

PRIVACY OF LIBRARY RECORDS – POLICY AND PROCEDURES

Person Responsible: Operations Report
Last Updated: 3/18/18

- I. **PURPOSE:** This policy provides guidelines for staff based on Colorado State Library Privacy Statutes and the USA Patriot Act regarding the release of customer library records.

- II. **PROCEDURE FOR PRACTICAL IMPLEMENTATION of Colorado Statute (C.R.S. 24-90-119),**
 - A. Privacy with respect to information sought or received and materials consulted or borrowed is a fundamental right for library users. Colorado statutes provide the framework for the procedures the Library follows to protect the confidentiality of customer records according to **Colorado Statute (C.R.S. 24-90-119), Privacy of user Records.**

 - B. Records may be disclosed in the following instances:
 1. Directly to the account holder who presents a library card or an account number; verifying the person presenting the library card or account number is the account holder by requesting additional identification as necessary.
 2. To a third party upon written consent of the account holder with verification by a supervisor and in consultation with the Library Director as deemed appropriate,
 3. When necessary for the reasonable operation of the library with approval of a facility supervisor and in consultation with the Library Director as deemed appropriate;
 4. Pursuant to subpoena, upon court order, or where otherwise required by law in consultation with the Library Director.

 - C. Records may be disclosed over the telephone in the following instances:
 1. If the account holder can provide their library account number and can provide another identifying piece of information only the cardholder would have, such as their date of birth or home address or phone number in the record. All account information can then be released.
 2. If the account holder cannot provide the library account number but can provide additional identification such as the account holder's name, date of birth and address staff shall disconnect with the account holder and immediately call the account holder back at the telephone number(s) on file with the library to confirm the caller is the account holder.
 3. When re-contacted at a phone number listed in library record all account information can then be released. If the account holder cannot be contacted by staff at any of the telephones listed in library record no information shall be released.
 4. When the caller is a custodial parent or legal guardian who can provide the library account number and additional information, all account information can be released to the caller. If the custodial parent or legal guardian cannot provide the library account number, staff should follow the steps outlined in subparagraph 2 above. If contacted at a phone number listed in the library records then all account information can be released to the caller.
 5. Outside of the above scenarios, the customer must come in and show identification.

 - D. A parent (e.g. legal guardian) may have full access a dependent minor's library account if they have written consent from the user, the library card or the library account number. If the parent does not have the card, account number or written consent from the user, the parent may have information limited only to the number of items, circulation dates and account

financial data if any amounts are owed AND the parent may cancel the account at any time if the account is clear of checked out items and outstanding balances.

III. LEGAL RESPONSIBILITIES OF LIBRARY STAFF AND VOLUNTEERS: According to **(C.R.S. 24-90-119)**, 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 (\$300). Source: L. 83, p. 1023, § 1.

>>**ALSO SEE CITY**<< Administrative Policy Memoranda (APM) 4-9

RELEASE OF LIBRARY RECORDS UNDER THE PATRIOT ACT

IV. OVERVIEW: Congress enacted Anti-terrorism legislation entitled USA PATRIOT Act in October 2001 (US HR 3162, Public Law 107-56). The USA PATRIOT Act states that a federal agent with an signed order from the Foreign Intelligence Surveillance Court (FISC) issued pursuant to the Foreign Intelligence Surveillance Act, (50 U.S.C. § 1801-1862, specifically, § 1861), (FISA), can have access to “any tangible item,” a statement covering either electronic or written records. A gag order is immediately in effect when a request is made, meaning staff cannot disclose to anyone else that tangible items or library records have been requested, other than the library can call legal counsel. Colorado Library Law 24-90-119 Privacy of user records is superseded by the federal USA PATRIOT Act.

V. PROCEDURE FOR RELEASE OF RECORDS UNDER THE PATRIOT ACT: The following are recommended action steps, recognizing that the federal law voids the Library’s accustomed legal mandate to protect the customer’s right to privacy.

- A. The federal official will in most cases request to speak with the manager or the supervisor or the person in charge. If you are filling one of these roles:
1. Ask for identification
 2. Immediately refer the official to the Director designee, the Library Services Manager. It is lawful to refer the official to an administrator in charge of the library. Do not respond immediately on your own.
 3. Call Administration immediately to make sure one of these individuals is available. If neither of these individuals can be reached because they are both out of town, an Acting Director will have been appointed and you will refer the official to that individual.
 4. Inform the Director or his designee that a federal official is on their way.
 5. By federal law, you MAY NOT tell anyone else that this request has occurred, including coworkers, customers, friends, the individual/s named in the warrant, the media or anyone at all.
- B. Legal counsel will immediately be called to provide advice or to be onsite to meet with the Director or designee and the federal official.
- C. The Director or designee will include either legal counsel or another library administrative colleague in the meeting with the federal official.
- D. No Court Order Presented: If the official does not have a signed court order compelling the production of records, the director or designee will explain that the user’s records are not available except when a proper court order has been presented to the library. Without a

proper court order, the official has no authority beyond requesting the name and address of the person with whom he or she is meeting.

E. Subpoena Presented: A federal agency subpoena to produce records, signed by a FISC judge, is a Court Order requiring the release of the listed library records:

1. If the official presents a proper court order, the director or his designee will immediately refer the court order to the library's legal counsel for review for any legal defect, including the manner in which it was served on the library, the breadth of its request, its form, or other issues as may be identified by the City Attorney's staff.
2. Provide only those records or documents specifically identified by the court order and approved for release by legal. Follow instructions strictly and do not provide any information not specifically requested.
3. The City Attorney's staff may ask the court to enter a protective order to keep the information confidential and limit use to the particular case, asking that access be restricted to those persons working directly on this specific case.

F. Search Warrant Presented: A search warrant signed by a FISC judge is a Court Order requiring the release of the listed library records:

1. A search warrant is executable immediately and the official may begin a search of library records as soon as the director or designee is served with the court order.
2. The director or designee will ask to have library counsel present before the search begins. This will provide an opportunity for the city assigned library counsel to review the search warrant.
3. Cooperate with the search to ensure only those user records identified in the warrant are produced and no other user records are viewed or scanned.
4. Search warrants issued under FISA include a "gag order." No person or staff or institution served with this warrant can disclose to anyone, including the customer who is the subject of the search that the warrant has been served or that records have been produced pursuant to the warrant.
5. The "gag order" does not include legal counsel. The library can still seek legal advice concerning the warrant and can request that the library's legal counsel be present during the actual search and execution of the warrant.

APPROVED BY _____
Department Director

DATE _____

APPROVED BY _____
Library Board

DATE _____

Approved As To Form