



## Confidentiality Policy of the George F. Johnson Memorial Library

New York State library confidentiality law (New York Civil Practice Laws and Rules Section 4509):

“Library records. Library records, which contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems of this state, including but not limited to records related to the circulation of library materials, computer searches, interlibrary loan transactions, reference queries, requests for photocopies of library materials, title reserve requests, or the use of audio-visual materials, films or records, shall be confidential and shall not be disclosed except that such records may be disclosed to the extent necessary for the proper operation of such library and shall be disclosed upon request or consent of the user or pursuant to subpoena, court order, or where otherwise required by statute.”

In keeping with the New York State Civil Practice Law & Rules statute number 4509 and the American Library Association’s Code of Ethics statement, “Librarians must protect each user’s right to privacy with respect to information sought or received, and materials consulted, borrowed or acquired”, the George F. Johnson Library Board has adopted the following Confidentiality Policy:

- a) A valid Four County Library System patron card must be presented in order to transact business on or access a patron record, except in cases where a patron is picking-up a reserve or interlibrary loan. The card being presented must belong to the presenter – patrons may not use cards belonging to other people unless they have been given that card by its owner for the express purpose of signing-out a reserve or interlibrary loan item which the library has notified the requesting patron is available. **ACCESS FOR PURPOSES OF BORROWING OR DIVULGING INFORMATION ON THE PATRON RECORD MAY NOT BE GRANTED BY NAME OR BY VERBAL RECITATION OF THE CARD NUMBER, EVEN IF THE PATRON PRESENTS OTHER IDENTIFICATION.**
- b) No patron may access another patron’s record except parents or legal guardians of patrons under the age of thirteen. Access for parents or legal guardians will be granted only so far as necessary to fulfill the parental obligation of assuring that library items are returned on time, that fines are paid, and that contact information is kept current. Spouses and other family members are not to be granted access to patron records, other than their own, without the express approval of the library director. Parents and legal guardians may not use the cards belonging to their children to borrow items unless the owning child is also present at the time of the transaction. Parents and legal guardians may not use cards belonging to their children to borrow items of an obviously adult nature for the apparent use of the parent or guardian, nor may they borrow items on their children’s cards in order to

- circumvent borrowing limits or to gain access to the library collection if they are not registered borrowers, or if their own accounts are delinquent. The only other exception is in the case of homebound patrons. Such patrons may, by prior arrangement with the library director, designate up to two people who may borrow items for them. A letter formalizing this arrangement, signed by the homebound patron, must be submitted and will be kept on file by the library director. The library director will place a note on the homebound patron's record specifying the name of the designated borrower, and the designated borrower must present the homebound patron's library card or card number in order to transact. Responsibility for items borrowed under this arrangement rests solely with the homebound patron.
- c) Lost cards: Borrowers reporting that they have lost their library card must present valid identification in order to obtain a replacement card. The identification requirement is the same as that required for new patrons applying for a card for the first time.
  - d) Mobile devices: Patron cards scanned into mobile devices are not acceptable for purposes of accessing patron records (Library Board minutes, June 9 2011)
  - e) No patron records will be accessed for any agency of federal, state or local government except pursuant to such process, order, or subpoena as may be authorized under the authority of, and pursuant to, federal, administrative discovery procedures, or legislative investigative power; or as subject to terms of the Foreign Intelligence Service Act/USA Patriot Act.

Interpretation: Staff may not access any patron records by name for any government official or person claiming to be a government official. All requests of this type should be directed to the Library Director or senior staff. Staff members should do no more than give the official a copy of the library policy and point out the posted Confidentiality Law. The library director, attorney, or board President should be contacted as soon as possible in cases of such requests. Note the following FISA/ USA Patriot Act requirements and the appended GFJ Library USA Patriot Act policy.



