

## Denver Public Library

### Confidentiality of Library Records Policy

The Board of Trustees of the Denver Public Library recognizes the responsibility to protect the privacy of library users.

This policy is meant to protect the privacy of library users while complying with the Constitution of the United States of America, the First and Fourth Amendments, Federal and State Code, and the Code of Ethics of the American Library Association.

**Library Records are treated specifically in the Code of Iowa 22.7 “Examination of Public Records (Open Records)”, paragraphs 13, 14, and 18. The citations are as follows:**

#### 22.7 Confidential Records

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

22.7 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 or juvenile 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.

22.7 14 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.

22.7 18 Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of

government, to the extent that the government body receiving those communication from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available to the general public examination.

**In keeping with the protections afforded by the Constitution of the United States of America, First and Fourth Amendments, Federal and State Code and the Code of Ethics by the American Library Association, the Denver Public Library shall hold confidential:**

1. Information sought or received and materials consulted, borrowed, or acquired, database search records, reference interviews, interlibrary loan records, computer use records, and all other personally identifiable uses of library materials, facilities, or services.
2. The names of card holders and their registration information and not provide access for private public, or commercial use. Release of such information not attached to a circulation record could discourage people from applying for library cards.

The lawful custodian of the records of the library is the Director of the Library.

The legal counsel for the library is the City Attorney.

If there is a reasonable basis to believe that library registration records are necessary to the progress of an investigation or prosecution, the request for records including the justification for the request shall be made to the Director, in writing on official letterhead by an official of the investigation or prosecution workforce who has provided the necessary information.

Circumstances that may require the library to release library registration information include the following:

1. The library receives a valid court order requiring the library to release records protected under the Iowa Code.
2. The library receives a Warrant for the information issued under the USA Patriot Act.
3. The library receives a National Security Letter seeking the information pursuant to the USA Patriot Act.

The issuance or enforcement of any such process, order, or subpoena shall be examined by the library director in consultation with legal counsel and resisted until such time as a proper showing of good cause has been made in a court of competent jurisdiction.

**Staff Procedure for Enforcing the Policy on Confidentiality Records:**

1. The library staff member receiving a request to examine or obtain information relating to registration records or circulation records or other records identifying the names of library users will immediately ask for identification and then immediately refer the person making the request to the director. If the director is unavailable, staff will contact the director as soon as possible. In the event that the director cannot be reached, the highest ranking staff member on duty is responsible for working with the requestor.
2. The Library Director shall meet with the requestor with library legal counsel or another colleague in attendance. If the requestor does not have a court order compelling the production of records, the library director shall explain the confidentiality policy and state's confidentiality law and inform the requestor that the records will not be released except with a proper court order.
3. The Patriot Act does not impose any duty on libraries to collect or retain confidential information about its patrons for law enforcement purposes, therefore staff shall not alter library record keeping procedures as a result of a court order for existing information.
4. If the records requested cover registration, circulation, or other records protected under the Iowa Code, upon receipt of a process, order, or subpoena, the library director shall immediately consult with legal counsel to determine if such process, order, or subpoena is in proper form and if there is a showing of good cause of its issuance.
5. If any written request, process, order, or subpoena is not in proper form or if good cause has not been shown, the library director shall insist that such defects be cured before any records are released.

## **If Court Orders Are in Proper Form and Good Cause Has Been Shown:**

### **Court Order in the Form of a Subpoena:**

1. Library counsel shall examine the subpoena for any legal defect, including the manner in which it was served on the library, the breadth of its request, its form, or an insufficient showing of good cause made to a court. If a defect exists, counsel will advise on the best method to resist the subpoena. The library may file a motion to quash the subpoena or a motion for a protective order. A court may decide whether the library must comply with the subpoena. Counsel shall be consulted on all issues, including the payment of costs if the library is the unsuccessful party.
2. Through legal counsel the library director shall insist that any defect be cured before records are released and that the subpoena is strictly limited to require release of specifically identified records or documents.
3. If disclosure is required, the library director shall ask the court to enter a protective order (drafted by library counsel) to keep the information confidential and limit its use to the particular case. Legal counsel shall be instructed to ask that access be restricted to those persons working directly on the case.

### **Court Order in the Form of a Search Warrant:**

1. Because a warrant is immediately executable, staff may permit the agent or officer to begin a search of library records while staff makes contact with the library director.
2. Staff shall request to contact the library director before the search begins and to have the library director served with the warrant. The library director shall request to have legal counsel present before the search begins.
3. As soon as the library director is served with the warrant, the library director will contact the library's legal counsel.
4. Legal counsel shall request to be present before the search begins in order to allow library counsel an opportunity to examine the search warrant and to assure that the search conforms to the terms of the warrant.

5. The library director and legal counsel shall cooperate with the search to ensure that only the records identified in the warrant are produced and that no other user's records are viewed or scanned. The library director shall keep track of what is examined and what is taken.

**A Court Order as a Search Warrant Issued Under the Foreign Intelligence Surveillance Act (FISA) (USA Patriot Act amendment):**

1. Only FBI agents can use the Patriot Act to request information. An FBI agent who wishes to obtain confidential patron information is still required to present a court order before legally obtaining these records.
2. This search warrant contains a "gag order". If someone other than the library director is served with the warrant, that person shall not disclose that the warrant has been served or that records have been produced pursuant to the warrant except to the library director or the library's legal counsel. This gag order makes it particularly important the court order be served on the library director. Procedure for the search shall follow those as outlined above for a search warrant.

**A Court Order Including Removal of Hardware or Software:**

If the court order requires the removal of a computer workstation or other computer storage device from the library, the library director shall request that a backup tape be made before the device is removed.

Any threats or unauthorized demands concerning circulation or other records identifying the names of library users shall be reported to the director. Without a court order, neither the FBI nor local law enforcement has authority to compel cooperation with an investigation or require answers to questions other than the name and address of the person speaking to the agent or officer. If the agent or officer persists, or makes an appeal to patriotism, the director or other staff member should explain that as good citizens, the library staff will not respond to informal requests for confidential information in conformity with professional ethics, First Amendment freedoms, and state law.

**After any such visit by law enforcement:**

1. The court order shall be reviewed with legal counsel to ensure that the library complies with any remaining requirements including restrictions on sharing information with others.
2. Library policies and staff responses shall be reviewed and revised if necessary.
3. Communication with the news media shall be planned. A public information statement detailing the principles upholding library confidentiality shall be prepared if necessary.
4. Notice, in keeping with the court order served, shall be sent to ALA by calling the Office for Intellectual Freedom, to the Iowa Library Association's Intellectual Freedom Committee, to the State Library of Iowa, and to the Northeast Iowa Library Service Area.

Reviewed by the Denver Board of Trustees

Date: 1-13-2020