

**LIBRARIES, THE RIGHT TO PRIVACY, AND
AND EXISTING STATE LAWS** [fordham]

A PROFESSIONAL PAPER

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS

FOR THE DEGREE OF MASTER OF LIBRARY SCIENCE

IN THE GRADUATE SCHOOL OF THE

TEXAS WOMAN'S UNIVERSITY

SCHOOL OF LIBRARY AND INFORMATION STUDIES

BY

JANET FORDHAM

Master's Paper

1994

TEXAS WOMAN'S UNIVERSITY

Denton, Texas

Copyright, c. 1994, Janet Fordham

TABLE OF CONTENTS

ABSTRACT

CHAPTER

I. INTRODUCTION

Statement and Importance of Problem
Purpose and Significance of Study
General Research Question
Subsidiary Research Questions

II. REVIEW OF SELECTED LITERATURE

Introduction
Significant Events in the History of
Intellectual Freedom and Libraries
in America Since 1970
Federal Legislation and Library
Confidentiality
State Legislation and the Confidentiality of
Library Records
The Impact of Computer Technology on
Library Confidentiality
Risks to Confidentiality in Libraries
Practical Suggestions for Protecting Patron
Confidentiality in Libraries
American Library Association Position and
Policy
Research on Confidentiality Issue
Summary

III. METHODOLOGY FOR THE STUDY

Elements of Analysis Used
Definitions
Limitations
Assumptions

IV. RESULTS

Analysis by State of the Six Most Recently Enacted
Confidentiality Laws

Idaho
Mississippi
New Hampshire
Texas
Utah
West Virginia

Combined Analysis of the Six Most Recently
Enacted Confidentiality Laws

V. CONCLUSIONS AND RECOMMENDATIONS FOR
FURTHER RESEARCH

Recommendations for Further Research

SOURCES CITED

APPENDICES

APPENDIX A: CITATIONS OF STATE STATUTES ON
LIBRARY CONFIDENTIALITY

APPENDIX B: STATE LAWS CONCERNING CONFIDENTIALITY OF
LIBRARY RECORDS AS OF JANUARY 1994

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida

Georgia
Idaho
Illinois
Indiana
Iowa
Kansas
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

APPENDIX C: FIRST, FOURTH, FIFTH, AND FOURTEENTH
AMENDMENTS TO THE CONSTITUTION OF THE
UNITED STATES OF AMERICA

APPENDIX D: AMERICAN LIBRARY ASSOCIATION
POLICY ON CONFIDENTIALITY OF
LIBRARY RECORDS

APPENDIX E: ALA GUIDELINES FOR DEVELOPING
A WRITTEN POLICY TO PROTECT THE
CONFIDENTIALITY OF CIRCULATION RECORDS

APPENDIX F: AMERICAN LIBRARY ASSOCIATION
STATEMENT OF PROFESSIONAL ETHICS, 1981

ABSTRACT

LIBRARIES, THE RIGHT TO PRIVACY, AND

AND EXISTING STATE LAWS

BY

JANET FORDHAM

The purpose of this research project was to gather into one source the existing laws of each state in the United States and the District of Columbia as of January 1994 concerning the confidentiality of library usage, thereby providing librarians a basis upon which to deal competently and professionally, not only with governmental officials, but also with library staff and patrons on this important issue. In order to achieve this purpose, the researcher examined state statutes for applicable legislation currently in effect, utilizing the paper volumes located in the Underwood Law Library at Southern Methodist University in Dallas, Texas, as well as the WESTLAW database available through Blagg Huey Library at Texas Woman's University in Denton, Texas. Laws enacted subsequent to, and not addressed in, the thorough analysis by Bruce Kennedy in the Fall 1989 Law Review Journal were then analyzed, duplicating the elements utilized by Kennedy.

Research conducted revealed all states except Hawaii, Kentucky, and Ohio have laws in place as of January 1994 concerning the confidentiality of library usage. Most recently, Idaho, Mississippi, New Hampshire, Texas, Utah and West Virginia have passed confidentiality legislation.

This research project is significant not only because a literature review located no other compilation of current state statutes, but also because the individuals these laws protect remain dependent upon the action of informed librarians. Having access to and knowledge of applicable state laws will help library staff avoid violation of state laws and the penalties imposed, as the library patron's right to privacy is protected in the day-to-day procedures of the library.

Relevant federal legislation and constitutional issues were explored on a limited basis for this study; case law at both the federal and state level were a limitation of the study. The right of privacy for children and wards, inherent within the issue of confidentiality, was also beyond the scope of this paper. The researcher is not an attorney, and no legal advice is intended. If a legal opinion is necessary, a licensed attorney should be consulted.

CHAPTER I

INTRODUCTION

That librarians have a professional responsibility to protect the patron's right to privacy concerning use of the library and its resources is generally accepted. Judith Krug, representing the American Library Association before the House Judiciary Subcommittee on Civil and Constitutional Rights in 1988 stated:

One cannot exercise the right to read if the possible consequences include damage to one's reputation, ostracism from the community or workplace, or criminal penalties. Choice requires both a varied selection and the assurance that one's choice is not monitored (Krug and Penway 1993b, 2).

To guard this right within the library, librarians not only must deal competently with requests to produce information about patron usage of materials and facilities, but must also be aware of procedures within the library which jeopardize the individual's right to privacy. From the early 1950s, first, Soviet spies; later, anti-Vietnam war protesters and civil rights activists; then, members of the Moral Majority; and, more recently, readers of materials on the occult, satanism and witchcraft have all been the target of both individuals and organizations seeking to obtain information through library records.

"Fishing expeditions" were conducted by the FBI and the IRS in the early 1970s in libraries throughout the United States to gather information about suspected foreign spies and subversive groups. Rapidly and decisively, the American Library Association responded by establishing its "Policy on Confidentiality of Library Records" in 1971. The American Library Association, however, has long championed the right to privacy and the concept of intellectual freedom for all library patrons. As early as 1939 it adopted a "Librarian's Code of Ethics" which included the statement that

Librarians must protect each user's right to privacy with respect to information sought or received and materials consulted, borrowed, or acquired (Johnson 1989, 780)

and formed what is now known as its Office for Intellectual Freedom (Krug and Penway 1993b, 1-2).

The American Library Association places the responsibility for protecting the sanctity of the individual's right to privacy squarely on librarians. And, as Nancy Herman, assistant director of the ALA's Office for Intellectual Freedom has stated, "Librarians take their roles seriously" (American Bar Journal 1986, 21). In today's society, as the sheer number of records increase by leaps and bounds, computer technology complicates further efforts to maintain patron confidentiality. Still, the individual's right to privacy must be reconciled with another's need to know. The issue of confidentiality is a significant one for library professionals.

Statement and Importance of the Problem

Librarians must reconcile compliance with requests for library records with the library user's right to privacy and the freedom to read. Threats to patron confidentiality arise daily from loosely-managed information or circulation systems; untrained library staff; lack of a sound policy, or, lack of any policy at all. While librarians today are generally aware of their professional responsibility to protect the patron's right to privacy, it is believed that few know specifically what guidelines state law affords them; and that not all librarians have access to, or take advantage of, legal counsel.

A knowledge and general understanding of state confidentiality laws may provide a basis for librarians to advance the competency of the library profession. Library directors must be prepared to handle requests for information from governmental authorities, work with attorneys to development comprehensive confidentiality policies, train library staff, and support patrons on this issue. Ignorance is no defense.

While all states except Hawaii, Kentucky, and Ohio have laws in place concerning the confidentiality of library usage, these laws and the individuals they protect remain dependent upon the action of informed librarians (Johnson 1989). Indeed, such governmental agencies as the FBI and the CIA have sought to obtain access to information about individuals through their use of the library. As noted by Foerstel (1991), FBI Assistant Director James Greer "has admitted that the FBI . . . has withdrawn its requests when told that they were in violation of state law." Being informed, and acting decisively, can make a difference. Library confidentiality policies and procedures which comply with state laws are both essential and significant, and must be established and enforced by knowledgeable library professionals.

Purpose and Significance of the Study

This research project gathers into one source the laws currently in effect in each state within the United States, including the District of Columbia, concerning the confidentiality of library records and usage as of January 1994. A listing of legal citations for each of the laws was compiled as an aid to individuals with a need or interest in further research in this area.

Additionally, the retrieved statutes were examined to establish which ones were not addressed in the thorough analysis of state laws existing as of 1989 presented by Bruce Kennedy, Head of Reference at Edward Bennett Williams Law Library, Georgetown University Law Center in Washington, D.C. Such laws are then examined, duplicating the elements of analysis utilized by Kennedy.

This research project is significant because a review of library literature uncovered no single source which brings together all laws currently in effect, and provides the actual wording of the laws. While it is true that legislation may well be amended or repealed, the listing of citations furnishes a beginning point for future researchers. This research project is also significant because the resulting access to and knowledge of applicable state laws may help library directors avoid violation of state laws and the penalties imposed, as the library patron's right to privacy is protected in the daily management of the library.

General Research Question

This research project addresses the following major question: What is the current citation and wording of applicable law in each state in the United States and the District of Columbia concerning the confidentiality of library usage?

Subsidiary Research Questions

The following subsidiary research questions have been taken from Kennedy's (1989)

discussion of the statutory protection in effect in forty-one states and the District of Columbia. Each law located as a result of this research study, but not discussed by Kennedy (1989), will be analyzed by addressing these specific questions:

1. Is the law integrated within the state's general open records act, or is it independent of the state's general open records law?
2. What type of library is covered by the law?
3. Are library information or records defined in the law and, if so, what is the definition used?
4. What disclosure procedure is provided under this law?
5. What are the exceptions, if any, to the right to privacy provided under this law?
6. What penalties are imposed on a librarian who violates this law?

CHAPTER II

REVIEW OF SELECTED LITERATURE

Introduction

This review of selected literature focuses on the individual's right to privacy concerning his use of materials and services within the library environment. It considers the history of intellectual freedom and libraries in the United States, and relevant federal legislation; state laws and library confidentiality; the impact of computer technology on the patron's right to privacy; procedures which threaten or protect privacy; and, applicable American Library Association position and policy. One commonality observed throughout library literature has been the importance and necessity of safeguarding the patron's right to confidentiality. Million and Fisher (1986) stress the library functions as a "repository of information" which must protect its patron's intellectual freedom (349). Hauptman (1990) states,

Of all the ethical injunctions and admonitions that now weigh so heavily on information disseminators, none is more imperative than the protection of confidential exchanges (70).

Krug, in testimony in 1988 before a United States Senate Committee investigating the feasibility of enacting the Video and Library Privacy Protect Act declares,

One of the guiding principles of the library profession in this country is intellectual freedom. To librarians, this concept involves two inseparable rights. The first is the First Amendment right to seek and obtain access to all publicly-available ideas and information. The second is the right to have what one has sought and what one has used kept private. The right to information cannot help but be inhibited if personal reading or research interests can and will become known to others without one's own consent (Krug 1988, 228).

Bruce Johnson (1989) warns that without "vigilance on the part of librarians, illegal breaches of confidentiality will readily occur . . ." and states emphatically that patron confidentiality is "dependent on the action of librarians" (800).

Significant Events in the History of
Intellectual Freedom and Libraries in the
United States Since 1970

In 1970 the IRS sought access to library circulation records in an attempt to formulate lists of suspects while investigating the manufacture and use of bombs in the United States (Swan 1983). At that time, ". . . librarians were jolted into the realization [that there are those who] "have, not guardianship and intellectual freedom as their goals, but who seek to expose and judge, for their own political or legal purposes, the reading habits and research topics of the library user" (Grant 1992, 1). The reader is directed to the combined writings of Krug and Penway (1993a) and Schmidt (1988a, 1989) for a broad overview of the history of intellectual freedom and libraries in America.

In 1979 the Export Administration Act was passed and, for first time in the United States, the concept of controlling the export of ideas--information and technology--became law (Schmidt 1989). Consequently, the dissemination of "unclassified" information began to receive consideration, and governmental attention turned increasingly to libraries.

\Schmidt (1989) tells of the federal government's attempts to control presentations and attendance at designated professional conferences. When these endeavors were not highly successful, the government attempted to monitor the papers presented and published as a

result of the conferences. In 1986, the Department of Defense, the Central Intelligence Agency, and the Federal Bureau of Investigation were all seeking names and areas of interest of users of online databases such as Dialog and Chemical Abstracts (Schmidt 1989).

Concurrently, FBI agents began to scrutinize circulation and interlibrary loan records, as well as nonrecorded use, of libraries by Chinese, East European and Cuban individuals suspected of being spies. When FBI agents approached Paula Kaufman, the head librarian of the Math/Science Library of Columbia University in 1987, she notified the Intellectual Freedom Office of the American Library Association. This incident led to exposure and publicity of the FBI's "Library Awareness Program."

An interesting and informative book-length account of the FBI's Library Awareness Program has been written by a University of Maryland librarian actually visited by the FBI in 1986 (Foerstel 1991). Foerstel's position is that

. . . . the FBI has been neither arbitrary nor capricious in pursuing its library surveillance program but has espoused and exploited unfortunate federal executive policies with respect to technology transfer and information control because they seemed to justify and support the Bureau's counterintelligence mission (viii).

A briefer discussion is available as a law review article entitled, "The FBI's Library Awareness Program: Is Big Brother Reading Over Your Shoulder?" (Ault 1990). In it, Ault explains the FBI has conducted a program known as "LAP" since at least the 1970s to gather information about foreign agents who might be using American libraries to collect important but unclassified information. Significantly, both recorded and nonrecorded use of library facilities and resources was mentioned.

Schmidt (1989) also chronicles events in the United States he suggests show a pattern of attempts by the United States government to restrict access to the same unclassified information noted by Ault. He finds such efforts have been justified because of "national security, economic competitiveness, and necessary reductions in government spending" (83), but takes the position that no proof of danger from unrestricted access to unclassified information has been shown. Ault concurs.

Schmidt, Vice President of Research Libraries Group, Inc., also discusses the FBI Library Awareness Program and his subsequent testimony before the House Judiciary Subcommittee on Civil and Constitutional Rights on behalf of the American Library Association (Schmidt 1988a). Foerstel (1991) quotes Schmidt:

The requests of the FBI that library staff monitor and report the use of the library by any patron chills the First Amendment freedoms of all library and database users. The Library Awareness Program is a threat to the fundamental freedom of this nation. If continued, it will seriously and unnecessarily invade the intellectual life of citizens (29).

In response to her question concerning a logical conclusion to the Library Awareness Program, Robbins quotes FBI Director William Sessions as saying, "This is a continuing process. . . ." (Robbins 1988, 502).

Federal Legislation

No federal legislation exists specifically protecting library confidentiality (Wielhorski 1993, Krug and Penway 1993a, Garoogian 1991, Ault 1990). While discussion of federal court cases is beyond the scope of this literature search, a review of the most recent American Law Review Index revealed a plethora of cases concerned with privilege or confidential matters; however, none pertained to libraries. A brief discussion of federal cases is presented by Krug and Penway (1993a); more in-depth coverage is provided by Johnson (1989) and Wilson (1980).

Two federal laws are loosely related: The Buckley Amendment to the Family Education Rights and Privacy Act which gives parents access to school records of their children (American Library Association 1992); and the Freedom of Information Act, basically an "open records" act at the federal level, designed to ensure public access to government records (Krug and Penway 1993b). What this means to the library profession is that, under the Buckley Amendment, a school librarian could be required to produce a child's library records, whereas a public librarian would not (Falsone 1986).

The Privacy Act of 1974 was a result of increasing concern as record-keeping became more and more extensively automated (Crooks 1976, Harter and Busha 1976). The Act,

designed primarily to protect individuals from the misuse of federal records, applies only to those libraries within federal agencies (Harter and Busha 1976). Provisions include:

1. There must be no personal data record-keeping systems whose very existence is secret;
2. There must be a way for an individual to find out what information is in his or her file and how the information is being used;
3. There must be a way for an individual to correct information in his or her records;
4. Any organization creating, maintaining, using, or disseminating records of personally identifiable information must assure the reliability of the data for its intended use and must take precautions to prevent misuse; and,
5. There must be a way for an individual to prevent personal information obtained for one purpose from being used for another purpose without consent. (Krug and Penway 1993a, 5).

The Act was amended in 1988 to prevent:

1. Establishment of a national data bank which would gather information from several federal agencies;
2. Direct linking of computerized systems of records;
3. Computer matching of records not otherwise authorized by law; and
4. Disclosure of records for computer matching, except to a federal, state, or local government agency (Krug and Penway 1993, 5).

Harter and Busha suggest comparable guidelines are needed for libraries to protect patron confidentiality. They remind us that the Act applies to manual as well as automated systems of information storage and retrieval.

Just as the Privacy Act of 1974, both in its original and amended formats, does not refer directly to libraries, the United States Constitution and its amendments do not specifically include the "right to privacy," or refer to the individual's right to have his or her reading choices remain confidential. However, Supreme Court interpretations have found an

implied right of privacy . . . surrounding the First Amendment freedom of

expression, the Fifth Amendment privilege against self-incrimination, the Fourteenth Amendment provision for 'due process' and, above all, the Fourth Amendment protection against unreasonable search and seizure" (Krug and Penway 1993b, 4).

Appendix C of this paper sets forth the wording of these Amendments.

Foerstel (1991) cites Kennedy's constitutional argument in favor of confidentiality of library records, outlined here in five main points:

1. The First Amendment protects against state action that indirectly abridges speech through a 'chilling effect.'
2. Both the right to speak and the right to receive speech are protected.
3. The right to receive speech includes using a library to receive ideas and information.
4. State action that has a chilling effect on using a library violates the First Amendment.
5. The First Amendment protects the confidentiality of library records, because their disclosure would have a chilling effect on the use of library materials (Kennedy 1989, 746).

Kennedy asserts the Supreme Court has not adopted this reasoning, primarily because the right to receive speech has not been established by the Supreme Court. He concludes that constitutional arguments for the confidentiality of library records continue to be theories only and that authoritative judicial decisions must be rendered to move beyond this point.

