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Confidentiality of Library Records

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ON THE COVER

ALKI founding editor V. Louise Saylor holds a copy of the magazine's first issue, with an Intellectual Freedom theme. Began in 1985, ALKI has seen five editors, three publishers, and a variety of cover illustration styles. WLA thanks all those who have offered ALKI their time, opinions and expertise. May our next ten years be even more exciting!

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Confidentiality of Library Records

by Lewis Miller

Library circulation records have long been of interest to government agencies and private individuals. But only in the last century or so have privacy and confidentiality as societal and legal concepts become widely acknowledged and well supported. In libraries, Wiegand (1994) points out that "For at least 50 years, librarians have been in the forefront of protecting library patron privacy." (p. 102). Furthermore, it has only been in the last twenty-five years that confidentiality of library records has been an issue of central concern and specific policy within the American Library Association (ALA). It has been only within the last 15 years that many states have enacted laws designed to protect the confidentiality of library records.

When one considers the short span of time in which all of these developments have taken place, it is not surprising that there are many undefined areas. What protection do state laws really provide? What types of records are covered by these laws? What types of libraries are covered by state laws? Why are individual library policies important? Should they cover more than circulation records?

The American Library Association, many state libraries and state library associations have been very active in the matter of confidentiality for the last quarter century. The issue began to receive prominent national attention in the spring of 1970. Visits by agents of the U.S. Treasury Department to a number of public libraries brought urgent calls to the ALA Office of Intellectual Freedom. These agents were requesting permission to examine the circulation records of certain books. "On July 21, the ALA Executive Board issued an emergency advisory statement urging all libraries to make circulation records confidential as a matter of policy," (Intellectual Freedom Manual, 1992, p. 129).

With some recommended revisions, this advisory statement was "submitted to the ALA Council at the 1971 Midwinter Meeting in Los Angeles, and was approved on January 20, 1971," (Intellectual Freedom Manual, 1992, p. 131). One of those recommendations is of particular importance. When the Executive Board drafted the advisory statement, there was an urgency in responding to a crisis situation. So the statement addressed only circulation records. Sug-

gestions from Intellectual Freedom Committee members for modifications added the phrase "and other records identifying the names of library users with specific materials," (Intellectual Freedom Manual, 1992, p. 131). Although circulation records were appropriately a primary concern, it was recognized quite early that these were not the only records needing protection.

In 1975, the phrase "with specific materials" (Manual, 1992, p. 132) was deleted from the policy. This action made the policy applicable to all patron records, not just those tied to specific materials. Again, this was specific action to extend the coverage of the policy. A further effort to broaden the scope is found in the Code of Ethics, point 3, which specifies "materials consulted, borrowed, or acquired" (Manual, 1992, p. 126). So we see that the intent has consistently been to extend confidentiality to as many types of records as need the protection.

The development of policy guidelines by ALA has been important in shaping our perceptions of the need for confidentiality and privacy in the library setting. Additionally, library literature is replete with articles on the topic. Many authors issue calls for extending the coverage of confidentiality policies. Hauptman (1990) called for greater sensitivity to "the importance of confidentiality in areas other than access to services" (p. 71). A number of librarians have written persuasive arguments for protection of such activities as online bibliographic searches, ILL records, and the reference interview.

Thirdly, since 1978 over 40 states have enacted laws which specifically address confidentiality of library records. These laws have often been integrated into existing laws as an exemption in state open record laws. A second option has been passage of independent laws specifically addressing library records.

Washington state law is based upon the integrated model. Washington state Title 42 RCW 42.17.310 (1992) lists a number of exemptions to public access to public records. Section 1 reads "Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user" (p. 31).

There are important points to consider about this law. First, it is applicable only to those libraries which produce public records. Public records are produced by agencies of government - city, county, and state - not by private colleges and universities, corporate or other types of private special libraries. "Private or special libraries generally are not included in these laws, probably because their records are private property and are not subject to disclosure under open record laws" (Kennedy, 1989, p. 760). Therefore, many libraries in Washington state are not covered by this law.

Secondly, the law does not specify and clearly intends to not specify which library records are covered. It only sets up criteria for the type of record. Circulation records obviously meet the criteria outlined in the law. There are numerous court decisions around the country and in this state which establish circulation records as the primary beneficiary of laws of this type. As the records which appear to be most vulnerable to privacy abuse they have obtained

the most protection. The case is less clear for other types of library records. Subject to further legal interpretation, other record types may or may not be protected by this statute.

Library order records represent a record type which illustrates several points about laws and the need for individual library policy. Many public libraries have established procedures for patron suggested acquisition requests. In many academic libraries, faculty generate a large number of book order requests. Requestor name is often tied to the order record. Does the fact that a person requests that the library order a particular title indicate that the requestor is also a library user? Washington state law appears to only protect a library user. Particularly in an academic setting where the library usually does not maintain individual initiated registration requests, this could be tricky.

There are at least two examples where public release of information about who ordered a book or books could cause harm to an individual. First is the case of a public library in which a patron requests a particular title be ordered. Should that title later become a target of censors, harm could result should the censors learn the identity of the requestor.

The second instance is in the academic setting. Faculty place requests for the majority of books ordered in many academic libraries. For faculty members being reviewed for reappointment, tenure or promotion, public release of order information would appear at the very least to violate their academic freedom. There is, of course, a great amount of protection for faculty under the aegis of academic freedom. Even so, one wonders if the exemption to open record laws would support confidentiality of order records in a state supported university or college?

Although the passage of state laws, policy statements from ALA, and calls in the literature for greater coverage have all been

vital components of the development of confidentiality protection for library records, it is obvious that this is not enough. Many libraries have already taken that next step by formulating carefully developed policies. In fact, the policy at the University of Illinois at Urbana-Champaign specifically lists "a list of suggested acquisitions submitted by a particular patron" (When are library, 1992, p. 129). Many libraries however have not taken action under the assumption that they are covered by state law when in fact they are not, or that the state law is all they need if they are covered.

Minimally, a policy can ensure that the library staff complies with the applicable privacy legislation. Secondly, many state laws do not pertain to the records of private libraries. Therefore a strong library policy is a must in private libraries and can go a long way toward discouraging invasion of privacy. Third, state laws tend to specifically cover circulation records, but are open to interpretation in the matter of which other records are covered. A local library policy can and should detail more explicitly those records which are considered to be under legal protection.

State laws do not substitute for a local library policy. ALA policy does not substitute for a local library policy. A broadly conceived local library policy on privacy and confidentiality is of vital importance in strengthening protection and helping to define and resolve the issues.

(For references, see page 31.)

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