## FISA/USA PATRIOT ACT CONSIDERATIONS

Even before 9-11, increased visits to libraries by law enforcement agents, including officers of county sheriffs departments and FBI agents, were raising considerable concern among the public and the library community. Our professional ethics require that a patron's personal information be kept confidential. In addition, New York has a strong confidentiality law designed to protect citizens' First Amendment rights. Confidential library records should not be released or made available in any format to a federal agent, law enforcement officer or other person *unless a court order in proper form has been entered by a court of competent jurisdiction after showing good cause* by the law enforcement agency or person seeking the records. The American Library Association gives us the following recommended procedures to prepare staff for law enforcement visits:

### **Before any visit:**

- Designate the person or persons who will be responsible for handling law enforcement requests. In most circumstances, it should be the library director, library manager, or person-in-charge.
- Train all library staff, including volunteers, on the library's procedure for handling law enforcement requests. They should understand that it is lawful to refer the agent or officer to an administrator in charge of the library, and that they do not need to respond immediately to any request.

### **During the visit:**

- Staff should immediately ask for identification if they are approached by an agent or officer, and then immediately refer the agent or officer to the library director or other designated officer of the institution.
- The director or officer should meet with the agent with library counsel or another colleague in attendance (preferred attorneys contact info is appended).
- If the agent or officer does not have a court order compelling the production of records, the director or officer should explain the library's confidentiality policy and the state's confidentiality law, and inform the agent or officer that users' records are not available except when a proper court order in good form has been presented to the library.
- Without a court order, neither the FBI nor local law enforcement has authority to compel cooperation with an investigation or require answers to questions, other than the name and address of the person speaking to the agent or officer. If the agent or officer persists, or makes an appeal to patriotism, the director or manager should explain that, as good citizens, the library staff will not respond to informal requests for confidential information, in conformity with professional ethics, First Amendment freedoms, and state law.

- If the agent or officer presents a court order, the library director or manager should immediately refer the court order to the library's legal counsel for review.(preferred attorney contact info is appended)

**If the court order is in the form of a subpoena:**

- Counsel should examine the subpoena for any legal defect, including the manner in which it was served on the library, the breadth of its request, its form, or an insufficient showing of good cause made to a court. If a defect exists, counsel will advise on the best method to resist the subpoena.
- 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.
- Verify with counsel that Library Board President can be notified.
- Require that the agent, officer, or party requesting the information 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 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.

**If the court order is in the form of a search warrant:**

- A search warrant is executable immediately, unlike a subpoena. The agent or officer may begin a search of library records as soon as the library director or manager is served with the court's order.
- Ask to have library counsel present before the search begins in order to allow library counsel an opportunity to examine the search warrant and to assure that the search conforms to the terms of the search warrant.
- Verify with counsel that Library Board President can be notified.
- Cooperate with the search to ensure that only the records identified in the warrant are produced and that no other users' records are viewed or scanned. ALA recommends gathering the exact information for the agent or officer rather than let them rifle through library databases or records.

**If the court order is either a subpoena or a search warrant issued under the Foreign Intelligence Surveillance Act (FISA) (USA PATRIOT Act amendment):**



- The recommendations for regular subpoenas and search warrants still apply. However, subpoenas and search warrants issued by a FISA court 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.
- If it is a FISA subpoena, then the FISA judge is supposed to fix a “time to respond”, which may a period of days or may be immediately. Like other search warrants, FISA warrants are executable immediately.
- 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 subjects 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 court order and request that the library’s legal counsel be present during the actual search and execution of the court order. Counsel should be consulted to verify that Library Board President can be notified.
- FISA orders may be challenged in court. Librarians should seek legal counsel to determine if circumstances support such a challenge.

**If the order is a National Security Letter (NSL) issued under Section 505 of the USA PATRIOT Act:**

- The recommendations for a regular subpoena still apply. However, like a FISA order, an NSL also contains a gag order. That means that no person or institution served with the NSL can disclose that the NSL has been served or that records have been produced pursuant to the NSL. The gag order does not prevent consultation with legal counsel. Counsel should also be consulted to verify that Library Board President can be notified.
- NSLs may be challenged in court. Librarians should seek legal counsel to determine if circumstances support such a challenge.

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Preferred attorneys: Ellen Bach (518) 487-7600; Joseph Meagher (607-754-0410); or the American Library Association’s Office of Intellectual Freedom (1-800-545-2433 ext 4223).

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