While several authors briefly discuss the Video and Library Privacy Protection Act of 1988, Foerstel (1991) offers detailed insight into both FBI and ALA positions pertaining the failed federal legislation. Librarians favored the proposed legislation because it broadened the definition of library records from simply "circulation" records to

data-base search records, reference interview records, interlibrary loan records, and other personally identifiable records revealing an individual's use of library materials or services (127);

because it would have protected the eight states without confidentiality laws in place at the time; and, because the legislation would have resolved and strengthened "inconsistencies and occasional inadequacies" in existing state laws (127). The FBI, in turn, strongly opposed the legislation partially because it would have established a court order on the federal level as the standard for disclosure of information. The FBI countered with a disclosure process requiring they submit only a "national security letter" to gain access to library information. Under this procedure, federal law--which would supersede state confidentiality laws requiring a judicial decision to issue a court order--would require only a letter from the FBI asserting a risk to national security. This was totally unacceptable to the American Library Association, and it withdrew support of the proposed legislation. Subsequent legislation adopted contained only protection from disclosure of video rental records (Wielhorski 1993). Optimism concerning future passage of a federal law pertaining to confidentiality of library records and services is minimal (Foerstel 1991).

According to Bruce Kennedy (1989),
 Privacy, like other legal values, is not an absolute right; it must be balanced against competing legal interests. The interests of the library record seeker must be weighed against the privacy interests of the library user (734).

Garooigian (1991) shows the breadth of existing opinion, however, as she bluntly declares:

In all cases . . . the librarian is ethically and legally bound to make every effort to protect the individual's right to privacy no matter how convincing the argument for the release of such information appears in the light of the greater good. . . it is far better for a crime to go unpunished than to have a patron's reading habits revealed by a third party who is the custodian of this information (219).

Garooigian concludes that librarians should lobby for legal recognition of librarian/patron confidentiality.

Schmidt (1989) offers a discussion of the individual's right to privacy versus national security and the public good, concluding the American government has not proven open access to unrestricted information to be dangerous. Wielhorski (1993) cites a three-way

test suggested by legal counsel for American Library Association should be met, including showing "the need is so compelling that the individual's right to privacy should yield to the government's need to know" (22).

Moor (1990) discusses the philosophy of privacy, referring to Warren and Brandeis' oft-quoted analysis and justification for the right to privacy set forth in their 1890 Harvard Law Review article. These two men argued the violation of a person's privacy to be spiritually damaging, but felt this emerging need could not be reconciled with the law of their day because the legal focus then was on material damages, not spiritual ones. Interestingly, the intimidating and distrusted technology of their time was not the computer, but the "insidious" camera.

Moor (1990), in his discussion of privacy, quotes Fried: "Privacy is not simply an absence of information about us in the minds of others, rather it is the control we have over information about ourselves" (74). Moor, however, considers this definition inadequate. He concludes the "most defensible" concept of privacy to be one in which

an individual or group has privacy in a situation if and only if in that situation the individual or group or information related to the individual or group is protected from intrusion, observation, and surveillance by others (70).

He considers one of the appealing features of his "restricted access to privacy" concept to be that it gives technology credit for enhancing privacy, while challenging it to protect privacy. To him, withdrawing money from an automatic teller after normal banking hours is more private than standing in line with people and talking to a human bank teller. Even computer technology, which is often portrayed as the greatest threat to privacy, he says, can strengthen it.

State Legislation and the

Confidentiality of Library Records

To compensate for the lack of specific federal legislation on this issue, forty-seven states and the District of Columbia have now adopted statutes protecting the confidentiality of library records and usage. Only Kentucky, Hawaii, and Ohio have no such laws. Library

users are the ones actually protected by these laws, not libraries per se (Kennedy 1989).

Texas was the first state to have any sort of legal protection for the confidentiality of patron records in the form of an Attorney General's Opinion in 1975. It is, however, the most recent to enact a law. Texas law, which takes the form of an exception to the state's open records laws, became effective September 1, 1993.

State confidentiality laws usually take one of two basic forms: an independent statute, meaning that the law is not incorporated in the state's open records act; or, wording concerning confidentiality of library records and usage imbedded within either definitions or exceptions to the state's open records laws (Kennedy 1989). Both Kennedy and Foerstel (1991) find an integrated statute more complex and difficult to enforce and analyze. Foerstel states directly that internal library policies are very important for libraries in states with integrated confidentiality statutes. Krug and Penway (1993b) explain further,

Direct protection often provides for punitive action and redress if the law is broken, while an exemption from an open public records act is not as easily enforced (5).

The laws vary in the degree to which they clearly refer to library records, or simply refer to any record of a publicly-funded state agency; list exceptions to the law; enumerate exact situations in which information must be divulged; and state penalties imposed for violation. While the laws differ considerably from state to state, all accomplish the same goal: limiting access to library records and usage (Falsone 1986).

For example, definitions of "libraries" and "library records" differ. Some laws actually identify "library records" as "circulation records"; others include registration records which may contain personal information about a patron. Some laws define "library" as in the Michigan Privacy Act:

'Library' includes a library which is established by the state; a county, city, town, village, school district, other local unit of government or authority or combination of local units of governments and authorities; a community college district; a college or university; or any private library open to the public (emphasis added (Million and Fisher 1986, 347).

Others specify "public" libraries only, or ones supported by "public" monies. The American Library Association states that the most common types of publicly-supported libraries are public, school, academic, federal, and state (American Library Association 1992).

Some states are vague, and rely on legal interpretation to decide exactly which libraries fall under the provisions of their laws. Laws which do not specifically prohibit disclosure of information concerning library records and usage may be subject to judicial interpretation and manipulation by determined private citizens or governmental agencies.

Guarding the privacy rights of the patron in reference interviews (Grant 1992, Stover 1987), online searches (Isbell and Cook 1986), and requests for materials through interlibrary loan (Nolan 1993) are among the special areas of concerns library professions seek to have addressed by state legislation. These concerns are valid. Be forewarned: database services are the FBI's favorite library "service" (Foerstel 1991).

Some laws are elaborately detailed. In the District of Columbia, precise procedure to be followed in disclosing confidential information includes the library notifying (by certified mail) a patron within two working days of receipt of a subpoena requesting his or her library records. The patron then has the burden of appearing in court within ten days from the mailing of this notice to explain why the disclosure should not occur. The patron is specifically given the right to representation by an attorney. This same statute allows the patron notification procedure to be waived if a governmental agency demonstrates to a court that such notice might endanger a person, cause flight from prosecution, result in destruction of or tampering with evidence, intimidate a potential witness, or otherwise jeopardize an investigation (D.C. Code Ann. § 37-106.2 (1993)).

Not all libraries fall within the jurisdiction of state confidentiality laws. Such laws do not apply generally to private or special libraries, or archives (Kennedy 1989). Although these libraries can make internal policies concerning non-access to patron circulation records, they, like public libraries, still remain vulnerable to subpoenas issued in accordance with state or federal laws (Kennedy 1989). In Texas, the process of obtaining a subpoena to be served on a public library may be different from the process followed for obtaining records from a private library.

Several articles contain discussion, which invites comparison, of the wording of state laws (Foerstel 1991, Johnson 1989, Kennedy 1989, Million and Fisher 1986, Swan 1983). An additional article by Lincoln (1992) presents the wording of twenty-three of the existing confidentiality laws. Also included is the text of an Oregon Attorney General's opinion issued April 13, 1981, which is of help in understanding the mindset of legislators in Oregon at the time.

The Impact of Computer Technology on

Library Confidentiality

Moor may be correct in his assessment that computer technology has the potential for strengthening privacy, but the consensus found by this literature review is that technology has complicated the issue of the individual's right to privacy. People are wary. They agree with Crooks (1976) when she refers to the "unforgiving and unforgetting record systems" (484) created by computers.

Privacy issues related to computers cause concern outside the library environment as well (Pritchard-Schoch 1993, Amidon 1992, Paul 1991, King and Power 1991). On April 6, 1992, The Wall Street Journal carried a lengthy Special Report entitled "An On-line Discussion Via An Electronic Bulletin Board of the Risks of the Computer Revolution." The discussion involved eleven individuals, including the chairman of the Senate subcommittee on law and technology, a constitutional law professor at Harvard Law School, and a former chief executive of Lotus Development Corp. In the article, one of the participants contends:

. . . we can never know whether a given system is actually trustworthy, with respect to its requirements for . . . data confidentiality. . . Requirements are often wrong; designs are flawed; programs are buggy; hardware is not always operating properly; people are a constant source of difficulties by having cause these problems in the first place, or having maliciously misused a system in such a way as to undermine its expected behavior (R12).

Snapper (1989), also in literature from other than the library field, speaks of computers and the personal right to privacy. He gives two examples of computer misuse viewed as invasions of personal privacy: the unauthorized dissemination of medical records, and

government use of broad personal data files. Johnson (1989) also expresses the apprehension seen on a national level, resulting in the formation of the U.S. Privacy Protection Study Commission. Indeed, as discussed earlier, the Privacy Act of 1974 was an outcome of this concern.

Computers present privacy problems because:

1. More information tends to be accumulated and preserved with computers than without;
2. More points of access exist and, therefore, more points of access must be controlled; and
3. A greater number of people share the information in a computer database than is possible when only one, or even several, hard copies are available (Linowes & Hoyman 1982, 496).

Interestingly, Crooks (1976) points out that computer records tend to contain more mistakes than manual records, and that people are, therefore, concerned that computer printouts, with such potential for error, are treated as "gospel" (484).

Ways to safeguard circulation and borrower records in computers include:

1. Keeping registration files separate from computerized file;
2. Erasing circulation records from files when items are returned; retaining only the number of times an item circulates;
3. Charging materials by an identification number instead of borrower name;
4. Requesting minimum data from patrons, with extra questions, if asked, clearly marked "optional" (Crooks 1976).

As more libraries purchase their first automated circulation software/system, update their old systems, or develop a fully integrated system for a large library, it is important to have a properly designed computer system which will not allow circulation records to accumulate. Krug and Penway remind librarians to include confidentiality requirements which conform to state legislation in "Request for Proposals" or when updating systems. "It is very important to be sure that it is impossible for anyone to reconstruct records once

they have been deleted from the computer's files" (Krug and Penway 1993b, 22). The American Library Association's recent module on technology and confidentiality has a detailed list of items to be included in a "Request for Proposal" (18-20).

In this module, librarians learn that most library computer systems vendors have a "two pyramid structure" to meet security concerns. The first level of access is known as "terminal identification" and, in turn, permits two types of entry. The highest level user will have access to all aspects of the computer system, including its hardware, software, and the ability to designate terminals for specific uses and authorized access levels. The second level of access permits circulation function overrides, and alteration of patron, bibliographic and item records.

The second pyramid is known as "operator identification" and has four subordinate levels. From the highest level of access to the lowest, these levels:

1. Allow total access to software applications, including the ability to give and alter operator passwords;
2. Allow alteration of patron, bibliographic, and item records; and, circulation overrides;
3. Allow access only to circulation functions;
4. Provide for "read only" access to bibliographic records (Krug and Penway 1993b).

Interestingly, a member of the Arizona Maricopa County Sheriff's Department has warned area librarians that the greatest breach of security is, not the computer, but the 3-M Post-It Note. With a password written on it and stuck to a computer, it could seriously compromise security within the library (Horenstein and Schon 1988). In the following section, additional risks to patron confidentiality found in daily procedures and policies will be considered.

Risks to Confidentiality in Libraries

Threats to the confidentiality of patron circulation records arise in the day-to-day operations of libraries from loosely-managed information or circulation systems; untrained library staff (professional, paraprofessional, and clerical); from lack of a sound policy; or, perhaps a lack of any policy at all. While librarians are for the most part

convinced they should not release patron circulation information without following American Library Association recommended procedure, Hauptman (1990), in an effort to sensitize us to potential problems, warns that "the rest of us have been wantonly breaching confidentiality wherever we could" (70-71).

Library staff may be approached by local police, or possibly the FBI. Numerous articles have been published which refer to actual situations threatening the patron's right to privacy (Kniffel 1993, Kniffel 1990, Lee 1986, Fontaine 1981). One New York library director has stated he receives an average of two subpoenas each year from governmental authorities (Kniffel 1990). More likely, requests will come from patrons themselves, or from family members, students, or professors.

A father--wanting to know if his child is using his name, or that of a step-parent's--may present a library director with a challenge to preserve a minor's right to privacy. This researcher found minimal coverage of the issue of confidentiality and children's rights (Hildebrand 1991). It is an area ripe for both problems and research. Inquiries often come from people representing authority, making it all the more difficult for uninformed staff to manage (Crooks 1976). Johnson (1989), Kennedy (1989), and Robbins (1988) tell of governmental officials seeking information who simply go from one library staff person to another, until the "more cooperative clerk" is found.

Horenstein and Schon (1988) remind, also, that certain groups are willing to pay large sums of money to obtain mailing lists patron records generate. Then, too, Gerhardt (1990) chides us concerning gossip about patrons: "It is a fact that we tell each other quite readily what a badge-bearing snoop would have to pry out of us with a warrant" (4).

Other areas of library operation which present problems in maintaining confidentiality include:

1. Manual circulation systems which reveal patron names on charge cards (Stevenson and Anderson 1990);
2. Automated circulation systems which make circulation records much more accessible than possible with manual files (Falsone 1986);
3. Public online catalogs which may make circulation details open to computer glitches or hacking (Hauptman 1990);
4. Reference interviews conducted surrounded by those who hear, whether they want to or not, the information needs of another (Stover

1987);

5. Reference questions asked over Internet (Sawyer 1993);
6. Online search strategies retained by patron name or shared with other researchers (Isbell and Cook 1986, Grant 1992);
7. Overdue notices mailed on postcards with the title of the book exposed (Schuyler 1990); and
8. Completed interlibrary loan forms accessible to library patrons and interlibrary loan materials arranged by patron name in close proximity of patrons who may see borrowers' names displayed (Nolan 1993).

Practical Suggestions for Protecting Patron

Confidentiality in Libraries

Schmidt (1988b) states that for librarians to protect the patron's right of privacy it is imperative that they

- 1) Know their legal rights--obtain the advice of informed and responsible legal counsel knowledgeable about applicable local and state laws;
- 2) With the assistance of legal counsel, develop and review on a regular basis a confidentiality policy to conform with applicable laws;
- 3) Develop and familiarize all staff with procedures to be followed to protect confidentiality of patron circulation records, including the directing all questions to a designated person;
- 4) Support local policy and procedure containing explicit provision for evaluating and challenging as circumstances warrant any court order presented to compel the release of circulation records (180).

The Intellectual Freedom Committee also offers the following guidelines:

- 1) Avoid unnecessary records. Think twice about committing a name to a written record.
- 2) Set a limit on the length of time records are kept and destroy records containing patron information as soon as they are no longer needed.
- 3) Be aware of information on public view due to library procedure (Krug and Penway 1993a, 19).

Time and time again, librarians are urged to be prepared in advance with a well-written

confidentiality policy. Remember Schmidt's advice to retaining legal counsel or assistance. One Colorado attorney stated, "I hate to tell you, but courts do not care a great deal about what the American Library Association says. They never heard of it and could care less" (Garoojian 1991, 226). However, a written policy can serve as the basis upon which to fight a legal process and can be especially helpful in states without specific library legislation, or where the existing law is weak (Kennedy 1989). Rubin (1984) agrees: An internal library confidentiality policy may not be law, but it may well prove invaluable. Established policy may also serve to remove responsibility from the individual library worker, and place it soundly on the institution and its written policy.

Little was found in library literature to explain the legal procedures which ensue when a request for disclosure of confidential information is received. Rubin (1984), however, in a sequential and understandable manner, tells librarians what to expect. He also encourages them to educate attorneys regarding library position and policies. In another article, Janis Lee (1988), director of a public library in Pennsylvania, recounts her actual experiences when faced with protecting the confidentiality of a frequent, "problem" patron who killed three and seriously wounding seven others during a shooting spree at a nearby shopping mall--shortly after visiting the public library. While Lee's experience was disturbing, it underscores the value of knowing and understanding state confidentiality laws, and the need for legislation which covers more than simply "circulation records." The most difficult questions for Lee to field while on the witness stand involved how the individual acted, what reference questions the patron asked, and what items she photocopied--all areas left unprotected at the time by Pennsylvania confidentiality law (Lee 1986). The American Library Association's recently published module on policy development is a sound resource. It advises that a good policy will be short, succinct and specific and should include:

- * Policy objective(s);
- * Designation of a responsible person to enforce the policy;
- * Enumeration of the information to be protected;
- * Steps to identify challenges to the patron's right to privacy;
- * Realistic procedures to implement the policy;
- * Procedure explaining how the policy may be adopted, amended and repealed;
- * Procedure for training new staff and informing patrons

- of the policy; and
- * Circumstances, if any, under which records will be released (Krug and Penway 1993a).

The module also gives direction to involve key individuals in the process of seeing the policy adopted.

One of the best ways to protect against confidentiality challenges is to educate the library staff. Guide staff to see why the right to privacy and intellectual freedom is important. Make staff aware of the scenarios within the library which threaten confidentiality. See that everyone knows the library's policy and to whom questions should be referred. The Office for Intellectual Freedom "suggests that libraries post their confidentiality policy in public view, not only to remind employees of their ethical duty, but also to inform patrons of their rights as well" (Grant 1992, 11). Make it clear the director supports both the policy and the staff. Other specific recommendations for protecting confidentiality of circulation records in a library include:

- * Use numbers instead of names in manual systems, or black out names (if used) as library materials are returned.
- * Erase circulation records in automated systems as each item is returned; use an exclusive identification number for each patron, rather than a Social Security number or name.
- * Send overdue notices in sealed envelopes; do not post lists of patron names and overdue materials.
- * Do not give out titles of interlibrary loan items and reserve books in response to telephone requests from family members/friends.
- * Leave a message for a patron to return a call rather than leaving details with another individual concerning titles or specific information sought.
- * Keep registration records (including patron work phone numbers or Social Security numbers) separate from circulation files.
- * Indicate as "optional" any interest profiles or questions about race, age, or marital status on general information forms which may be given to patrons when applying for a library card. Question whether the information is essential to library administration; keep such information separate from circulation records (Grant 1992).

