patron's record. If a staff member accesses a patron's record in the course of library business, that staff member is never to discuss the information obtained, unless there is a library business related reason to do so. Any violation of this policy will be considered as a cause for disciplinary action up to and including discharge.

*Chapter 43.30: "Records of any library which is in whole or in part supported by public funds, including the records of a public library system, indicating the identity of any individual who

borrowers or used the library's documents may not be disclosed except by court order or to persons acting within the scope of their duties in the administration of the library or library system to persons authorized by the individual to inspect such records or to libraries as authorized under subs. (2) and (3)..."

Procedures for Law Enforcement Visits

- A. Inquiries: Staff approached by a federal law enforcement officer or agent is to ask for identification and then immediately refer the officer or agent to the Library Director or the Librarian-in Charge.
1. If the officer or agent does not have a court order compelling the production of records, the Librarian-in-Charge should explain the library's confidentiality policy and the state's confidentiality law, and inform the officer or agent that users' records are not available except when a proper court order in good form has been presented to the library.
 2. Law enforcement officers and agents are to be told that the Milwaukee County Federated Library System (MCFLS) is "the sole point of contact for any court ordered or subpoenaed compilation and/or surrender of user information or borrowing data." See Appendix A (attached).
- B. Search Warrants: Staff approached by a federal law enforcement officer or agent with a search warrant is to ask for identification and then immediately refer the officer or agent to the Library Director. If not available, then refer the individual to the Librarian-in-charge.
1. Although the Milwaukee County Federated Library System (MCFLS) is to be the sole contact for information from County Cat, a search warrant may be served on the Hales Corners Public Library.
 - a. The MCFLS director or designee is to be informed as soon as practical, unless the requirements of the law restrict such notification.
 - b. If the search warrant order contains a "gag order," MCFLS will not be informed. See # 3.
 2. A search warrant is executable immediately. The agent or officer may begin a search of library records as soon as the Library Director or Librarian-in-charge has been informed.
 3. If the search warrant is issued under the Foreign Intelligence Surveillance Act (FISA) (USA Patriot Act Amendment) the procedures above still apply, but the warrant will contain a "gag order." Staff members who are aware that a warrant has been served under FISA or a gag order may not disclose that the warrant has been served or that records have been produced pursuant to the warrant. This information cannot be shared with anyone except to persons necessary to produce the required records (including members of administration or board members), which is why it is important to reach a top administrator when the search warrant is issued. The Library Director or Librarian-in-charge may ask to have library's legal counsel present before the search begins in order to allow legal counsel an opportunity to examine the search warrant and to assure that the search conforms to the terms of the search warrant. The librarian may contact the Village Attorney who will provide assistance and/or representation during the search. (Note that this is a request and that the law enforcement officers or agents do not have to wait for the attorney.)

4. Cooperate with the search warrant to ensure that only the records identified in the warrant are produced and that no other users' records are viewed or scanned.

C. Subpoenas: If the court order is in the form of a subpoena:

1. A subpoena is not executable immediately so there is some time for review. Staff members are not required to voluntarily give any information to a process server or attorney when being served with a subpoena.
2. The staff member approached by a federal law enforcement officer or agent with a subpoena is to immediately refer the officer or agent to the Library Director or the Librarian-in-Charge.
3. The Library Director shall ask the officer or agent for identification.
4. If the subpoena is for information from County Cat, the MCFLS director or designee is to be informed as soon as practical, unless the requirements of the law restrict such notification.
5. The American Library Association recommends the following:
 - Immediately refer the court order to the library's legal counsel for review. Counsel should examine the subpoena for any legal defect.
 - If a defect exists, 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 to 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 legal 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.

Maintaining Confidentiality

A. Overdue notice inquiries:

1. Minors.

The library respects the confidentiality of minors; however, State law gives custodial parents or legal guardians the right to information in library records regarding their children who are under the age of 16 (15 years of age or younger).*

A "custodial parent" is defined in this law as any parent other than a parent who has been denied periods of physical placement with a child under SS 767.24(4). In situations involving separation or divorce, the courts will generally order periods of physical placement to both parents. However, in some cases, the courts will issue an order denying periods of physical placement to one or both parents.

