

FACT or FICTION: PRIVACY IN AMERICAN LIBRARIES

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If this nation is to be wise as well as strong, if we are to achieve our destiny, then we need more new ideas for more wise men reading more good books in more public libraries. These libraries should be open to all except the censor. We must know all the facts and hear all the alternatives and listen to all the criticisms. Let us welcome controversial books and controversial authors. For the Bill of Rights is the guardian of our security as well as our Liberty. John F. Kennedy

For the last half of the Twentieth Century, public librarians across America incorporated the ideals expressed by JFK into the policies and procedures used to manage over 15,000 American public libraries. As a profession, there was overwhelming support that the role of a public library in American society was that of “the great equalizer.” Regardless of gender, social status, economic resources, nationality, or any other socio-economic factor, anyone could enter a public library and access a wide variety of information.

The concept of Intellectual Freedom is a core value of Librarianship. It is defined as the absence of any policy, procedure or person who restricts the information available to someone else. Included in the ideals of intellectual freedom is privacy. Librarians have a great concern that if the information usage data of patrons do not have the highest level of privacy protections, a chilling effect will take place and patrons won't access information.

You are what you read, or Guilty by Reading.

Law enforcement officials have often tried to make the case that if someone accesses certain information, they become “worthy of investigation”. This point is best illustrated with an example from Decatur Texas. In 1990, an infant was abandoned. The District Attorney's office subpoenaed the records from the local library. They asked for the names, addresses and telephone numbers of everyone

who had checked out any book on childbirth during the previous nine months.² There was no evidence that the mother of the child had read a book from the library. The authorities admitted that they were “on a fishing expedition.” The library filed a motion to quash the subpoena. A District Court Judge ruled in the library’s favor and quashed the subpoena. Had the library turned over the circulation records, every patron who had checked out a resource about childbirth would have been interviewed and investigated.

During the early 1970’s the library community became aware of the FBI’s Library Awareness Program. During this time period, the FBI developed a system to track the library usage and reading habits of many American citizens and as well as others. The American Library Association publicized the program, confronted the FBI and worked to end the program so library patrons could once again access information without fear of their information gathering habits being monitored and/or recorded.³

From a historical perspective, the library circulation records of those thought to be communists during the McCarthy era were often introduced as evidence. It was during this time period that states began to introduce laws protecting library usage data. At this point, 48 states have state laws that provide various levels of protection for library patrons. In the remaining two states, the Attorneys General have issued opinions that library records should remain private.

Responses of the Library Community

The American Library Association, (ALA) the world’s oldest and largest professional association for Librarians has debated the issues surrounding intellectual freedom, privacy and confidentiality. The results of those debates include a number of policies and procedural documents designed to be models for those in the field.

The association recognizes that in order to carry out the mission of libraries, specifically the circulation of materials, personally identifiable information must be collected and in some cases, that information is linked with library resources. Because of this reality, ALA suggests that libraries:

1. Formally adopt a policy which specifically recognizes its circulation records and other records identifying the name of library users to be confidential in nature.
2. Advise all librarians and library employees that such records shall not be made available to any agency of state, federal, or local government except pursuant to such process, order, or subpoena as may be authorized under the authority of, and pursuant to, federal, state or local law relating to civil, criminal, or administrative discovery procedures or legislative investigative power.
3. Resist the issuance of enforcement of any such process, order, or subpoena until such time as a proper showing of good cause has been made in a court of competent jurisdiction.⁴

By the late 1990’s the vast majority of public libraries offered patrons the option of accessing information via the Internet. Librarians began to tackle the issues of patron privacy and the Internet.

Librarians have a grave concern that patrons will expect to have the same level of privacy and confidentiality when retrieving information from a server that is not under the libraries control. The major issues we are now tackling include:

- educating patrons about the risks of the lack of privacy(identity theft, guilt by reading, etc.)

- Assisting patrons who wish to maintain anonymity during their information seeking sessions.
- Educating young people about privacy in general and privacy as it relates to electronic media.

Because of these issues, ALA has developed a policy document on privacy which aims to guide librarians as they assist patrons. The document, listed below is currently being circulated within the association. The governing body is expected to vote on it during the Summer of 2002.

DRAFT

Privacy: An Interpretation of the Library Bill of Rights⁵

Introduction

Privacy is essential to the exercise of free speech, free thought, and free association. The courts have upheld the right to privacy based on the Bill of Rights of the U.S. Constitution.⁶ Several states provide an explicit guarantee of privacy in their constitutions and statute law.⁷ Further, just as the courts have established a First Amendment right to receive information and to use a publicly funded library, numerous decisions in case law have defined and extended rights to privacy.⁸

Protecting user privacy and confidentiality has long been an integral part of the mission of libraries, library trustees, librarians, and all other library staff. The ALA Code of Ethics has affirmed a right to privacy since 1939. Article III of the current Code (1956) 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.” Existing ALA policies affirm that confidentiality is crucial to freedom of inquiry.⁹ Rights to privacy and confidentiality also are implicit in the Library Bill of Rights’ guarantee of free access to library resources.