Perhaps Kennedy (1989) says it best: "Libraries should become information storage

centers for their patrons, and not about their patrons" (766).

AMERICAN LIBRARY POSITION AND POLICY

In 1939, when the American Library Association adopted its "Librarian's Code of Ethics," its position that the librarian is the guardian of the patron's right to privacy was clearly established. Johnson furnishes a thorough discussion of the history of the American Library Association's position concerning confidentiality, complete with extensive references to additional articles which may be helpful to interested readers (Johnson 1989). Harter and Busha (1976) note, though, as a whole, librarians have only recently addressed themselves seriously to the problem of maintaining privacy and confidentiality--the subject heading "privacy" first appeared in Library Literature in 1970.

That same year the American Library Association reaffirmed and strengthened its position by adopting a "Policy on Confidentiality of Library Records" which recommends libraries adopt a formal confidentiality policy; resist surrender of records until legal process has been followed; and insist upon a proper "showing of good cause" before producing requested records (American Library Association 1992). According to Krug and Penway (1993c), all state library associations have followed suit and have such policies in effect.

Since the formation of its Office for Intellectual Freedom, the American Library Association has reported confidentiality problems in its Newsletter on Intellectual Freedom. Other related ALA policies and publications which serve to support and heighten awareness of privacy rights include the Library Bill of Rights, Freedom to Read Statement, the Resolution on Prisoner's Right to Read, Administrative Policies and Procedures Affecting Access to Library Resources and Services, Restricted Access to Library Materials, and ALA's Policy on Governmental Intimidation (Rubin 1984).

Not all, however, consider ALA policy to be realistic and practical. Mark Stover (1987) discusses three problematic areas: 1) the dilemma in reconciling the conflict between privacy and the freedom of information; 2) the lack of penalty for noncompliance with recommended procedures; and, 3) the lack of specificity for use in "real life" situations. Gerhardt (1990), on the other hand, finds ALA policy concerning patron privacy "quite easy to practice when you equate it only with resisting police attempts at invasions of

privacy" (4). For those librarians who work with children, she says, "Fending off the FBI is easier than stonewalling a concerned parent or teacher who wants to help in the serious, positive work of helping young readers to grow" (4). Sheerin (1991) also is vocal in his belief that the American Library Association Library Bill of Rights is "stronger on lofty rhetoric than on realism--and in varying degrees seem absolutist, simplistic, and self-contradictory" (442).

Several note that ALA policy concerning confidentiality of library records is not law (Nolan 1993, Fischer 1988, Rubin 1984, McQuarie 1984). Others see the American Library Association as instrumental in encouraging the enactment of relevant state legislation (Krug and Penway 1993c, Kennedy 1989, Swan 1983).

Despite real or perceived problems with its policies and guidelines concerning confidentiality, the American Library Association has been a catalyst in keeping the issue of confidentiality before librarians and the general public. In time, perhaps, as library professionals press their national leadership for day-to-day assistance in this area, the organization will be responsive and the gap between recommended policy and practical enforcement will lessen.

In November 1993 this researcher contacted Anne Penway of ALA's Office for Intellectual Freedom and, in response, was sent a categorized listing of state confidentiality legislation updated through February of 1990. A state-wide committee formed in Colorado to research privacy laws and proposed legislation after John Hinckley shot President Ronald Reagan in 1981 received similar assistance (McQuarie 1984). Such support is indicative of ALA's willingness to help.

The American Library Association participated in the 1992 White House Conference on Libraries at which time access to information was considered the top priority. By doing so, the American Library Association set an example for all library professionals to become involved and, on a national level, to "help Congress draw the most accurate line possible between individual privacy and the public's right to information" (Pritchard-Schon 1993, 102).

On June 17, 1993, the American Library Association released its Confidentiality in Libraries: An Intellectual Freedom Modular Education Program in response to the need within the library profession for support and guidance in developing and enforcing

relevant library policies and procedures. While there is repetition among the five booklets, concrete and creative suggestions for dealing with confidentiality are presented.

The modules address policy development, technology, legislation, legal and public relations (Krug and Penway 1993b).

Research on Confidentiality

This search of library literature concurs with the recent finding of Grant (1992) that actual research conducted on confidentiality issues, specifically concerning policies and procedures, is minimal. Grant cites the study by Isbell and Cook related to online bibliographic searching as being the only one to have studied confidentiality policies and procedures "in any depth" (8-9).

Grant's survey, which targeted reference departments of college and university libraries in Texas and had a response rate of 83%, reinforced Isbell and Cook's conclusions. She found that approximately 80 percent of the reference librarians surveyed voiced support of the patron's right to privacy, but that record-keeping procedures and policies, pertaining to both recorded and nonrecorded usage, still needed to be established. She states,

Only 5 to 12 percent of the libraries surveyed had written confidentiality policies pertaining to reference or online search situations and only 20 percent of the libraries had written procedures which would protect their patron's privacy in the general reference department or in the online search department (v).

Horenstein and Schon (1988) surveyed eleven public libraries and one university library in Maricopa County, Arizona to determine how these libraries used circulation records and whether privacy of patron records was maintained. Their survey found 50% had established confidentiality policies, a larger percentage than Grant observed, but still revealed a substantial need for heightened awareness of and compliance with ALA policy.

A search of Dissertation Abstracts Online located a study of the confidentiality of Missouri public school library records (Fischer 1988). Fischer's study in April of 1988 sought, in part, to determine if Missouri school librarians were aware of state and federal confidentiality legislation. She questioned respondents concerning their state's confidentiality legislation (enacted during 1986) and the federal Privacy Act of 1974. She concluded respondents were more aware of federal than state privacy laws. She found that 81% had not received a request for information in the last three years, and that most librarians perceived no problem in this area. Librarians in the Arizona survey similarly indicated no problem with patron confidentiality and had no expectation of future problems.

Summary

While numerous articles concerning confidentiality and patron usage of materials and services of libraries exist, actual research located was minimal. There is a need for more research to determine the degree of compliance with ALA suggested policies and procedures, and to understand and act on the reasons behind noncompliance.

Constitutional uncertainty as to the confidentiality of library records and services discussed by Kennedy has led most states to enact legislation. This researcher located two significant articles in library literature discussing relevant state laws which became the foundation and motivation for this study. Lincoln (1992) published the library confidentiality laws of twenty-three states and offered insight into legislative thinking for an additional three states. Kennedy (1989) discussed the development of the movement toward protecting library confidentiality by state legislation, incorporating forty-two state laws for which Johnson (1989) listed legal citations. American Library Association data provided a list of useful citations updated through February 1990. The researcher therefore, seeks to bring this body of information current through January 1994.

CHAPTER III

METHODOLOGY FOR THE STUDY

The purpose of this study was to assemble into one location within the discipline of library and information science the laws in effect as of January 1994 in each state within

the United States and the District of Columbia concerning the confidentiality of library records and usage. Initially, the researcher collected citations of those statutes referenced by Kennedy (1989) and Lincoln (1992). Information from the Office for Intellectual Freedom was helpful in that it confirmed Kennedy and Lincoln's citations; however, no new ones were located by this source. The resulting forty-four citations were, in turn, used to search WESTLAW, a computer legal research database, available at Blagg Huey Library, Texas Woman's University, Denton, Texas.

The researcher retrieved the wording of a state confidentiality law from WESTLAW by two methods when the citation was known:

1. By following the inquiries posed for name and citation for each state by WESTLAW EZ ACCESS, "a research system for new or infrequent" users; or
2. By keying in "fi" and a state postal abbreviation followed by the known citation (i.e., "FI AK ST S 09.25.140" for Arkansas).

The format of the retrieved document indicated at the beginning if the law was in the process of being amended or repealed by the caption, "THIS DOCUMENT HAS BEEN AMENDED. USE > UPDATE TO RETRIEVE THE AMENDING DOCUMENT(S)." If this were the case, the researcher would have the text of the retrieved document on the computer screen and also would be able to enter "UPDATE" and be transferred to a new database called "LEGIS." LEGIS contains updates to existing statutes which WESTLAW has not yet added to appropriate statute databases.

The researcher had no citations for seven states: Hawaii, Kentucky, Mississippi, Ohio, Texas, Utah, and West Virginia. Both WESTLAW and the paper volumes at Underwood Law Library of Southern Methodist University in Dallas, Texas were utilized for data collection from this point forward.

Texas was one of the states for which neither Kennedy, Lincoln, nor the Office for Intellectual Freedom reported a confidentiality law. Previous knowledge by the researcher of recently enacted Art. 6252-17a of Texas' Open Records Act, Vernon's Texas Civil Statutes led to the location of the recodified law in the Texas Government Code. Mississippi law (Miss. Code Ann. § 39-3-365 to 369) was found in both the paper volumes of the 1993 Cumulative Supplement to Mississippi Code 1972 Annotated, and in WESTLAW's Mississippi LEGIS database. Transcription of the language of this law,

found in Appendix B herein, was taken from the paper volumes because the paper volumes were current through 1993 legislative sessions. In contrast, the WESTLAW document retrieved from LEGIS was a part of the 1992 Session Laws and showed a copyright date of 1992.

Relevant Utah law was found by a key word search ("libraries" and "confidentiality") of all state annotated statutes databases. West Virginia law did not emerge from this type of search, but was located in the 1993 Cumulative Supplement West Virginia Code Annotated at Underwood Law Library, and was then found on WESTLAW in the unannotated state statute database by entering "FI WV ST S 10-1-22."

For the three remaining states (Hawaii, Kentucky and Ohio), a search was conducted on WESTLAW using key words in the unannotated statute databases. A descriptive word search, conducted using search words taken from the WESTLAW thesaurus, included terms such as "library," "privacy," "confidentiality," "public," and "records," with truncations and combinations of each. When this procedure resulted in no laws being found, the researcher searched in the paper volumes for each of the three states, using the most current indexes, pocket parts, supplements and legislative reports available. No reference was found to library confidentiality in either Hawaii, Kentucky, or Ohio state laws.

The researcher subsequently contacted the Associate Director of the Dallas County Law Library in Dallas, Texas, and a representative of WESTLAW on its "hotline" service to devise and execute a search strategy for these three states. Both agreed with the researcher's conclusion that there was no existing or proposed law concerning confidentiality of library records and/or usage in these three states.

The researcher has over ten years experience in working closely with attorneys as a legal assistant and a fundamental, but sound, working knowledge of basic database searching. To compensate for not having worked specifically on WESTLAW, she contacted Bruce Muck, the Head of Research Studies at the Underwood Law Library at Southern Methodist University. Mr. Muck gave direction and confirmation that correct procedure was being followed in searching both the paper volumes and WESTLAW. A law librarian/attorney in Dallas also offered general advice. One other attorney, licensed by the State Bar of Texas and practicing in the Dallas area for over twenty years, confirmed the correctness of the researcher's state-by-state analysis of the six laws addressed in the

following chapter and supervised the search for the penalties imposed in these laws.

Three additional remarks may be helpful. First, the format of the listing of citations in Appendix B was taken from The Bluebook: A Uniform System of Citation, 15th Edition, as directed in A Manual for Writers of Term Papers, Theses, and Dissertations by Turabian.

Secondly, an explanation of the format used in Appendix B is in order. Each transcription follows the same format:

1. Name of the state
2. "Preliminary" heading information taken from WESTLAW or the paper volumes so that the reader will know the overall area of law in which the library confidentiality law is located
3. Wording from WESTLAW which demonstrates the current status of the law. (Only Mississippi law is cited from the paper volumes. Information concerning how current the law is was taken from the Preface to the 1993 Cumulative Supplement to Mississippi Code 1972 Annotated.)
5. Citation
6. Text of applicable law. Only relevant portions of the text retrieved by searching as indicated above are transcribed.

Finally, research to gather information concerning penalties imposed against librarians who violate the confidentiality laws in Idaho, Texas, Utah, Mississippi, New Hampshire and West Virginia was conducted under the supervision of a licensed attorney. Penalties discussed in the following section are those enumerated either with the open records laws, or directly imbedded in the confidentiality laws found to be independent of open records laws.

Elements of Analysis Used

In Kennedy's 1989 words, "A single privacy statute can be thoroughly analyzed by using a framework of five elements. . . ." These elements involve statutory design, scope of the privacy right, exceptions to the privacy right, disclosure procedure, and sanctions. Basically, each state privacy law is meant to "limit the reach of state open records laws with respect to library records" (755). These open records laws at the state level are

sometimes referred to as "sunshine" laws.

The first element in Kennedy's analysis--"statutory design"--looks at how the privacy laws interact with open records laws. "With a few exceptions, library privacy laws can be categorized as either independent or integrated statutes" (755). The exceptions would cover those states which have enacted both an independent statute and relevant wording within their open records laws. Consequently,

Subsidiary Research Question 1 reads: "Is the law integrated within the state's general open records laws, or is it independent of the state's general open records law?"

The second element of analysis concerns the "scope of the privacy right." Kennedy measures this by looking at three things: the type of library covered; the records covered; and, the information covered.

Subsidiary Research Questions 2 and 3 in this study deal with the "scope of the privacy right": (2) "What type of library is covered by the law?" and, (3) "Are library records or information defined in the law; if so, what is the definition used?"

Kennedy's third element of analysis involves "disclosure procedures." Here, he is looking for a particular agenda to be followed. In other words, Kennedy is looking, not for the fact that a subpoena may be required before records are produced; but, that a judge, instead of a court clerk, is required to hold a hearing and then make the decision to authorize a subpoena. Principal questions include:

- a) Is a hearing required before records are disclosed?
- b) May a library be represented by an attorney and appear in court to oppose a disclosure request?
- c) Who has the responsibility of explaining why the library records should or should not be disclosed?

Subsidiary Research Question 4 addresses these considerations by asking: "What disclosure procedure is provided under this law?"

The fifth element of analysis applies to "exceptions to the privacy right."

Exceptions provide access to library records under specified circumstances. For example, a subpoena, ostensibly requiring judicial scrutiny, may be required.

Subsidiary Research Question 5, therefore, reads: "What are the exceptions, if any, to the right to privacy provided under this law?" The final element of analysis involves "sanctions for wrongful disclosure." Releasing or divulging records may result in either criminal or civil penalties.

Subsidiary Research Question 6 states: "What penalties are imposed on a librarian who violates this law?"

Definitions

The following definitions will help to clarify this research project.

The "right to privacy" is the claim or privilege of an individual or group to decide when, how, and to what extent personal information is disseminated to others (Snapper 1989).

A "statute" is a law enacted by the legislative branch of a government (Webster's Ninth New Collegiate Dictionary 1990, 1152). Laws enacted at the state level which seek to regulate access to information about a library patron are the focus of this research project and are sometimes referred to as "library confidentiality laws."

"Open records laws" generally describe a state or federal law which specifies that public records are to be made accessible to the public and set forth rules under which the public agency is to provide such records. However, most open records laws also contain substantial restrictions as to what records are excepted from the requirements of the open records laws.

"Disclosure" within a library occurs when patron information reaches a third party who is neither the patron nor library staff (Kennedy 1989), and who is not authorized to have such information. Private citizens, representatives of local law enforcement agencies, and

FBI agents are among those who may approach librarians wanting information about a patron's actions while in the library.

"Recorded use of a library" involves any documentation which, alone or in conjunction with other library records, connects a patron with his or her use of library services or materials. The information may be preserved in written or computerized format and may involve the individual's name or some personal identifying number, such as a driver's license or social security number. Examples of recorded use include checking out a book, ordering materials through interlibrary loan, conducting research on an online database, or placing a hold on a book.

"Nonrecorded use of library" in this study involves any use of a library's services or materials by a person when no written or computerized record connects the patron and services or materials of the library. Examples would include using a photocopy machine, reading a magazine, using the online public access computer, or asking a reference question.

Limitations

There were several limitations to this project. Of primary importance was that the researcher was not an attorney, and no legal advice was intended. Analysis was limited to restatement of the laws in layman's terms, and that to only the newest laws, since Kennedy's article offers an excellent analysis of confidentiality laws through 1989. Another limitation was that no attempt was made to locate or interpret general criminal state or federal statutes concerning penalties which might apply to librarians' disclosure or nondisclosure of confidential information. Federal and state case law was also beyond the scope of this study.

The issue of parent or guardian access to information concerning minor children or wards who use a library was another limitation of the project. Also, the researcher only gathered state library confidentiality laws, and did not address whether or not procedures and policies are being used in libraries to protect the patron's right to privacy.

Assumptions

There were several assumptions of this study. One was that the researcher was adequately prepared to search WESTLAW at Texas Woman's University and the paper volumes at Underwood Law Library. Another was that the collection at Underwood Law Library and the information retrieved from WESTLAW were both current and adequate for this study. Also, it was assumed that most librarians would not have easy access to state confidentiality laws or the time needed to locate the various laws.

CHAPTER IV RESULTS

The purpose of this research project was to gather into one source the existing laws of each state in the United States and the District of Columbia concerning the confidentiality of library records and usage as of January 1994. Also, the research proposed to compile a listing of citations from the laws located. An additional objective was to analyze those statutes found to have been enacted subsequent to, and not addressed in, Kennedy's (1989) article.

This research project discovered confidentiality legislation in all but three states--Hawaii, Kentucky, and Ohio. Confidentiality laws for forty-seven states and the District of Columbia are arranged alphabetically by state in Appendix B. Citations are given alphabetically in Appendix A. Idaho, Mississippi, New Hampshire, Texas, Utah and West Virginia each adopted their laws after the writing of the Kennedy article. Examination of these new laws is based on Kennedy's consideration of confidentiality legislation as of 1989.

Each of the six most recently enacted confidentiality laws at the state level is now considered individually. The numbered format follows that established in the previous listing of subsidiary research questions which is now restated:

1. Is the law integrated within the state's general open records laws, or is it independent of the state's general open records laws?
2. What type of library is covered by the law?
3. Are library information or records defined in the law and, if so, what is the definition used?
4. What disclosure procedure is provided under this law?
5. What are the exceptions, if any, to the right to privacy provided under this law?
6. What penalties are imposed on a librarian who violates this law?