*Chapter 43.30(4): "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 the child."

2. Others inquiring about overdue items for another patron (in-person service only).
If the person has the patron's overdue notice, staff may give out this information regarding the status of the material listed on the notice only, i.e., whether the materials have been returned or not. Other information from the patron record, including other material checked out on the patron's library card but not listed on the overdue notice cannot be provided.
3. Overdue notice inquiries received via the telephone.
Callers who identify themselves as a patron and who are able to provide their library card number may be given information from their patron record about items checked out.

B. Payment of fines, fees or charges for another patron:

When a person wants to pay overdue charges for another patron, this may be done as noted below as long as the confidentiality of the author, title, and subject is maintained. The exception is for a parent/legal guardian paying for their child.

When a parent/legal guardian is paying fines, fees or charges for their child, staff can:

- use the individual's name to access the patron record
- collect payment and clear charges
- receipt can be given to the parent/legal guardian

When a spouse, sibling, or friend is paying fines, fees or charges for another individual and can provide one of the following:

- the individual's library card or
- dated, written permission from the individual with library card number or
- overdue notice or statement of charges

Staff can then:

- access the patron record
- collect payment and clear charges
- the receipt will be provided to the library-cardholder (in person) upon request

C. Holds – picking up holds by someone other than the individual:

An individual can make arrangements for another person to pick up material using a permission slip form. The permission slip must be filled out and presented by the library cardholder in person. Permission is recorded on the patron record and the form is kept on file at the library. The library material is checked out using the patron name noted on the holds pick up slip.

E. Telephone Service:

Callers who identify themselves as a patron and who are able to provide their library card number may be given information about their circulation records and items on hold over the telephone.

F. Changing or adding information to a patron record:

Changing or adding information to a patron record can only be done in person by the library-cardholder. The person making the request for changing information or adding information (such as an email address) must provide their library card.

Visibility of Screens

Staff-use terminals are in areas where the public may be able to view the screen. Staff is reminded not to leave circulation information on the screen, but to return to a menu.

Maintaining the Integrity of the Patron Record Database

The records that are contained in the circulation and registration database are there to protect the library's resources. Staff members are not to alter any patron's records or other staff member's records, unless it is done as part of the normal library procedure. In addition, staff members are never to alter their own patron records.

APPENDIX A
Milwaukee County Federated Library System
Administrative Manual

Date: **10/16/02**

Category: **Administration**

Administrative Manual Insert Number: **A-10**

Topic: **COURT-ORDERED BORROWER DATA SURRENDER POLICY**

From the Member Agreement:

Court-ordered or Subpoenaed Data

“Because of the cross-jurisdictional nature of library use in Milwaukee County and because of the proprietary role that MCFLS has traditionally played in the retention and custody of borrower records and commitment to database integrity, the System shall be the sole point of contact for any court-ordered or subpoenaed compilation and/or surrender of user information or borrowing data. Such single point of contact shall ensure consistency in the collection, preparation, and packaging of said information and data. In fulfilling this obligation, the System shall provide a mutually agreeable procedure that ensures that the retention and custody of all borrower records and system collection database integrity is maintained, and that statutory confidentiality requirements are observed.”

Compliance with this stipulation shall include direct notification of the MCFLS Director, or his/her designee, on an as soon as practicable basis, concerning any compilation and/or surrender of borrower data in response to a court order served on any of the MCFLS member libraries. This notification is expected to occur prior to the surrender of data. However, in those cases where data surrender cannot legally be deferred to allow for prior MCFLS notification, MCFLS shall be notified as soon as possible thereafter. In all such surrenders (either prior or post MCFLS notification), compliance with this stipulation shall also include the placement in a confidential and secured file, at the MCFLS office, of the court order (or a copy thereof) along with a copy of the surrendered data.

Notwithstanding the aforementioned procedure, the requirements of the law shall take precedence. *

*If the court order is a search warrant issued under the Foreign Intelligence Surveillance Act (FISA - USA Patriot Act amendment) or other specified Act, it may also contain 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 can still seek legal advice concerning the warrant and request that the library’s legal counsel be present during the actual search and execution of the warrant. (American Library Association)