Rights of Library Users

The Library Bill of Rights affirms the ethical imperative to provide unrestricted access to information, and to guard against impediments to open inquiry. Article IV states: “Librarians should cooperate with all persons and groups concerned with resisting abridgement of free expression and free access to ideas.” When privacy or confidentiality is compromised, or users fear they might be, freedom of inquiry no longer exists.

In all areas of librarianship, best practice should leave as many choices as possible in the hands of the user. These include decisions about the choice of, access to, and use of information. Lack of privacy and confidentiality has a chilling effect on users’ choices. Because the library belongs to its entire community, individual users may be required to provide a minimal amount of personally identifiable information for purposes of administration (e.g., checking out a book). Policies and procedures should carefully limit both the amount and retention of this data, based strictly on the effective accomplishment of the mission of the library. Users have an expectation, and in many cases a legal right, for their information to be protected and kept private and confidential by library staff, trustees, and service personnel. Users have a right to be free from any unreasonable intrusion or surveillance of their library use.¹⁰

In addition, Article V of the Library Bill of Rights states: “A person’s right to use a library should not be denied or abridged because of origin, age, background, or views.” This precept precludes political or ethnic profiling as a basis for any breach of privacy rights. The American Library Association opposes all attempts to infer an individual’s beliefs or predict behavior from that person’s use of library services, materials, and facilities.

Responsibilities of Librarians

The library profession has a long standing commitment to an ethic of facilitating access to information, not monitoring it. Librarians have a responsibility to maintain an environment respectful and supportive of the privacy of all users. Librarians have a legal and ethical obligation to protect the confidentiality of users’ personally identifiable information regardless of the format or technology used in collecting data. This should include developing and adhering to privacy policies approved by the appropriate governing body. For administrative purposes, librarians may implement appropriate time, place, and manner restrictions on the use of library resources. The collection of personally identifiable information should only be a matter of routine or policy when necessary for the fulfillment of the mission of the library.

Conclusion

The American Library Association affirms that rights of privacy are necessary for intellectual freedom and are fundamental to the ethics and practice of librarianship.

For Further Reading and Works Cited

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Endnotes

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2 Krug, Judith. *The Intellectual Freedom Manual*, 5th ed. Chicago: ALA, 1995. p. 220.

3 Foerstel, Herbert N. *Surveillance in the Stacks: The FBI's Library Awareness Program*. Westport, CT: Greenwood Press, 1991.

4 Krug, Judith. *The Intellectual Freedom Manual*, 5th ed. Chicago: ALA, 1995. P. 155. Note: This policy was adopted January 20, 1971 and revised July 4, 1975 and July 2, 1986. Also see ALA "Code of Ethics," point III: "We protect each library user's right to privacy and confidentiality with respect to information sought or received and materials consulted, borrowed, acquired or transmitted. Point Three is further clarified in a footnote: Point 3 above, means that upon receipt of such process, order, or subpoena, the library's officers will consult with their legal counsel to determine if such process, order, or subpoena is in proper form and if there is a showing of good cause for its issuance; if the process, order, or subpoena is not in proper form or if good cause has not been shown, they will insist that such defects be cured.

5 The American Library Association Intellectual Freedom Committee will submit a draft of *Privacy: An Interpretation of the Library Bill of Rights* to the American Library Association Council for their approval as association policy in June, 2002.

6 See in particular the Fourth Amendment's guarantee of "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," the Fifth Amendment's guarantee against self-incrimination, and the Ninth Amendment guarantee that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." This right is also explicit in Article Twelve of the Universal Declaration of Human Rights: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." See <http://www.un.org/Overview/rights.html>.

7 See <http://www.ala.org/alaorg/oif/privacy.html>

8 Cases recognizing a right to privacy include *NAACP v. Alabama*, 357 U.S. 449 (1958); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Katz v. United States*, 389 U.S. 347 (1967); and *Stanley v. Georgia*, 394 U.S. 557 (1969). Congress recognized the right to privacy in the Privacy Act of 1974, which addresses the potential for government's violation of privacy through its collection of personal information. It states, in part, "[T]he right to privacy is a personal and fundamental right protected by the Constitution of the United States.

9 See these ALA Policies: Policy Concerning Confidentiality of Personally Identifiable Information About Library Users (www.ala.org/alaorg/oif/pol_user.html); Policy on Confidentiality of Library Records (www.ala.org/alaorg/oif/pol_conf.html); Suggested Procedures for Implementing Policy on the Confidentiality of Library Records (www.ala.org/alaorg/oif/sigpolcn.html); Freedom to Read Statement (www.ala.org/alaorg/oif/freeread.html); Libraries: An American Value (www.ala.org/alaorg/oif/lib_val.html); and the newly revised Library Principles for a Networked World (www.ala.org/oitp/prinintro.html).

10 Refer to your state confidentiality statute, available at: www.ala.org/alaorg/oif/privacy.html