Analysis by State of the Six Most Recently Enacted

Confidentiality Laws

IDAHO
(See Appendix B)

1. This statute is integrated into Idaho's open records laws as an exemption clause.
2. No distinction is made as to type of library.
3. Confidential records or information cited in this statute include the records of a library which reveal the identify of a patron checking out, requesting, or using an item from a library. Library records of contributions of materials which have been given to a library on the condition of anonymity are mentioned.
4. No disclosure procedure is specified.
5. No exceptions to the statute are specifically enumerated within Section 9-340, but at Section 9-342 the law states that an individual may inspect and copy his own personal records of a public agency.
6. Penalty for violation of this statute is found in another section of Idaho's open records laws. At Section 9-344, the civil penalty for "frivolous" refusal of a "public official" to disclosure records when the court rules the records should have been disclosed includes paying reasonable court costs and attorney fees to the prevailing party. Then, at Section 9-345, the law states further that if the refusal to disclose was made "deliberately and in bad faith," a fine "shall" be imposed in an amount up to \$1,000. There is no penalty for wrongful disclosure.

Mississippi

(See Appendix B)

1. The Mississippi statutes concerning the confidentiality of library user records is independent of the state's open records laws.
2. The type of library mentioned specifically is any library funded in whole or in part by public funds.
3. Information considered confidential is information relating to the identity of a person using the library, or using books or other materials at the library.
4. No specific disclosure procedure is cited.
5. Exceptions include:

- a) With the written permission of the user;
 - b) Upon court order;
 - c) Specifically, "aggregate statistics" (with all personal identification removed) may be "released" or utilized by a library for research, planning, or reporting purposes;
 - d) A library, or an agent of the library, can use the library's records to collect fines on overdue materials, or to collect overdue books, documents, films or other items or materials "belonging to" the library.
6. No penalty for violation of the statute is given within the body of Sections 39-3-365 or 39-3-367.

New Hampshire
(See Appendix B)

- 1. This statute is independent of New Hampshire's open records laws.
- 2. The type of libraries mentioned are "public" and "other than public" libraries.
- 3. "Records" are defined as ones which give actual patron names or in some other way identify a person as a user of the library, and include, but are not limited to:
 - a) Library records;
 - b) Library information system records;
 - c) Archival records related to circulation;
 - d) Archival records related to use of library materials; and
 - e) Archival records related to library services.
- 4. No disclosure procedure is specified.
- 5. Paragraph II of this statute states that library records may be disclosed:
 - a) To the extent necessary for proper operation of libraries;
 - b) With the consent of user;
 - c) When a subpoena requires the disclosure;
 - d) When a court order requires the disclosure; or
 - e) Where required by other laws of New Hampshire.

An additional exception to the library user's right to privacy is listed in Paragraph III: General statistical information concerning circulation or use of library materials may be released. However, even though the information is released, the information is still considered "confidential" and is not to be treated "as public knowledge."
- 6. No penalties are specifically stated within the section of the statute applying to the confidentiality of library user records.

Texas

(See Appendix B)

1. Texas law related to the confidentiality of patron use of a library is integrated within the state's open records law.
2. The type of library specified is "a library or library system supported in whole or in part by public funds."
3. Records or information deemed confidential include the records which identify or "serve to identify the person who requested, obtained, or used a library material or service."
4. Specific disclosure procedure is given for the issuance of a subpoena or court order. The subpoena or court order must be obtained as the result of a court hearing before a judge who must sign the subpoena before it becomes valid.
5. Library records which may be disclosed include:
 - a) Those necessary for the operation of library (unless confidential under other state or federal laws);
 - b) An individual's own library records when the individual is the one seeking access. Certain exceptions apply under Subsection (3B) and, in general, these exceptions refer to a situation in which another law (not concerning privacy) would prevail;
 - c) Those requested by a "law enforcement agency or a prosecutor under a court order or subpoena obtained after a showing to a district court" that:
 - 1) "Disclosure of the record is needed to protect the public safety"; or
 - 2) The records are evidence of an offense a specific person committed;
6. Two types of violations are penalized. First, it is a criminal misdemeanor to "distribute" confidential information under Section 552.352. This offense is punishable by up to six months in jail and/or a fine not to exceed \$1,000. Secondly, it is also a criminal misdemeanor to fail to provide, or to refuse to provide, confidential information when disclosure is required by law. The same punishment applies.

Utah

(See Appendix B)

1. Utah's statute pertaining to confidentiality of library records is integrated into the state's open records laws.
2. The only libraries specified are "publicly funded libraries."
3. Records are defined as those which, when examined either alone or with other records, identify a patron.
4. No disclosure procedure is specified.
5. No exceptions are listed.
6. Applicable sanctions appear in other sections of the open records laws. A person who intentionally discloses or provides a copy of a "protected record" is guilty of a class B criminal misdemeanor, and may be punished by imprisonment not to exceed six months, and/or assessed a fine of not more than \$1,000 (Section 76-3-301).

West Virginia
(See Appendix B)

1. This statute is independent of West Virginia's open records act.
2. Public libraries in West Virginia are the only libraries mentioned.
3. Confidential records are defined as circulation and "similar records . . . which identify the user of library materials."
4. No disclosure procedure is specified.
5. Confidential records may be disclosed:
 - a) To members of the library staff in the ordinary course of business;
 - b) Upon written consent of the user;
 - c) Upon written consent of a minor's parents or a ward's guardian;
 - d) Upon presentation of a court order; or
 - e) Upon presentation of a subpoena.
6. No sanctions are provided within the statute itself; however, the law does state a person disclosing material which falls within the exceptions listed here is not liable for having done so. Subsection (b) of Section 10-1-22 also holds that confidential materials disclosed in either an authorized or unauthorized manner under the terms of this statute remain "confidential."

Combined Analysis of The Six Most Recently

Enacted Confidentiality Laws

At the end of 1989, forty-two states and the District of Columbia had adopted some form of confidentiality legislation restricting the examination of library records (Foerstel 1991). In studying the laws, Kennedy (1989) concluded, "Literally, no three of them are alike" (754). In the following section the six most recently enacted laws are combined and then evaluated, incorporating the primary considerations utilized by Kennedy.

Statutory Design

As explained earlier, library confidentiality statutes are either made a part of the state's open records laws or enacted as entirely separate laws. This research project found that Idaho, Texas, and Utah's confidentiality statutes are integrated in each state's open records laws.

Texas library confidentiality law was originally enacted as Article 6252-17a, § 3(a)(24) and (g) of Texas Revised Civil Statutes Annotated and became effective September 3, 1993. However, as Texas is in the lengthy process of recodifying its laws, the legislature subsequently repealed the new confidentiality law, and re-established it in Vernon's Texas Codes Annotated: Government Code at Sections 552.122(24) and 522.123. In reading the current law, one finds the format in the new Government Code has not meshed with the recodified law. Library confidentiality is under a section entitled, "Exception: Curriculum Objectives and Test Items." Time will, undoubtedly, resolve this problem.

Conversely, Mississippi, New Hampshire and West Virginia have passed laws which are independent of each state's open records laws. Kennedy contends, "An independent statute is easier to understand" (755) and ". . . may provide the sounder foundation for a strong library privacy right" (758); Foerstel agrees, finding it simpler and safer" (135). Krug and Penway state, "Direct protection is, of course, preferable" (1993b).

Scope of Privacy Right

The "scope of privacy right" is examined in two ways. First, what type of library is mentioned in the law? Idaho stipulates no specific type of library. The five remaining states have similar laws in that each refers either to "public" monies or "public" libraries. Within this framework:

Mississippi	Refers to "any library funded in whole or in part by public funds";
Texas	Refers to "A library or library system supported in whole or in part by public funds";
Utah	Refers only to "publicly funded libraries."

West Virginia specifies "public libraries." Interestingly, the remaining state, New Hampshire, covers "public" and "other than public" libraries. In comparison, Kennedy found that ten of the forty-two laws he examined made no distinction as to type of library.

This research project found none of the new laws make direct reference to private, special, or archival libraries. Indirectly, however, the New Hampshire law may reach library records of both private and archival libraries, depending upon legal interpretation. Kennedy remarks that private or special libraries are not generally included in confidentiality laws, "probably because their records are private property and are not subject to disclosure under open records laws" (760). He also found no mention of archival libraries.

The second way the "scope of privacy right" is examined is by asking if, and how, library "information" and "records" are defined. Definitions of Library "Information" and "Records" in the Six Most Recently Enacted Confidentiality Laws

Idaho Records which "reveal the identity of a patron checking out, requesting, or using an item from a library"

Mississippi ". . . . information relating to the identity of a person using the library, or

using books or other materials of the library"

- New Hampshire Records which name, or in some other way, identify a patron. (Drafters of this statute include a partial listing of indicative types of records they meant to be covered: library records; library information system records; and, archival records related to circulation, materials, or services)
- Texas Records which identify or "serve to identify the person who requested, obtained, or used a library material or service"
- Utah Those records which, "when examined alone or with other records," identify a patron
- West Va. Circulation records or "similar records" which identify a patron

All six definitions make reference to the "identity" of the patron. West Virginia's approach is the most general: it merely refers to records as being "circulation" or "similar." Utah adds the possibility of a library record being combined with additional information to identify a patron. Mississippi, the only state to use the term "information," also broadly talks of using either the library, or the materials belonging to the library. Idaho and Texas go a step further in that they include, respectively, the phrases "checking out, requesting, or using an item from the library" [emphasis added] and "requested, obtained, or used a library material or service" [emphasis added]. New Hampshire includes the more comprehensive listing of the six.

While none of the new laws refer directly to computer databases, New Hampshire's "library information system records" comes close. Texas law, too, reaches patron usage of a library "service" which could also be interpreted to denote online search capabilities which are increasingly available as a service in libraries today.

All encompass recorded information in some format; none seem to cover verbal disclosure about records, a tactic the FBI tried in 1989 (Foerstel 1991). Significantly, the Mississippi statute includes "nonrecorded" use of the library, such as just being in the library or, perhaps, using the copier.

Disclosure Procedures Required

Texas law is the only one of the six to provide a procedure to be used in issuing a subpoena or court order. Library records requested by a law enforcement agency or prosecutor are to be obtained after a "showing to a district court," at which time the law enforcement agency or prosecutor has the burden of proving either 1) disclosure of the record is necessary to protect the public safety, or 2) the library record is evidence of an offense a particular person has already committed. "Showing to a district court" indicates a court hearing before a district judge. A requirement of prior notice of the hearing is not indicated. Mississippi and West Virginia both list consent of the user as a situation under which disclosure is allowed. They both require such consent to be in writing. Of the six newest laws, Texas contains the only judicial safeguards to minimize the possibility of imprudent disclosure by requiring a judge to issue a subpoena. Unfortunately, Kennedy says, most laws make no provision for procedure to be followed in issuing a subpoena or court order. Subsequently, "the general court rules and statutes governing civil and criminal procedure will dictate how these orders will issue" (764).

Exceptions to the Privacy Right

Most states permit some access to library records, with the most frequent exception being that they may be released pursuant to a subpoena or court order. This research project reveals one of the six new statutes allows no express exceptions (Utah), whereas Kennedy found only one of forty-two states had drafted its law with exceptions given.

In theory, requiring a subpoena or court order places the responsibility for issuance of the subpoena or court order upon an independent person more likely legally to protect confidentiality. Mississippi, New Hampshire, Texas and West Virginia provide for this legal standard. Mississippi requires only a court order. New Hampshire, West Virginia, and Texas call for either a court order or a subpoena. Again, Texas has the only procedural requirements (discussed in the previous section). Texas appears to provide the greater degree of protection, but "represents a minimalist solution to the problem of library privacy" (Kennedy 1989, 762).

Do the Six Newest Laws Give Direction Concerning the
Release of Library Records in the Following Situations?

State*	Upon Presentment Of Subpoena Or Court Order	With Parental Release of Child's Records	For Ordinary Operation Of Library	With Patron Consent
MS	Court Order	No	Yes	Yes
NH	Both	No	Yes	Yes
TX	Both	No	Yes	Yes
UT	No	No	No	No
WV	Both	Yes	Yes	Yes

* State postal abbreviations are used.

Whereas Kennedy found several states which allow the disclosure of a child's library records, this study found only West Virginia to have such an exception. Consent must be "written." The same proviso is made for a guardian and ward.

Another exception permits disclosure of records when necessary for the operation of the library. Again, Utah makes no such exception; Idaho does likewise. Four states--Mississippi, New Hampshire, Texas, and West Virginia--allow for release of library records for this reason. Wording varies: "aggregate statistics with all personal identification removed" may be disclosed in Mississippi, as well as, data needed to collect fines on overdue materials. General statistical information concerning circulation or use of materials is permitted in New Hampshire. Information may be used by "library staff" in West Virginia. New Hampshire is the only state to specify that released

information is still "confidential" and is not for use by the "general public." Texas qualifies its exception with the phrase, "unless confidential under other state or federal laws." New Hampshire, conversely, says disclosure is allowed "where required by other laws of New Hampshire." Mississippi's provision about materials "belonging to" a library might possibly exclude books circulated by a library under a rental arrangement such as the McNaughton Plan.

Common sense would seem to dictate the final exception, that of when a patron gives his or her consent to the disclosure. Utah is the only state silent on this issue, perhaps because it considers this to be implied. Patron consent is the only exception Idaho enumerates: A library patron may "inspect and copy" his own library records.

Texas law permits library records to be disclosed to an individual when he or she is the one requesting the record. Texas law also recognizes some situations exist in which even the individual cannot receive his or her library records. This is covered in Section (3B) and occurs, generally, when another law, having nothing to do with confidentiality, controls. West Virginia, Mississippi, and New Hampshire each permit disclosure "with patron consent," with written consent being required by West Virginia and Mississippi.

In summary, the most commonly allowed disclosures are:

- * With patron consent (5 out of 6 states);
- * By presentment of a court order or subpoena (four of six);
- * For the ordinary operation of a library (four of six).

Only one of the six new laws specifically allows a parent to give consent for release of a child or ward's library records. None address the situation in which a private citizen seeks library records of another individual.

Sanctions for Wrongful Disclosure

What happens to the librarian who releases patron records or information which state law has deemed confidential? Kennedy concluded that "only a few statutes expressly address the matter of liability" (765). Findings of this study are similar. Four of the six states (New Hampshire, Texas, Utah, and Mississippi) make no explicit statement concerning

sanctions within the law itself. In the case of New Hampshire and Mississippi, no punishment was immediately apparent within or nearby library-related statutes. Extensive research to locate general punishment statutes which would apply for New Hampshire and Mississippi was beyond both the scope of this research project and the expertise of the researcher.

West Virginia law is one of the two which, in some way, make reference to a librarian's potential liability. This law contains no statement of punishment assessed, but instead stipulates a person who properly releases library records under the statute's enumerated exemptions is not liable for doing so.

Idaho is the other state to include a statement concerning liability. Sections of law adjacent to Idaho confidentiality law contain applicable sanctions. Wrongful nondisclosure--not releasing records when it would be proper to do so--is punishable as a civil crime. Reasonable attorneys' fees and court costs are awarded paid to the prevailing party. If a librarian is found to have withheld the information in "bad faith," a fine of not more than \$1,000 "shall" also be imposed, to be paid into the General Fund of the state.

Two of the three states with library confidentiality laws integrated into their open records laws (Texas, Utah, and Idaho) each impose a penalty on the librarian violating disclosure guidelines. In Utah, violation of the confidentiality laws is found to be a class B criminal misdemeanor at Section 63-2-801 of the open records laws. A person who lawfully has access to confidential library records and intentionally discloses this information, knowing it is wrong to do so, "may" be punished by imprisonment in jail up to six months and/or assessed a fine not to exceed \$1,000 (Section 76-3-301).

Texas law is similar. The exception to the open records laws pertaining to library records is found at Sections 552.122 and 552.123 of the Government Code. Relevant punishment is located in another area (Section 552.352). The law states if a librarian "distributes" information which is considered by Texas law to be confidential, the action is a criminal misdemeanor punishable by a fine not to exceed \$1,000 and/or six months in jail. Section 552.353 finds that if a librarian with criminal negligence refuses to disclose information which legally should be disclosed, an identical punishment may be assessed.

Idaho, Mississippi, New Hampshire, Texas, Utah, and West Virginia confidentiality laws are significantly diverse in the approach each takes to protect the library patron's right to

privacy. In the following section, conclusions will be drawn and suggestions given for possible future research.

CHAPTER V CONCLUSIONS AND RECOMMENDATIONS FOR FURTHER RESEARCH

To guard the patron's right to confidentiality in a capable and professional manner, librarians need to know and understand both American Library Association position and policy, and applicable state law. This study has found that library confidentiality laws currently exist in all states except Hawaii, Kentucky and Ohio; and that these laws vary significantly in statutory design, scope, disclosure procedure provided, exceptions allowed, and sanctions imposed.

This researcher concludes, also, that, in working with a state's library confidentiality laws, legal interpretation and guidance is essential for the librarian. For example, in the new Mississippi confidentiality law discussed in the previous section, it was stated that no penalty for violation of the statute is given within the body of Sections 39-3-365 or 39-3-367. This is true; however, in another section of the law dealing with libraries, penalty is set for "unauthorized removal . . . of library materials." Embedded in a definition of "library materials" is this wording:

. . . and other personal property which is the property or in the custody of or entrusted to a public or private library . . . (Sec. 39-3-305).

The statute appears to be referring to materials which would be loaned to patrons by the library; but, depending upon legal interpretation, this section might conceivably apply to disclosure of library records. Such "unauthorized removal" is punishable by a fine of not more than \$500 or by imprisonment in the county jail for not more than six months, or both (Sec. 39-3-309). Most librarians will not know how to interpret this law. Legal opinion should be sought.

The reader is reminded that state legislatures do update, amend, codify and otherwise change their laws. Local attorneys can assist a librarian concerning new developments in the law and in the establishment of strong policies and procedures which conform with established legal guidelines. In turn, these policies and procedures must be imparted to

staff (professional, paraprofessional, and clerical) and patrons.

Recommendations for Further Research

Several suggestions for future studies can be made. An interesting study could be undertaken to see just how important an issue librarians consider confidentiality to be; and how they balance the ethical, social, and legal concerns involved.

Another study might address whether or not librarians agree with ALA policy, and if they consider it to be practical and enforceable. What changes do they see as necessary? Do they feel the ALA should be more aggressive in educating librarians and in requiring compliance with their policy? Should the ALA impose penalties for noncompliance with its policy on confidentiality, and if so, what suggestions do they have for enforcing compliance?

More research should be conducted to determine not only if librarians are writing and enforcing policies and procedures concerning the confidentiality of both recorded and nonrecorded library use, but also specifically whether or not policies and procedures are being written with an awareness of existing state confidentiality laws and if the protections provided by the state laws are intentionally being incorporated into new procedures and policies.

It would also be helpful to study how librarians learn of newly-enacted state legislation or changes in existing confidentiality laws. How, then, does new legislation impact existing policies and procedures? Are attorneys, in reality, consulted in the drafting or implementation of, confidentiality policies and procedures?

Another area of research might involve finding out how many librarians have actually been approached with requests for what they knew to be confidential library records or information. How many have been charged or threatened with violation of state confidentiality laws? What was the outcome? What support--emotional, legal, and financial--has been offered, and by whom? Are state library associations or local groups more likely to be supportive than ALA? Which group is most likely to inform librarians

of changes in relevant state legislation, and to offer assistance in interpreting and integrating changes into institutional policies and procedures?

Then, too, actual court cases interpreting confidentiality law could be compiled and a study undertaken comparing judicial decisions or interpretations. Information from this research project could provide insight into the effectiveness of existing confidentiality laws and might indicate certain changes to be in order.

Another study might research existing Attorney General Opinions in Hawaii, Kentucky, and Ohio. How does each state's Attorney General view library records? Another question: Have bills related to library confidentiality been brought before the House or Senate, and, if so, what has been the response to them?

Two further studies are suggested. An interesting study might involve what librarians think of the FBI's Library Awareness Program and a survey of how it has impacted the establishment of procedures and policies. Finally, although confidentiality laws exist in all but three states, these laws do not designate the age at which a person has the right to privacy or when a parent is no longer responsible for the materials a child checks out from a library. Children's confidentiality rights should be researched to see if librarians perceive this to be a problem area, and if so, how the issue is being addressed.

SOURCES CITED

American Library Association. Office for Intellectual Freedom. 1992. Intellectual freedom manual. 4th ed. Chicago: American Library Association.

Amidon, Paige. 1992. Widening privacy concerns. Online 16 (July): 64-68.

Ault, Ulrika Ekman. 1990. The FBI's Library Awareness Program: Is Big Brother reading over your shoulder? *New York University Law Review* 65 (December): 1532-1565.

The Bluebook: A uniform system of citation. 15th ed. 1991. Massachusetts: Harvard Law

Review Association.

Crooks, Joyce. 1976. Civil liberties, libraries, and computers. *Library Journal* 101 (February 1): 482-487.

Falsone, Anne Marie. 1986. Privacy of circulation files. *Journal of Library Administration* 7 (Winter): 19-23.

Fischer, Katheryne Viola. 1988. The confidentiality of library records in Missouri public schools. M.L.S. thesis, Central Missouri State University.

Foerstel, Herbert N. 1991. *Surveillance in the stacks: The FBI's Library Awareness Program*. New York: Greenwood Press.

Fontaine, Sue. 1981. Dismissal with prejudice. *Library Journal* 106 (June): 1273-1277.

Garoogian, Rhoda. 1991. Librarian/patron confidentiality: An ethical challenge. *Library Trends* 40 (Fall): 216-233.

Gerhardt, Lillian N. 1990. Ethical Back Talk: III. *SchoolLibrary Journal* 36 (June): 4.

Grant, Susan Marie. 1992. The confidentiality policies and procedures of the reference departments in Texas academic libraries. M.L.S. thesis, Texas Woman's University.

Harter, Stephen and Charles Busha. 1976. Libraries and privacy legislation. *Library Journal* 101 (February 1): 475-481.

Hauptman, Robert. 1990. A brief note on confidentiality. *Wilson Library Bulletin* 65

(November): 70-71.

Hildebrand, Janet. 1991. Is privacy reserved for adults? *School Library Journal* 37 (January): 21-25.

Horenstein, Tova and Isabel Schon. 1988. Maintaining privacy of patron records: A survey of Arizona librarians, practices and attitudes. *Technicalities* 4 (May): 10-12.

Isbell, Mary K. and M. Kathleen Cook. 1986. Confidentiality of online bibliographic searches: Attitudes and practices. *RQ* 25 (Summer): 483-486.

Johnson, Bruce S. 1989. "A more cooperative clerk": The confidentiality of library records. *Law Library Journal* 81, (Fall): 769-804.

Kennedy, Bruce M. 1989. Confidentiality of library records: A survey of problems, policies, and laws. *Law Library Journal* 81 (Fall): 733-767.

King, Alan and Central Maine Power. 1991. Revisited: The rise and fall of Lotus MarketPlace. *Online* 15 (July): 102-104.

Kniffel, Leonard. 1993. Library's Show Me held as evidence in child porn case. *American Libraries* 24 (June): 466-67.

_____. 1990. Police subpoena library records in hunt for NYC's Zodiac killer. *American Libraries* 21 (September): 703+.

Krug, Judith F. 1988. Quoted in Rhoda Garoogian. Library patron confidentiality: An ethical concern. *Library Trends*, 30 (Fall): 216-233.

Krug, Judith F., and Anne Levinson Penway. 1993a. Confidentiality in libraries: An intellectual freedom modular education program. Module I, Policy development. Chicago: American Library Association.

_____. 1993b. Confidentiality in libraries: An intellectual freedom modular education program. Module II, Technology and confidentiality. Chicago: American Library Association.

_____. 1993c. Confidentiality in libraries: An intellectual freedom modular education program. Module IV, Using the legislative process. Chicago: American Library Association.

Lee, Janis M. 1988. Confidentiality: From the stacks to the witness stand. *American Libraries* 19 (June): 444-449.

Lincoln, Alan Jay. 1992. State statutes on confidentiality of information. *Library & Archival Security* 11: 49-77.

Linowes, David and Michele M. Hoyman. 1982. Data confidentiality, social research and the government. *Library Trends* 30 (Winter): 489-503.

McQuarie, Heather. 1984. Library confidentiality for the other half. *American Libraries* 15 (May): 332-333.

Million, Angela C. and Kim N. Fisher. 1986. Library records: A review of confidentiality laws and policies. *The Journal of Academic Librarianship* 11 (January): 346-349.

Moor, James H. 1990. The ethics of privacy protection. *Library Trends* 39 (Summer/Fall): 69-82.

Nolan, Christopher W. 1993. The confidentiality of interlibrary loan records. *The Journal of Academic Librarianship* 19 (May): 81-86.

Paul, Nancy. 1991. For the record: Information on individuals. *Database* 14 (April): 15-23.

Pritchard-Schoch, Teresa. 1993. The right to government information about individuals: The privacy issue revisited. *Online* 17 (March): 99-102.

Robins, Natalie. Spying in the stacks: The F.B.I.'s invasion of libraries. *The Nation* 246 (April): 481+.

Rubin, Richard. 1984. The threat to library circulation records: A case study. *Library Journal* 109 (September): 1602-1606.

Sawyer, Deborah C. 1993. A matter of confidence: Asking reference questions over the Internet. *Online* 17 (July): 8-9.

Schmidt, C. James. 1988a. ALA testimony on FBI "Library Awareness Program." *Newsletter on Intellectual Freedom* 37 (September): 145+.

_____. 1988b. Confidentiality of library records: Renewed concerns. *Library Administration and Management* 2 (September): 179-180.

_____. 1988c. Quoted in Herbert Foerstel. *Surveillance in the stacks: The FBI's Library Awareness Program*. New York: Greenwood Press.

Schmidt. 1989. Rights for users of information: Conflicts and balances among privacy,

professional ethics, law, national security. In *The Bowker Annual Library and Book Trade Almanac 34th Edition 1989-90*, 83-90. New York: R.R. Bowker.

Schuyler, Michael. 1990. Systems librarian and automation review. *Computers in Libraries* 10 (June): 23-28.

Sheerin, William E. 1991. Absolutism on access and confidentiality: Principled or irresponsible? *American Libraries* 22 (May): 440-444.

Silas, Faye A. 1986. An open book?: Library privacy guarded. *ABA Journal* 72 (March): 21.

Snapper, John W. 1989. On whether a misuse of computer technology is a violation of personal privacy. In *The Information web: Ethical and social implications of computer networking*, 71-86. Boulder: Westview Press.

Stevenson, Marsha J. and Paul M. Anderson. 1990. Circulation services. In *Technical services today and tomorrow*, compiled by Michael Gorman, 143-156. Englewood: Libraries Unlimited.

Stover, Mark. 1987. Confidentiality and privacy in reference service. *RQ* 27 (Winter): 240-244.

Swan, John C. 1983. Public records & library privacy. *Library Journal* 108 (September): 1645-1650.

Webster's ninth new collegiate dictionary. 1990. Springfield, Massachusetts: Merriam-Webster.

Wielhorski, Karen. 1993. Confidentiality of library records: A Texas concern. *Texas Library Journal* 69 (Spring): 19-23.

Wilson, Mark K. 1980. Surveillance of individual reading habits: Constitutional limitations on disclosure of library borrower lists. *The American University Law Review* 30: 275-321.

APPENDIX A

CITATIONS FOR THE STATE STATUTES ON
THE CONFIDENTIALITY OF LIBRARY RECORDS

Alabama	Ala. Code §§ 36-12-40, 41-8-9 to -10 (1993)
Alaska	Alaska Stat. § 09.25.140 (1993)
Arizona	Ariz. Rev. Stat. Ann. § 41-1354 (1993)
Arkansas	Ark. Code Ann. §§ 13-2-701 to -706 (Michie 1993)
California	Cal. Gov't Code §§ 6254(j), 6267 (West 1993)
Colorado	Colo. Rev. Stat. §§ 24-90-119, 24-72-204(3)(a)(VII) (West 1993)
Connecticut	Conn. Gen. Stat. Ann. § 11-25 (West 1993)
Delaware	Del. Code Ann. tit. 29, § 10002(d)(12)(1992-93)
District of Columbia	D.C. Code Ann. § 37-106.2 (1993)
Florida	Fla. Stat. Ann. §§ 257.261, 775.082 (West 1992)
Georgia	Ga. Code Ann. § 24-9-46 (1993)
Hawaii	No law as of January 1994
Idaho	Idaho Code §§ 9-340, 9-342 (1993)
Illinois	Ill. Ann. Stat. ch. 75, para. 70/1, 70/2 (Smith-Hurd 1993)
Indiana	Ind. Code Ann. § 5-14-3-4 (West 1993)
Iowa	Iowa Code Ann. § 22.7(13) (West 1992)
Kansas	Kan. Stat. Ann. § 45-221(a)(23) (1992)
Kentucky	No law as of January 1994
Louisiana	La. Rev. Stat. Ann. § 44.13 (West 1993)
Maine	Me. Rev. Stat. Ann. tit. 27, § 121 (West 1993)
Maryland	Md. Code Ann., Educ. § 23-107 (1993) Md. Code Ann., State Gov't § 10-616(e) (1993)
Massachusetts	Mass. Gen. Laws Ann. ch. 78, § 7 (West 1992)
Michigan	Mich. Comp. Laws Ann. §§ 397.601 to .604 (West 1993)
Minnesota	Minn. Stat. Ann. § 13.40(2) (West 1993)
Mississippi	Miss. Code Ann. §§ 39-3-365 to -369 (1993)
Missouri	Mo. Ann. Stat. §§ 182.815, 182.817 (Vernon 1992)
Montana	Mont. Code Ann. §§ 22-1-1101 to -1103, 22-1-1111 (1993)
Nebraska	Neb. Rev. Stat. § 84-712.05(10) (1992)

Nevada	Nev. Rev. Stat. § 239.013 (1993)
New Hampshire	N.H. Rev. Stat. Ann. § 201-D:11 (1992)
New Jersey	N.J. Stat. Ann. §§ 18A:73-43.1 to -43.3 (West 1993)
New Mexico	N.M. Stat. Ann. §§ 18-9-1 to -6 (Michie 1993)
New York	N.Y. Civ. Prac. L. & R. 4509, 2307 (McKinney 1993)
North Carolina	N.C. Gen. Stat. §§ 125-18 to -19 (1993)
North Dakota	N.D. Cent. Code § 40-38-12 (1993)
Ohio	No law as of January 1994
Oklahoma	Okla. Stat. tit. 65, § 1-105 (West 1993)
Oregon	Or. Rev. Stat. § 192.501(10) (1991)
Pennsylvania	Pa. Stat. Ann. tit. 24, § 4428 (1992)
Rhode Island	R.I. Gen. Laws § 38-2-2(d)(21) (1993)
South Carolina	S.C. Code Ann. §§ 30-1-10, 30-4-20(c), 60-4-10 to -30 (Law. Co-op. 1991)
South Dakota	S.D. Codified Laws Ann. § 14-2-51 (1993)
Tennessee	Tenn. Code Ann. §§ 10-8-101 to -103 (1993)
Texas	Tex. Gov't Code Ann. § 552.122(3)(a)(24), 552.123 (West 1993)
Utah	Utah Code Ann. § 63-2-302(1)(c) (1993)
Vermont	Vt. Stat. Ann. tit. 1, § 317(b)(19) (1992)
Virginia	Va. Code Ann. § 2.1-342(B)(8) (Michie 1993)
Washington	Wash. Rev. Code Ann. § 42.17.310 (West 1992)
West Virginia	W. Va. Code § 10-1-22 (1993)
Wisconsin	Wis. Stat. Ann. § 43.30 (West 1993)
Wyoming	Wyo. Stat. § 16-4-203(d)(ix) (1993)

APPENDIX B
STATE LAWS CONCERNING
CONFIDENTIALITY OF LIBRARIES

Please note the following information concerning the format of the transcribed statutes:

1. The name of the state is given first.
2. Next, statute headings, titles, and subtitles are furnished to provide the reader with a point of reference in knowing the location of the confidentiality law within each state's legislative recordation system.
3. Currentness is indicated for those statutes found by searching WESTLAW during January 1994.
4. Only applicable law is transcribed.

ALABAMA**CODE OF ALABAMA 1975
TITLE 36. PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 12. MAINTENANCE, USE, ETC. OF
PUBLIC PROPERTY, RECORDS, ETC.
ARTICLE 3. INSPECTION AND COPYING OF RECORDS**

**Current through Act 93-928, approved 9-2-93
Ala. Code § 36-12-40 (1993)**

§ 36-12-40 Rights of citizens to inspect and copy public writings; exception for public library registration and circulation records.

Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. Provided however, registration and circulation records and information concerning the use of the public, public school or college and university libraries of this state shall be exempted from this section. Provided further, any parent of a minor child shall have the right to inspect the registration and circulation records of any school or public library that pertain to his or her child.

**CODE OF ALABAMA 1975
TITLE 41. STATE GOVERNMENT
CHAPTER 8. ALABAMA PUBLIC LIBRARY SERVICE
ARTICLE 1. GENERAL PROVISIONS**

**Current through Act 93-928, approved 9-2-93
Ala. Code §§ 41-8-9 to -10 (1993)**

s 41-8-9 "Registration records" defined.

As used in section 41-8-10, the term "registration records" includes any information which a library requires a patron to provide in order to become eligible to borrow books and other materials, and the term "circulation records" includes all information which identifies the patrons utilizing particular books and any other library materials in any medium or format.

s 41-8-10 Registration, etc., records of public libraries to be confidential; right of parents to inspect records.

It is recognized that public library use by an individual should be of confidential nature. Any other provision of general, special or local law, rule or regulation to the contrary notwithstanding, the registration and circulation records and information concerning the use of the public, public school, college and university libraries of this state shall be confidential. Registration and circulation records shall not be open for inspection by, or otherwise available to, any agency or individual except for the following entities: (a) the library which manages the records; (b) the state education department for a library under its jurisdiction when it is necessary to assure the proper operation of such library; or (c) the state public library service for a library under its jurisdiction when it is necessary to assure the proper operations of such library. Aggregate statistics shown from registration and circulation records, with all personal identification removed, may be released or used by a library for research and planning purposes. Provided however, any parent of a minor child shall have the right to inspect the registration and circulation records of any school or public library that pertain to his or her child.

ALASKA

**ALASKA STATUTES
TITLE 9. CODE OF CIVIL PROCEDURE.
CHAPTER 25. EVIDENCE.**

**Current through Ch. 83 of the 1st Regular Session of 1993
Alaska Stat. § 09.25.140 (1993)**

Sec. 09.25.140 Confidentiality of library records.

(a) Except as provided in (b) of this section, the names, addresses, or other personal identifying information of people who have used materials made available to the public by a library shall be kept confidential, except upon court order, and are not subject to inspection under AS 09.25.110 or

AS 09.25.120. This section applies to libraries operated by the state, a municipality, or a public school, including the University of Alaska.

(b) Records of a public elementary or secondary school library identifying a minor child shall be made available on request to a parent or guardian of that child.

ARIZONA

**ARIZONA REVISED STATUTES ANNOTATED
TITLE 41. STATE GOVERNMENT
CHAPTER 8. AGENCIES OF THE LEGISLATIVE DEPARTMENT
ARTICLE 3. DEPARTMENT OF LIBRARY,
ARCHIVES AND PUBLIC RECORDS**

**Current through 1993 1st Reg. Sess. Ch. 259, & 1st through 4th Sp. Sess.
Ariz. Rev. Stat. Ann. § 41-1354 (1993)**

s 41-1354. Privacy of user records; exception; violation; classification

A. Except as provided in subsection B, a library or library system supported by public monies shall not allow disclosure of any record or other information which identifies a user of library services as requesting or obtaining specific materials or services or as otherwise using the library.

B. Records may be disclosed:

- 1. If necessary for the reasonable operation of the library.**
- 2. On written consent of the user.**
- 3. On receipt of a court order.**
- 4. If required by law.**

C. Any person who knowingly discloses any record or other information in violation of this section is guilty of a class 3 misdemeanor.

ARKANSAS

**ARKANSAS CODE OF 1987 ANNOTATED
TITLE 13. LIBRARIES, ARCHIVES, AND CULTURAL RESOURCES
CHAPTER 2. LIBRARIES
SUBCHAPTER 7. CONFIDENTIALITY OF PATRONS' RECORDS**

**Current through Act 1319 of the 1993 Regular Session
Ark. Code Ann. §§ 13-2-701 to -706 (Michie 1993)**

13-2-701 Definitions.

(a) "Patron" means any individual who requests, uses, or receives services, books or other materials from a library.

(b) "Confidential library records" means documents or information in any format retained in a library that identify a patron as having requested, used, or obtained specific materials including, but not limited to, circulation of library books, materials, computer data base searches, interlibrary loan transactions, reference queries, patent searches, requests for photocopies of library materials, title reserve requests, or the use of audiovisual materials, films, or records.

13-2-702 Penalty.

(a) Any person who knowingly violates any of the provisions of this subchapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars (\$200) or thirty (30) days in jail, or both, or a sentence of appropriate public service or education, or both.

(b) No liability shall result from any lawful disclosure permitted by this subchapter.

(c) No action may be brought under this subchapter unless such action is begun within two (2) years from the date of the act complained of or the date of discovery.

13-2-703 Disclosure prohibited.

(a) Library records which contain names or other personally identifying details regarding the patrons of public, school, academic, and special libraries and library systems supported in whole or in part by public funds shall be confidential and shall not be disclosed except as permitted by this subchapter.

(b) Public libraries shall use an automated or Gaylord-type circulation system that does not identify a patron with circulated materials after materials are returned.

13-2-704 Disclosure permitted.

A library may disclose personally identifiable information concerning any patron:

(1) To the patron;

(2) To any person with the informed, written consent of the patron given at the time the disclosure is sought; or

(3) To a law enforcement agency or civil court, pursuant to a search warrant.

13-2-705 Construction--Statistics.

(a) No provision of this subchapter shall be construed to prohibit any library or any

business operating jointly with a library from disclosing information for the purpose of collecting overdue books, documents, films, or other items or materials owned or otherwise belonging to such library. Nor shall any provision of this subchapter be construed as to prohibit or hinder any such library or business office from collecting fines on such overdue books, documents, films, or other items or materials.

(b) Aggregate statistics shown from registration and circulation records with all personal identification removed may be released or used by a library or library system for research or planning purposes.

13-2-706 Use of information in evidence.

Personally identifiable information obtained in any manner other than as provided in this subchapter shall not be received in evidence in any trial, hearing, arbitration, or other proceeding before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state or political subdivision of the state.

CALIFORNIA

**WEST'S ANNOTATED CALIFORNIA CODES
GOVERNMENT CODE.
TITLE 1. GENERAL.
DIVISION 7. MISCELLANEOUS.
CHAPTER 3.5. INSPECTION OF PUBLIC RECORDS**

**Current through the 1993 portion of the 1993-94 legislative sessions.
Cal. Gov't Code §§ 6254(j), 6267 (West 1993)**

s 6254. Exemption of particular records.

Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

s 6267. Libraries supported by public funds; registration and circulation records; confidentiality; exceptions

All registration and circulation records of any library which is in whole or in part supported by public funds shall remain confidential and shall not be disclosed to any person, local agency, or state agency except as follows:

(a) By a person acting within the scope of his or her duties within the administration of the library.

(b) By a person authorized, in writing, by the individual to whom the records pertain, to inspect the records.

(c) By order of the appropriate superior court.

As used in this section, the term "registration records" includes any information which a library requires a patron to provide in order to become eligible to borrow books and other materials, and the term "circulation records" includes any information which identifies the patrons borrowing particular books and other material.

This section shall not apply to statistical reports of registration and circulation nor to records of fines collected by the library.

COLORADO**WEST'S COLORADO REVISED STATUTES ANNOTATED
TITLE 24. GOVERNMENT--STATE LIBRARIES
ARTICLE 90. LIBRARIES
PART 1. LIBRARY LAW**

**Current through all 1993 First Regular Session Laws
Colo. Rev. Stat. Ann. § 24-90-119 (West 1993)**

s 24-90-119. Privacy of user records

(1) Except as set forth in subsection (2) of this section, a publicly-supported library or library system shall not disclose any record or other information which identifies a person as having requested or obtained specific materials or service or as otherwise having used the library.

(2) Records may be disclosed in the following instances:

- (a) When necessary for the reasonable operation of the library;**
- (b) Upon written consent of the user;**
- (c) Pursuant to subpoena, upon court order, or where otherwise required by law.**

(3) Any library or library system official, employee, or volunteer who discloses information in violation of this section commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars.

COLORADO

**WEST'S COLORADO REVISED STATUTES ANNOTATED
TITLE 24. GOVERNMENT--STATE
ARTICLE 72. PUBLIC RECORDS**

**Current through all 1993 First Extraordinary Session laws
Colo. Rev. Stat. Ann. § 24-72-204(3)(a)(VII) (West 1993)**

s 24-72-204. Allowance or denial of inspection--grounds--procedure--appeal

(3)(a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(VII) Library records disclosing the identity of a user as prohibited by section 24-90-119;

CONNECTICUT

CONNECTICUT GENERAL STATUTES ANNOTATED.

TITLE 11. LIBRARIES.

CHAPTER 190. PUBLIC LIBRARIES

**Current through Gen. St., Rev. to 1993, published 1-1-93
Conn. Gen. Stat. Ann. § 11-25 (West 1993)**

s 11-25. Reports by libraries. Confidentiality of records

(a) The libraries established under the provisions of this chapter, and any free public library receiving a state appropriation, shall annually make a report to the state library board.

(b) Notwithstanding the provisions of section 1-19, personally identifiable information contained in the circulation records of all public libraries shall be confidential.

DELAWARE

**DELAWARE CODE ANNOTATED.
TITLE 29. STATE GOVERNMENT.
PART X. GENERAL REGULATIONS FOR STATE AGENCIES
CHAPTER 100. FREEDOM OF INFORMATION ACT**

**Current through 1992 Second Session, Ch. 451
Del. Code Ann. tit. 29, § 10002(d)(12) (1992-93)**

s 10002. Definitions.

(d) "Public record" is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced. For the purposes of this chapter, the following records shall not be deemed public:

(12) Any records of a public library which contain the identity of a user and the books, documents, films, recordings or other property of the library which a patron has used.

DISTRICT OF COLUMBIA**DISTRICT OF COLUMBIA CODE 1981****PART V. GENERAL STATUTES****TITLE 37. LIBRARIES****CHAPTER 1. PUBLIC LIBRARIES**

**Current through Law 9-272 of the 1992-1993 Council Session
D.C. Code Ann. § 37-106.2 (1993)**

s 37-106.2 Confidentiality of circulation records.

(a) Circulation records maintained by the public library in the District of Columbia which can be used to identify a library patron who has requested, used, or borrowed identified library materials from the public library and the specific material that patron has requested, used, or borrowed from the public library, shall be kept confidential, except that the records may be disclosed to officers, employees, and agents of the public library to the extent necessary for the proper operation of the public library.

(b) (1) Circulation records shall not be disclosed by any officer, employee, or agent of the public library to a 3rd party or parties, except with the written permission of the affected library patron or as the result of a court order.

(2) A person whose records are requested pursuant to paragraph (1) of this subsection may file a motion in the Superior Court of the District of Columbia requesting that the records be kept confidential. The motion shall be accompanied by the reasons for the request.

(3) Paragraph (1) of this subsection shall not operate to prohibit the officers of the public library from disclosing relevant information on a library patron to the

Corporation Counsel of the District of Columbia or legal counsel retained to represent the public library in a civil action.

(4) Within 2 working days after receiving a subpoena issued by the court for public library records, the public library shall send a copy of the subpoena and the following notice, by certified mail, to all affected library patrons:

"Records or information concerning your borrowing records in the public library in the District of Columbia are being sought pursuant to the enclosed subpoena.

"In accordance with the District of Columbia Confidentiality of Library Records Act of 1984, these records will not be released until 10 days from the date this notice was mailed.

"If you desire that these records or information not be released, you must file a motion in the Superior Court of the District of Columbia requesting that the records be kept confidential, and state your reasons for the request. A sample motion is enclosed.

"You may wish to contact a lawyer. If you do not have a lawyer, you may call the District of Columbia Bar Lawyer Referral Service."

(5) The public library shall not make available any subpoenaed materials until 10 days after the above notice has been mailed.

(6) Upon application of a government authority, the notice required by paragraph (4) of this subsection may be waived by order of an appropriate court if the presiding judge finds that:

(A) An investigation being conducted is within the lawful jurisdiction of the government authority seeking the records.

(B) There is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry.

(C) There is reason to believe that the notice will result in:

(i) Endangering the life or physical safety of any person;

(ii) Flight from prosecution;

(iii) Destruction of or tampering with evidence;

(iv) Intimidation of potential witnesses; or

(v) Otherwise seriously jeopardizing an investigation or official proceeding.

(7) The term "government authority", as used in paragraph (6) of this subsection, means any federal, state, or local government agency or department.

(c) The Board of Library Trustees may issue rules necessary to implement this section.

(d) Unless otherwise authorized or required by law, any officer, employee, or agent of the public library who shall violate any provision of this section or any rules issued pursuant to it commits a misdemeanor, and upon conviction shall be punished by a fine of not more than \$300. The aggrieved public library patron may also bring a civil action against the individual violator for actual damages or \$250, whichever is greater, reasonable attorneys' fees, and court costs.

FLORIDA**WEST'S FLORIDA STATUTES ANNOTATED.
TITLE XVIII. PUBLIC LANDS AND PROPERTY.
CHAPTER 257. PUBLIC LIBRARIES AND STATE ARCHIVES.**

**Current through 1992 Special 'H' Session
Fla. Stat. Ann. § 257.261 (West 1992)**

257.261. Library registration and circulation records

All registration and circulation records of every public library, except statistical reports of registration and circulation, shall be confidential and exempt from the provisions of s. 119.07(1). Except in accordance with proper judicial order, no person shall make known in any manner any information contained in such records. As used in this section, the term "registration records" includes any information which a library requires a patron to provide in order to become eligible to borrow books and other materials, and the term "circulation records" includes all information which identifies the patrons borrowing particular books and other materials. Any person violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.114.

**WEST'S FLORIDA STATUTES ANNOTATED.
TITLE XLVI. CRIMES.
CHAPTER 775. DEFINITIONS; GENERAL PENALTIES;
REGISTRATION OF CRIMINALS.**

**Current through 1992 Special 'H' Session
Fla. Stat. Ann. § 775.082 (West 1992)**

775.082. Penalties

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

GEORGIA

**CODE OF GEORGIA
TITLE 24. EVIDENCE
CHAPTER 9. WITNESSES GENERALLY
ARTICLE 2. PRIVILEGE
PART 2. MEDICAL INFORMATION**

**Current through Act 616 of the 1993 Regular Session of the General Assembly
Ga. Code Ann. § 24-9-46 (1993)**

24-9-46 Confidential nature of certain library records.

(a) Circulation and similar records of a library which identify the user of library materials shall not be public records but shall be confidential and may not be disclosed except:

(1) To members of the library staff in the ordinary course of business;

(2) Upon written consent of the user of the library materials or the user's parents or guardian if the user is a minor or ward; or

(3) Upon appropriate court order or subpoena.

(b) Any disclosure authorized by subsection (a) of this Code section or any unauthorized disclosure of materials made confidential by that subsection (a) shall not in any way destroy the confidential nature of that material, except for the purpose for which an authorized disclosure is made. A person disclosing material

as authorized by subsection (a) of this Code section shall not be liable therefore.

IDAHO

**IDAHO CODE
TITLE 9. EVIDENCE
CHAPTER 3. PUBLIC WRITINGS**

**Current through Ch. 416 of the 52nd Legislature
Idaho Code § 9-340 (1993)**

**9-340. Records exempt from disclosure. [Effective January 1, 1994, and until July 1, 1994;
and, effective July 1, 1994.]**

The following records are exempt from disclosure:

(9) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(10) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

**IDAHO CODE
TITLE 9. EVIDENCE
CHAPTER 3. PUBLIC WRITINGS**

**Current through Ch. 416 of the 52nd Legislature
Idaho Code § 9-342 (1993)**

9-342. Access to records about a person by a person.

(1) A person may inspect and copy the records of a public agency pertaining to that person, even if the record is otherwise exempt from public disclosure.

ILLINOIS**WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 75. LIBRARIES
ACT 70. LIBRARY RECORDS CONFIDENTIALITY ACT**

**Current through P.A. 88-1, approved 3-12-93
Ill. Ann. Stat. ch. 75, para. 70/1, 70/2 (Smith-Hurd 1993)**

70/1. Registration and circulation records--Statistical reports

- s 1. (a) The registration and circulation records of a library are confidential information. Except pursuant to a court order, no person shall publish or make any information contained in such records available to the public.**
- (b) This Section does not prevent a library from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation where those reports are presented so that no individual is identified therein.**
- (c) For the purpose of this Section, (i) "library" means any public library or library of an educational, historical or eleemosynary institution, organization or society; (ii) "registration records" includes any information a library requires a person to provide in order for that person to become eligible to borrow books and other materials and (iii) "circulation records" includes all information identifying the individual borrowing particular books or materials.**

70/2. Short title

s 2. This Act may be cited as the Library Records Confidentiality Act.

INDIANA

WEST'S ANNOTATED INDIANA CODE
TITLE 5. STATE AND LOCAL ADMINISTRATION
ARTICLE 14. PUBLIC RECORDS AND PUBLIC MEETINGS
CHAPTER 3. ACCESS TO PUBLIC RECORDS

Current through end of 1993 Special Session
Ind. Code Ann. § 5-14-3-4 (West 1993)

5-14-3-4 Records excepted from disclosure requirements; names and addresses; time limitations; destruction of records

Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of person specified at the time of the acquisition or deposit.

IOWA

IOWA CODE ANNOTATED
TITLE I. STATE SOVEREIGNTY AND MANAGEMENT
SUBTITLE 9. RESTRAINTS ON GOVERNMENT
CHAPTER 22. EXAMINATION OF PUBLIC RECORDS (OPEN RECORDS)

Current through 1992 2nd Ex.Sess. (74 G.A.) - End of Laws
Iowa Code Ann. § 22.7(13) (West 1992)

22.7. Confidential records.

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

13. The records of a library, which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item or information from the library. The records shall be released to a criminal justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.

KANSAS

**KANSAS STATUTES ANNOTATED
CHAPTER 45. PUBLIC RECORDS, DOCUMENTS AND INFORMATION
ARTICLE 2. RECORDS OPEN TO PUBLIC**

**Current through all 1992 Regular Session chapters
Kan. Stat. Ann. § 45-221(a)(23) (1992)**

45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open.

(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(23) Library patron and circulation records which pertain to identifiable individuals.

LOUISIANA

WEST'S LOUISIANA STATUTES ANNOTATED
REVISED STATUTES
TITLE 44. PUBLIC RECORDS AND RECORDERS
CHAPTER 1. PUBLIC RECORDS
PART I. SCOPE

Current through all 1993 first Extraordinary and 1993 Regular Session Acts
La. Rev. Stat. Ann. § 44.13 (West 1993)

§ 13. Registration records and other records of use maintained by libraries.

A. Notwithstanding any provisions of this Chapter or any other law to the contrary, records of any library which is in whole or in part supported by public funds, including the records of public, academic, school, and special libraries, and the State Library of Louisiana, indicating which of its documents or other materials, regardless of format, have been loaned to or used by an identifiable individual or group of individuals may not be disclosed except to a parent or custodian of a minor child seeking access to that child's records, to persons acting within the scope of their duties in the administration of the library, to persons authorized in writing by the individual or group of individuals to inspect such records, or by order of a court of law.

B. Notwithstanding any provisions of this Chapter or any other law to the contrary, records of any such library which are maintained for purposes of registration or for determining eligibility for the use of library services may not be disclosed except as provided in Subsection A of this Section.

C. No provision of this Section shall be so construed as to prohibit or hinder any library or any business office operating jointly with a library from collecting overdue books, documents, films, or other items and/or materials owned or otherwise belonging to such library, nor shall any provision of this Section be so construed as to prohibit or hinder any such library or business office from collecting fines on such overdue books, documents, films, or other items and/or materials.

MAINE**MAINE REVISED STATUTES ANNOTATED
TITLE 27. LIBRARIES, HISTORY, CULTURE AND ART
CHAPTER 4-A. LIBRARY RECORDS**

**Current through Laws 1993, c. 481, approved 7-14-93
Me. Rev. Stat. Ann. tit. 27, § 121 (West 1993)**

§ 121. Confidentiality of library records

Records maintained by any public municipal library, including the Maine State Library and libraries of the University of Maine System and the Maine Maritime Academy, that contain information relating to the identity of a library patron relative to the patron's use of books or other materials at the library, are confidential. Those records may only be released with the express written permission of the patron involved or as the result of a court order.

Public municipal libraries shall have up to 5 years from the effective date of this chapter to be in compliance with this section.

MARYLAND**ANNOTATED CODE OF MARYLAND
EDUCATION
DIVISION IV. OTHER EDUCATION PROVISIONS
TITLE 23. LIBRARIES
SUBTITLE 1. STATE LIBRARY AGENCIES.**

**Current through 1993 Regular Session Ch. 642
Md. Code Ann., Educ. § 23-107 (1993)**

s 23-107. Circulation records.

(a) Inspection, use, or disclosure prohibited. Subject to the provisions of subsection (b) of this section, a free association, school, college or university library in this State shall prohibit inspection, use, or disclosure of any circulation record or other item, collection, or grouping of information about an individual that:

(1) Is maintained by a library;

(2) Contains an individual's name or the identifying number, symbol, or other identifying particular assigned to the individual; and

(3) Identifies the use a patron makes of that library's materials, services, or facilities.

(b) Exceptions. A free association, school, college, or university library in the State shall permit inspection, use, or disclosure of the circulation record of an individual

only in connection with the library's ordinary business and only for the purposes for which the record was created.

**ANNOTATED CODE OF MARYLAND
STATE GOVERNMENT
TITLE 10. GOVERNMENTAL PROCEDURES
SUBTITLE 6. RECORDS
PART III. ACCESS TO PUBLIC RECORDS**

**Current through 1993 Regular Session Ch. 642
Md. Code Ann., State Gov't § 10-616(e) (1993)**

s 10-616 Same -- Specific records.

(a) In general. Unless otherwise provided by law, a custodian shall deny inspection of a public record, as provided in this section.

(e) Circulation records, or other item, collection, or grouping of information about an individual.

(1) Subject to the provisions of paragraph (2) of this subsection, a custodian shall prohibit inspection, use, or disclosure of a circulation record of a public library or other item, collection, or grouping of information about an individual that:

(i) is maintained by a library;

(ii) contains an individual's name or the identifying number, symbol, or other identifying particular assigned to the individual; and

(iii) identifies the use a patron makes of that library's materials, services, or facilities.

(2) A custodian shall permit inspection, use, or disclosure of a circulation record of a public library only in connection with the library's ordinary business and only for the purposes for which the record was created.

MASSACHUSETTS

**MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XII. EDUCATION
CHAPTER 78. LIBRARIES
PUBLIC LIBRARIES**

**Current through 1992 Regular Session of the General Court
Mass. Gen. Laws Ann. ch. 78, § 7 (West 1992)**

s 7. Establishment by cities and towns; records

That part of the records of a public library which reveals the identity and intellectual pursuits of a person using such library shall not be a public record as defined by clause Twenty-sixth of section seven of chapter four. Library authorities may disclose or exchange information relating to library users for the purposes of inter-library cooperation and coordination, including but not limited to, the purposes of facilitating the sharing of resources among library jurisdictions as authorized by clause (1) of section nineteen E or enforcing the provisions of sections ninety-nine and one hundred of chapter two hundred and sixty-six.

MICHIGAN

**MICHIGAN COMPILED LAWS ANNOTATED
CHAPTER 397. LIBRARIES
LIBRARY PRIVACY ACT**

**Current through P.A. 1993, Nos. 57, 59 to 69, 71, 72, and 74 to 76
Mich. Comp. Laws Ann. §§ 397.601 to .604 (West 1993)**

397.601. Short title

Sec. 1. This act shall be known and may be cited as "the library privacy act".

397.602. Definitions

Sec. 2. As used in this act:

(a) "Library" includes a library which is established by the state; a county, city, township, village, school district, or other local unit of government or authority or combination of local units of governments and authorities; a community college district; a college or university; or any private library open to the public.

(b) "Library record" means a document, record, or other method of storing information retained by a library that identifies a person as having requested or obtained specific materials from a library. Library record does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general.

397.603. Disclosure of library records

Sec. 3. (1) A library record shall not be subject to the disclosure requirements of Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) Unless ordered by a court after giving the affected library notice of the request and an opportunity to be heard thereon, a library or an employee or agent of a library shall not release or disclose a library record or portion of a library record to any person without the written consent of the person identified in that record. The procedure and form of giving written consent may be determined by the library.

(3) At a hearing conducted pursuant to sub-section (2), a library may appear and be represented by counsel.

397.604. Liability for disclosure

Sec. 4. A library or an agent or employee of a library which violates section 3 shall be liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or \$250.00, whichever is greater; reasonable attorney fees; and the costs of bringing the action.

MINNESOTA

**MINNESOTA STATUTES ANNOTATED
DATA PRACTICES
CHAPTER 13. GOVERNMENT DATA PRACTICES
DATA MAINTAINED BY STATE AGENCIES AND
POLITICAL SUBDIVISIONS**

**Current through Laws 1993, 1st Spec. Sess., Chapter 6, approved 5-27-93
Minn. Stat. Ann. § 13.40(2) (West 1993)**

13.40. Library and historical data.

Subd. 2. Private data; library borrowers. The following data maintained by a library are private data on individuals and may not be disclosed for other than library purposes except pursuant to a court order:

- (1) data that link a library patron's name with materials requested or borrowed by the patron or that link a patron's name with a specific subject about which the patron has requested information or materials; or**
- (2) data in applications for borrower cards, other than the name of the borrower.**

MISSISSIPPI

**MISSISSIPPI CODE 1972 ANNOTATED
TITLE 39. LIBRARIES, ARTS, ARCHIVES AND HISTORY
CHAPTER 3. LIBRARIES AND LIBRARY COMMISSION
ARTICLE 9. MISSISSIPPI STATEWIDE
LIBRARY DEVELOPMENT SYSTEM ACT OF 1988**

**Current through the 1993 regular sessions of the legislature
Miss. Code Ann. §§ 39-3-365 to -369 (1993)**

§ 39-3-365. Confidentiality of library user records.

Records maintained by any library funded in whole or in part by public funds, which contain information relating to the identify of a library user, relative to the user's use of books or other materials at the library, shall be confidential. Such records may only be released with the express written permission of the respective library user or as the result of a court order.

§ 39-3-367. Release and use of aggregate statistics.

Aggregate statistics shown from registration and circulation records, with all personal identification removed, may be released or used by a library for research, planning and reporting purposes.

§ 39-3-369. Use of records for purpose of collecting overdue materials and fines.

No provision of this act shall be construed to prohibit any library, or any business operating jointly with a library, from disclosing information for the purpose of collecting overdue books,

documents, films or other items or materials owned or otherwise belonging to such library. No provision of this act shall be construed to prohibit or hinder any such library or business office from collecting fines on such overdue books, documents, films or other items or materials.

MISSOURI

VERNON'S ANNOTATED MISSOURI STATUTES
TITLE XI. EDUCATION AND LIBRARIES
CHAPTER 182. COUNTY AND CITY LIBRARIES--LIBRARIES GENERALLY

Current through S.B. No. 676, approved 11-3-92
Mo. Ann. Stat. §§ 182.815, 182.817 (Vernon 1992)

182.815. Disclosure of library records, definitions

As used in this section and section 182.817, the following terms shall mean:

- (1) "library", any library established by the state or any political subdivision of the state, or combination thereof, by any community college district, or by any college or university, and any private library open to the public;
- (2) "Library material", any book, document, film, record, art work, or other library property which a patron may use, borrow or request;
- (3) "Library record", any document, record, or other method of storing information retained, received or generated by a library that identifies a person or persons as having requested, used, or borrowed library material, and all other records identifying the names of library users. The term "library record" does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library material in general.

812.817. Disclosure of library records not required--exceptions

Notwithstanding the provisions of any other law to the contrary, no library or employee or agent of a library shall be required to release or disclose a library record or portion of a library record to any person or persons except:

(1) In response to a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or

(2) In response to an order issued by a court of competent jurisdiction upon a finding that the disclosure of such record is necessary to protect the public safety or to prosecute a crime.

MONTANA

**MONTANA CODE ANNOTATED
TITLE 22. LIBRARIES, ARTS, AND ANTIQUITIES
CHAPTER 1. LIBRARIES
PART 11. LIBRARY RECORDS CONFIDENTIALITY ACT**

Current through 1993 Session, Ch. 642

Mont. Code Ann. §§ 22-1-1101 to -1103, 22-1-1111 (1993)

22-1-1101. Short title.

This part may be cited as the "Montana Library Records Confidentiality Act".

22-1-1102. Definitions.

As used in 22-1-1103, the following definitions apply:

(1) "Library" means a library that is established by the state, a county, city, town, school district, or a combination of those units of government, a college or university, or any private library open to the public.

(2) "Library records" means any document, record, or any other method of storing information retained, received, or generated by a library that identifies a person as having requested, used, or borrowed library material or other records identifying

the names or other personal identifiers of library users. Library records does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general or records that are not retained or retrieved by personal identifier.

22-1-1103. Nondisclosure of library records.

(1) No person may release or disclose a library record or portion of a library record to any person except in response to:

**(a) a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library;
or**

(b) an order issued by a court of competent jurisdiction, upon a finding that the disclosure of such record is necessary because the merits of public disclosure clearly exceed the demand for individual privacy.

(2) A library is not prevented from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation if those reports are presented so that no individual is identified therein.

(3) Library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines.

22-1-1111. Penalty.

Any person who violates 22-1-1103 is guilty of a misdemeanor and is liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or \$100, whichever is greater. Reasonable attorney fees and the costs of bringing the action may be awarded to the prevailing party.

NEBRASKA

**NEBRASKA REVISED STATUTES OF 1943
CHAPTER 84. STATE OFFICERS
ARTICLE 7. GENERAL PROVISIONS AS TO STATE OFFICERS**

**Current through 92nd Legislature, 1992 Second Special Session
Neb. Rev. Stat. § 84-712.05(10) (1992)**

s 84-712.05. Records which may be withheld from the public; enumerated.

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting, or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(10) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

NEVADA

**NEVADA REVISED STATUTES
TITLE 19. MISCELLANEOUS MATTERS
RELATED TO GOVERNMENT AND PUBLIC AFFAIRS
CHAPTER 239. PUBLIC RECORDS
IN GENERAL**

**Current through Ch. 669, approved 10-1-93
Nev. Rev. Stat. § 239.013 (1993)**

239.013 Confidentiality of records of library which identify user with property used.

Any records of a public library or other library which contain the identity of a user and the books, documents, films, recordings or other property of the library which he used are confidential and not public books or records within the meaning of NRS 239.010. Such records may be disclosed only in response to any order issued by a court upon a finding that the disclosure of such records is necessary to protect the public safety or to prosecute a crime.

NEW HAMPSHIRE

NEW HAMPSHIRE STATUTES ANNOTATED

TITLE XVI. LIBRARIES

CHAPTER 201-D. STATEWIDE LIBRARY DEVELOPMENT SYSTEM

Current through the 1992 Regular Session

N.H. Rev. Stat. Ann. § 201-D:11 (1992)

201-D:11. Library User Records; Confidentiality

I. Library records which contain the names or other personal identifying information regarding the users of public or other than public libraries shall be confidential and shall not be disclosed except as provided in paragraph II. Such records include, but are not limited to, library, information system, and archival records related to the circulation and use of library materials or services.

II. Records described in paragraph I may be disclosed to the extent necessary for the proper operation of such libraries and shall be disclosed upon request by or consent of the user or pursuant to subpoena, court order, or where otherwise required by statute.

III. Nothing in this section shall be construed to prohibit any library from releasing statistical information and other data regarding the circulation or use of library materials provided, however, that the identity of the users of such library materials shall be considered confidential and shall not be disclosed to the general public except as provided in paragraph II.

NEW JERSEY

**NEW JERSEY STATUTES ANNOTATED
TITLE 18A. EDUCATION
SUBTITLE 13. STATE LIBRARY, ARCHIVES AND
HISTORY AND STATE MUSEUM
CHAPTER 73. DIVISION OF STATE LIBRARY, ARCHIVES AND
HISTORY AND DIVISION OF THE STATE MUSEUM
ARTICLE 3. DIVISION OF STATE LIBRARY, ARCHIVES AND HISTORY**

**Current through L.1993, C. 115, approved 5/24/93
N.J. Stat. Ann. §§ 18A:73-43.1 to -43.3 (West 1993)**

18A:73-43.1. Definitions

For the purposes of this act:

- a. "Library" means a library maintained by any State or local governmental agency, school, college, or industrial, commercial or other special group, association or agency, whether public or private.**

- b. "Library record" means any document or record, however maintained, the primary purpose of which is to provide for control of the circulation or other public use of library materials.**

18A:73-43.2. Confidentiality of library users' records

Library records which contain the names or other personally identifying details regarding the

users of libraries are confidential and shall not be disclosed except in the following circumstances:

- a. The records are necessary for the proper operation of the library;
- b. Disclosure is requested by the user; or
- c. Disclosure is required pursuant to a subpoena (sic) issued by a court or court order.

18A:73-43.3. Rules and regulations

The State Librarian shall adopt pursuant to section 18 of P.L.1969, c. 158 (C. 18A:73-33) and the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:148-1 et seq.) rules and regulations necessary to effectuate the purposes of this act.

NEW MEXICO

**NEW MEXICO STATUTES 1978, ANNOTATED
CHAPTER 18. LIBRARIES AND MUSEUMS
ARTICLE 9. LIBRARY PRIVACY**

**Current through Ch. 367 of the 1st Reg. Sess. of the 41st Legislature (1993)
N.M. Stat. Ann. §§ 18-9-1 to -6 (Michie 1993)**

18-9-1 Short title.

This act [18-9-1 to 18-9-6 NMSA 1978] may be cited as the "Library Privacy Act".

18-9-2 Purpose.

The purpose of the Library Privacy Act [18-9-1 to 18-9-6 NMSA 1978] is to preserve the intellectual freedom guaranteed by Sections 4 and 17 of Article 2 of the constitution of New Mexico by providing privacy for users of the public libraries of the state with respect to the library materials that they wish to use.

18-9-3 Definitions.

As used in the Library Privacy Act [18-9-1 to 18-9-6 NMSA 1978]:

- A. "library" includes any library receiving public funds, any library that is a state agency and any library established by the state, an instrumentality of the state, a local government, district or authority, whether or not that library is regularly open to the public; and

B. "patron record" means any document, record or other method of storing information retained by a library that identifies, or when combined with other available information identifies, a person as a patron of the library or that indicates use or request of materials from the library. "Patron record" includes patron registration information and circulation information that identifies specific patrons.

18-9-4 Release of patron records prohibited.

Patron records shall not be disclosed or released to any person not a member of the library staff in the performance of his duties, except upon written consent of the person identified in the record, or except upon court order issued to the library. The library shall have the right to be represented by counsel at any hearing on disclosure or release of its patron records.

18-9-5 Exceptions.

The prohibition on the release or disclosure of patron records in Section 4 [18-9-4 NMSA 1978] of the Library Privacy Act shall not apply to overdue notices or to the release or disclosure by school libraries to the legal guardian of the patron records of unemancipated minors or legally incapacitated persons.

18-9-6 Violations; civil liability.

Any person who violates Section 4 [18-9-4 NMSA 1978] of the Library Privacy Act shall be subject to civil liability to the person identified in the released records for damages and costs of the action as determined by the court.

NEW YORK

**MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK
ANNOTATED CIVIL PRACTICE LAW AND RULES
CHAPTER EIGHT OF THE CONSOLIDATED LAWS
ARTICLE 45--EVIDENCE**

**Current through L.1993, c. 720, approved 9/14/93
N.Y. Civ. Prac. L. & R. 4509 (McKinney 1993)**

s 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 database searches, interlibrary loan transactions, reference queries, requests for photocopies of library materials, title reserve requests, or the use of audiovisual 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.

**MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK
ANNOTATED CIVIL PRACTICE LAW AND RULES
CHAPTER EIGHT OF THE CONSOLIDATED LAWS
ARTICLE 23--SUBPOENAS, OATHS AND AFFIRMATIONS**

**Current through L.1993, c. 720, approved 9/14/93
N.Y. Civ. Prac. L. & R. 2307 (McKinney 1993)**

s 2307. Books, papers and other things of a library, department or bureau of a municipal corporation or of the state.

Issuance by court. A subpoena duces tecum to be served upon a library, or a department or bureau of a municipal corporation or of the state, or an officer thereof, requiring the production of any books, papers or other things, shall be issued by a justice of the supreme court in the district in which the book, paper or other thing is located or by a judge of the court in which an action for which it is required is triable. Unless the court orders otherwise, a motion for such subpoena shall be made on at least one day's notice to the library, department, bureau or officer having custody of the book, document or other thing and the adverse party. Such subpoena must be served upon such library, or such department or bureau of such municipal corporation or of the state or an officer having custody of the book, document or other thing and the adverse party at least twenty-four hours before the time fixed for the production of such records unless in the case of an emergency the court shall by order dispense with such notice otherwise required. Compliance with a subpoena duces tecum may be made by producing a full-sized legible reproduction of the item or items required to be produced certified as complete and accurate by the person in charge of such library, department or bureau, or a designee of such person, and no personal appearance to certify such item or items shall be required of such person or designee, unless the court shall order otherwise pursuant to subdivision (d) of rule 2214 of this chapter. Where a stipulation would serve the same purpose as production of the book, document or other thing and the subpoena is required because the parties will not stipulate, the judge may impose terms on any party, including the cost of production of the book or document, and require such cost to be paid as an additional fee to the library department or officer.

NORTH CAROLINA

**GENERAL STATUTES OF NORTH CAROLINA
CHAPTER 125. LIBRARIES
ARTICLE 3. LIBRARY RECORDS**

**Current through 1993 Regular Session, Ch. 563
N.C. Gen. Stat. §§ 125-18 to -19 (1993)**

s 125-18 Definitions

As used in this Article, unless the context requires otherwise:

(1) "Library" means a library established by the State; a county, city, township, village, school district, or other local unit of government or authority or combination of local units of governments and authorities; community college or university; or any private library open to the public.

(2) "Library record" means a document, record, or other method of storing information retained by a library that identifies a person as having requested or obtained specific information or materials from a library. "Library record" does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general.

s 125-19 Confidentiality of library user records.

(a) Disclosure.-- A library shall not disclose any library record that identifies a person as having requested or obtained specific materials, information, or services, or as otherwise

having used the library, except as provided for in subsection (b).

(b) Exceptions.-- Library records may be disclosed in the following instances:

- (1) When necessary for the reasonable operation of the library;
- (2) Upon written consent of the user; or
- (3) Pursuant to subpoena, court order, or where otherwise required by law.

NORTH DAKOTA

**NORTH DAKOTA CENTURY CODE
TITLE 40. MUNICIPAL GOVERNMENT
CHAPTER 40-38. PUBLIC LIBRARIES**

**Current through Ch. 783 of the 53rd Legislative Assembly (1993)
N.D. Cent. Code § 40-38-12 (1993)**

40-38-12 Library records -- Open records exception.

Any record maintained or received by a library receiving public funds, which provides a library patron's name or information sufficient to identify a patron together with the subject about which the patron requested information, is considered private and is excepted from the public records disclosure requirements of section 44-04-18. These records may be released when required pursuant to a court order or a subpoena.

OKLAHOMA

**OKLAHOMA STATUTES ANNOTATED
TITLE 65. PUBLIC LIBRARIES
CHAPTER A. OKLAHOMA LIBRARY CODE
ARTICLE 1. LEGISLATIVE INTENT AND GENERAL PROVISIONS**

**Current through Chapter 366, approved 6/11/93
Okla. Stat. tit. 65, § 1-105 (West 1993)**

s 1-105. Disclosure of records

A. Any library which is in whole or in part supported by public funds including but not limited to public, academic, school or special libraries, and having records indicating which of its documents or other materials, regardless of format, have been loaned to or used by an identifiable individual or group shall not disclose such records to any person except to:

- 1. Persons acting within the scope of their duties in the administration of the library;**
- 2. Persons authorized to inspect such records, in writing, by the individual or group; or**
- 3. By order of a court of law.**

B. The requirements of this section shall not prohibit middle and elementary school libraries from maintaining a system of records that identifies the individual or

group to whom library materials have been loaned even if such system permits a determination, independent of any disclosure of such information by the library, that documents or materials have been loaned to an individual or group.

OREGON

**OREGON REVISED STATUTES ANNOTATED
TITLE 19. MISCELLANEOUS MATTERS RELATED TO
GOVERNMENT AND PUBLIC AFFAIRS
CHAPTER 192. PUBLIC AND PRIVATE RECORDS;
PUBLIC REPORTS AND MEETINGS
INSPECTION OF PUBLIC RECORDS**

**Current through Ch. 973 of the 66th Legislative Assembly (1991)
Or. Rev. Stat. § 192.501(10) (1991)**

192.501 Public records exempt from disclosure

**The following public records are exempt from disclosure under ORS 192.410 to 192.505
unless the public interest requires disclosure in the particular instance:**

- (10) The circulation records of a public library showing use of specific library materials by named persons;**

PENNSYLVANIA

PURDON'S PENNSYLVANIA STATUTES ANNOTATED

TITLE 24. EDUCATION

CHAPTER 16. LIBRARIES

ARTICLE IV.

Current through the end of 1992 Regular Session

Pa. Stat. Ann. tit. 24, § 4428 (1992)

s 4428. Library circulation records

Records related to the circulation of library materials which contain the names or other personally identifying details regarding the users of the State Library or any local library which is established or maintained under any law of the Commonwealth or the library of any university, college or educational institution chartered by the Commonwealth or the library of any public school or branch reading room, deposit station or agency operated in connection therewith, shall be confidential and shall not be made available to anyone except by a court order in a criminal proceeding.

RHODE ISLAND

**GENERAL LAWS OF RHODE ISLAND ANNOTATED, 1956
REENACTMENT OF 1990
TITLE 38. PUBLIC RECORDS
CHAPTER 2. ACCESS TO PUBLIC RECORDS**

**Current through January Session (1993), ch. 93-475
R.I. Gen. Laws § 38-2-2(d)(21) (1993)**

38-2-2 Definitions

As used in this chapter:

(d) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:

(21) Library records which, by themselves, or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.

SOUTH CAROLINA

CODE OF LAWS OF SOUTH CAROLINA 1976 ANNOTATED

TITLE 30. PUBLIC RECORDS

CHAPTER 1. PUBLIC RECORDS, REPORTS AND OFFICIAL DOCUMENTS

**Current through Act 248, approved 10-1-91
S.C. Code Ann. §30-1-10 (Law. Co-op. 1991)**

s 30-1-10. Definitions.

(A) For the purposes of Section 30-1-10 to 30-1-140 "public record" has the meaning as provided in Section 30-4-20(c). Nothing herein authorizes the Archives to make records open to the public in contravention of Sections 30-4-40, 30-4-50, and 30-4-70, respectively.

(B) "Public body" means any department of the State, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina Ports Authority.

(C) "Agency" means any state department, agency, or institution.

(D) "Subdivision" means any political subdivision of the State.

(E) "Archives" means the South Carolina Department of Archives and History.

(F) "Director" means the Director of the Department of Archives and History.

CODE OF LAWS OF SOUTH CAROLINA 1976 ANNOTATED
TITLE 30. PUBLIC RECORDS
CHAPTER 4. FREEDOM OF INFORMATION ACT

Current through Act 248, approved 10-1-91
S.C. Code Ann. §30-4-20(c) (Law. Co-op. 1991)

s 30-4-20. Definitions.

(c) "Public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, except nonidentifying administrative and statistical reports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act; nothing herein authorizes or requires the disclosure of those records where the public body, prior to January 20, 1987, by a favorable vote of three-fourths of the membership, taken after receipt of a written request, concluded that the public interest was best served by not disclosing them. Nothing herein authorizes or requires the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of the institutions required to be made by law.

**CODE OF LAWS OF SOUTH CAROLINA 1976 ANNOTATED
TITLE 60. LIBRARIES, ARCHIVES, MUSEUMS AND ARTS
CHAPTER 4. CONFIDENTIAL LIBRARY RECORDS**

**Current through Act 248, approved 10-1-91
S.C. Code Ann. §60-4-10 to -30 (Law. Co-op. 1991)**

s 60-4-10. Records identifying library patrons as confidential information; disclosure.

Records related to registration and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, are confidential information.

Records which by themselves or when examined with other public records would reveal the identity of the library patron checking out or requesting an item from the library or using other library services are confidential information.

The confidential records do not include nonidentifying administrative and statistical reports of registration and circulation.

The confidential records may not be disclosed except to persons acting within the scope of their duties in the administration of the library or library system or persons authorized by the library patron to inspect his records, or in accordance with proper judicial order upon a finding that the disclosure of the records is necessary to protect public safety, to prosecute a crime, or upon showing of good cause before the presiding Judge in a civil matter.

s 60-4-20. Definitions.

As used in this chapter, the term "registration records" includes any information which a library requires a patron to provide in order to become eligible to borrow books and other materials, and the term "circulation records" includes all information which identifies the patrons borrowing particular books and other materials.

s 60-4-30. Penalties.

Any person violating the provisions of s 60-4-10 must upon conviction be fined not more than five hundred dollars or imprisoned for not more than thirty days for the first offense, must be fined not more than one thousand dollars or imprisoned for not more than sixty days for the second offense, and must be fined not more than two thousand dollars or imprisoned for not more than ninety days for the third or subsequent offense.

SOUTH DAKOTA

**SOUTH DAKOTA CODIFIED LAWS
TITLE 14. LIBRARIES
CHAPTER 14-2. PUBLIC LIBRARIES**

**Current through SL 1993, Ch. 405
S.D. Codified Laws Ann. § 14-2-51 (1993)**

14-2-51 Confidential library records.

All public library records containing personally identifiable information are confidential. Any information contained in public library records may not be released except by court order or upon request of a parent of a child who is under eighteen years of age. As used in this section, "personally identifiable" means any information a library maintains that would identify a patron. Acts by library officers or employees in maintaining a check out system are not violations of this section.

TENNESSEE

**TENNESSEE CODE ANNOTATED
TITLE 10 PUBLIC LIBRARIES, ARCHIVES AND RECORDS
CHAPTER 8 CONFIDENTIALITY OF RECORDS**

**Current through 1993 Regular Session, Chapter 535
Tenn. Code Ann. §§ 10-8-101 to -103 (1993)**

10-8-101 Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Library" means:

(A) A library that is open to the public and established or operated by:

(i) The state, a county, city, town, school district or any other political subdivision of the state;

(ii) A combination of governmental units or authorities;

(iii) A university or community college; or

(B) Any private library that is open to the public; and

(2) "Library record" means a document, record, or other method of storing information retained by a library that identifies a person as having requested or obtained specific information or materials from such library. "Library record" does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation materials in general.

10-8-102 Disclosure prohibited -- Exceptions.

(a) Except as provided in subsection (b), no employee of a library shall disclose any library record that identifies a person as having requested or obtained specific materials, information, or services or as having otherwise used such library. Such library records shall be considered an exception to the provisions of s 10-7-503.

(b) Library records may be disclosed under the following circumstances:

(1) Upon the written consent of the library user;

(2) Pursuant to the order of a court of competent jurisdiction; or

(3) When used to seek reimbursement for or the return of lost, stolen, misplaced or otherwise overdue library materials.

10-8-103 Applicability

The provisions of this chapter shall apply to libraries included within the provisions of chapters 1 and 3-5 of this title.

TEXAS

VERNON'S TEXAS CODES ANNOTATED
GOVERNMENT CODE
TITLE 5. OPEN GOVERNMENT; ETHICS
SUBTITLE A. OPEN GOVERNMENT
CHAPTER 552. OPEN RECORDS

Current through the 1993 Regular Session of the 73rd Legislature.
Tex. Gov't Code Ann. § 552.122(3)(a)(24), 552.123 (West 1993)

Section 552.122. Exception: Curriculum Objectives and Test Items

[Sec. 3.(a)] All information collected, assembled, or maintained by or for governmental bodies, except in those situations where the governmental body does not have either a right of access to or ownership of the information, pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body, with the following exceptions only:

(24) records of a library or library system, supported in whole or in part by public funds, that identify or serve to identify a person who requested, obtained, or used a library material or service, unless the records are disclosed:

(A) because the library or library system determines that disclosure is reasonably necessary for the operation of the library or library system, and the records are not confidential under other state or federal law;

(B) under Section 3B of this Act; or

(C) to a law enforcement agency or a prosecutor under a court order or subpoena obtained after a showing to a district court that:

**(i) disclosure of the records is necessary to protect the public safety;
or**

(ii) the records are evidence of an offense or constitute evidence that a particular person committed an offense.

§ 552.123. Exception: Name of Applicant for Chief Executive Officer of Institution of Higher Education

[§ 3(g)] Records of a library or library system that are excepted from required disclosure under Subsection (a)(24) of this section are confidential.

UTAH

UTAH CODE, 1953
TITLE 63. STATE AFFAIRS IN GENERAL
CHAPTER 2. GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT
PART 3. CLASSIFICATION

Current through Ch. 17 of the 1993 2nd Sp. Sess. of the 50th LegislatureUtah Code Ann. § 63-2-302(1)(c) (1993)

63-2-302 Private records.

(1) The following records are private:

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

VERMONT

**VERMONT STATUTES ANNOTATED
TITLE ONE. GENERAL PROVISIONS
CHAPTER 5. COMMON LAW; GENERAL RIGHTS
SUBCHAPTER 3. ACCESS TO PUBLIC RECORDS**

**Current through 61st Biennial Sess. (1992) P.A. 269, approved 6-26-92
Vt. Stat. Ann. tit. 1, § 317(b)(19) (1992)**

s 317. Definitions; public agency; public records and documents

(b) As used in this subchapter, "public record" or "public document" means all papers, staff reports, individual salaries, salary schedules or any other written or recorded matters produced or acquired in the course of agency business except:

(19) records relating to the identity of library patrons or the identity of library patrons in regard to the circulation of library materials.

VIRGINIA

CODE OF VIRGINIA

TITLE 2.1. ADMINISTRATION OF GOVERNMENT GENERALLY

CHAPTER 21. VIRGINIA FREEDOM OF INFORMATION ACT

Current through Ch. 3 of the 1993 Special Session

Va. Code Ann. § 2.1-342(B)(8) (Michie 1993)

s 2.1-342 Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter.

B. The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

8. Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

WASHINGTON

**WEST'S REVISED CODE OF WASHINGTON ANNOTATED
TITLE 42. PUBLIC OFFICERS AND AGENCIES
CHAPTER 42.17--DISCLOSURE--
CAMPAIGN FINANCES--LOBBYING--RECORDS
PUBLIC RECORDS**

**Current through Laws 1992, Ch. 241, approved 4-3-92
Wash. Rev. Code Ann. § 42.17.310 (West 1992)**

42.17.310. Certain personal and other records exempt

(1) The following are exempt from public inspection and copying:

(l) 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.

WEST VIRGINIA

**WEST VIRGINIA CODE 1966
CHAPTER 10. PUBLIC LIBRARIES;
PUBLIC RECREATION; ATHLETIC ESTABLISHMENTS;
MONUMENTS AND MEMORIALS;
ROSTER OF SERVICEMEN;
EDUCATIONAL BROADCASTING AUTHORITY
ARTICLE 1. PUBLIC LIBRARIES**

**Current through Ch. 3 of the Second Extraordinary Session of the 71st Legislature (1993)
W. Va. Code § 10-1-22 (1993)**

s 10-1-22 Confidential nature of certain library records.

(a) Circulation and similar records of any public library in this state which identify the user of library materials are not public records but shall be confidential and may not be disclosed except:

(1) To members of the library staff in the ordinary course of business;

(2) Upon written consent of the user of the library materials or the user's parents or guardian if the user is a minor or ward; or

(3) Upon appropriate court order or subpoena.

(b) Any disclosure authorized by subsection (a) of this section or any unauthorized disclosure of materials made confidential by that subsection (a) does not in any way

destroy the confidential nature of that material, except for the purpose for which an authorized disclosure is made. A person disclosing material as authorized by subsection (a) of this section is not liable therefor.

WISCONSIN

**WISCONSIN STATUTES ANNOTATED
WEST'S WISCONSIN STATUTES ANNOTATED
CHAPTER 43. LIBRARIES**

**Current through 1993 Act 15, published 8/13/93.
Wis. Stat. Ann. § 43.30 (West 1993)**

43.30. Public library records

(1) 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 borrows or uses the library's documents or other materials, resources or services 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).

(2) A library supported in whole or in part by public funds may disclose an individual's identity to another library for the purpose of borrowing materials for the individual only if the library to which the individual's identity is being disclosed meets at least one of the following requirements:

(a) The library is supported in whole or in part by public funds.

(b) The library has a written policy prohibiting the disclosure of the identity of the individual except as authorized under sub. (3).

(c) The library agrees not to disclose the identity of the individual except as authorized under sub. (3).

(3) A library to which an individual's identity is disclosed under sub. (2) and that is not supported in whole or in part by public funds may disclose that individual's identity to another library for the purpose of borrowing materials for that individual only if the library to which the identity is being disclosed meets at least one of the requirements specified under sub. (2)(a) to (c).

WYOMING

**WYOMING STATUTES 1977
TITLE 16. CITY, COUNTY, STATE AND LOCAL POWERS
CHAPTER 4. UNIFORM MUNICIPAL FISCAL PROCEDURES;
PUBLIC RECORDS, DOCUMENTS AND MEETINGS
ARTICLE 2. PUBLIC RECORDS**

**Current through Ch. 230 of the General Session of the 52nd Legislature (1993)
Wyo. Stat. § 16-4-203(d)(ix) (1993)**

s 16-4-203 Right of inspection; grounds for denial; access of news media; order permitting or restricting disclosure.

(d) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

(vi) Library, archives and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of the contributions;

(ix) Library circulation and registration records except as required for administration of the library or except as requested by a custodial parent or guardian to inspect the records of his minor child;

APPENDIX C

**FIRST, FOURTH, FIFTH AND FOURTEENTH AMENDMENTS
TO THE CONSTITUTION OF THE
UNITED STATES OF AMERICA**

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment 4

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of

life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce (sic) any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendments are copied from The Constitution of the United States of America: Analysis and Interpretation prepared by the Legislative Reference Service of the Library of Congress and published in 1964.

APPENDIX D**AMERICAN LIBRARY ASSOCIATION
POLICY ON CONFIDENTIALITY OF LIBRARY RECORDS***

The Council of the American Library Association strongly recommends that the responsible officers of each library, cooperative system, and consortium in the United States:

- 1. Formally adopt a policy which specifically recognizes its circulation records and other records identifying the names 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 or 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.****

*** Note: See also ALA Policy Manual 54.15--Code of Ethics, Point 3. "Librarians must protect each user's right to privacy with respect to information sought or received, and materials consulted, borrowed, or acquired."**

**** Note: 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.

--Adopted January 20, 1971; revised July 4, 1975 and July 2, 1986, by the ALA Council.

APPENDIX E

ALA GUIDELINES FOR DEVELOPING A WRITTEN POLICY TO PROTECT THE CONFIDENTIALITY OF CIRCULATION RECORDS

Include the following:

*** THE POLICY'S OBJECTIVE**

Who or what is to be protected?

From whom or what?

Why is the policy necessary?

*** RESPONSIBILITY**

Who is responsible for implementing the policy?

Who will enforce it?

Who has a right to know?

A need to know?

*** CRITERIA**

Which information will be protected?

How will this be determined?

*** PROCEDURES**

What steps are to be taken by staff in identifying situations where the policy applies?

How will the policy be implemented in response to such situations?

How will the policy be adopted, amended, repealed?

How will it be incorporated into the training of new staff?

What specific steps must staff follow under the policy?

What provisions will there be for making the policy known to patrons and the public at large?

* **CIRCUMSTANCES**

Under which circumstances will records be released?

This is transcribed from Module I, "Policy Development," of the American Library Association Confidentiality in libraries: An intellectual freedom modular education program.

APPENDIX F

AMERICAN LIBRARY ASSOCIATION STATEMENT ON PROFESSIONAL ETHICS, 1981

Since 1939, the ALA has recognized the importance of codifying and making known to the public and the profession the principles which guide librarians in action. This latest revision of the Code of Ethics reflects changes in the nature of the profession and in its social and institutional environment. It should be revised and augmented as necessary.

Librarians significantly influence or control the selection, organization, preservation, and dissemination of information. In a political system grounded in an informed citizenry, librarians are members of a profession explicitly committed to intellectual freedom and the freedom of access to information. We have a special obligation to ensure the free flow of information and ideas to present and future generations.

Librarians are dependent upon one another for the bibliographical resources that enable us to provide information services, and have obligations for maintaining the highest level of personal integrity and competence.

CODE OF ETHICS

- I. Librarians must provide the highest level of service through appropriate and usefully organized collections, fair and equitable circulation and services policies, and skillful, accurate, unbiased, and courteous responses to all requests for assistance.

- II. Librarians must resist all efforts by groups or individuals to censor library materials.

- III. Librarians must protect each user's right to privacy with respect to information sought or received, and materials consulted, borrowed, or acquired.**
- IV. Librarians must adhere to the principles of due process and equality of opportunity in peer relationships and personnel actions.**
- V. Librarians must distinguish clearly in their actions and statements between their personal philosophies and attitudes and those of an institution or professional body.**
- VI. Librarians must avoid situations in which personal interests might be served or financial benefits gained at the expense of library users, colleagues, or the employing institution.**