

## FAQ: Library Confidentiality

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**This "FAQ" deals with confidentiality of library records that identify library users and their use of library materials, resources, or other services. A different "FAQ" deals with public records generally and Wisconsin's public records law.**

### **What's the statutory reference?**

Section 43.30(1m) of Wisconsin Statutes states, which says in part:

*Records of any library which is in whole or in part supported by public funds .... indicating the identity of any individual who borrows or uses the library's documents or other materials, resources, or services may not be disclosed...*

### **What does it mean?**

You may not release any library record that identifies anyone who is using the library or reveals their use of library materials, resources, or services except under specific circumstances. Not specified in statute, but covered by general ethical principles, is that staff should not unnecessarily talk about library users and their use of the library (gossip).

### **What's a record?**

According to Section 19.32(2) of Wisconsin Statutes:

*"Record" means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks.*

A record could be any document, correspondence, audio or video recording. The format of the record does not matter; it could be a printed document, email, or computer file.

**When the statute says “records .... indicating the identity of any individual who borrows or uses the library's documents or other materials, resources, or services” what “documents or other materials, resources, or services” are being referred to?**

Any record that would allow someone to identify an individual's use of materials in the library's collection, whether checked out or used in the library, their access to library computers, and their participation in library programs and activities. The Attorney General's office has interpreted this section very broadly and stated that persons merely using the library's parking lot or entering the building may be using library resources and records relating to that use must remain confidential.

The following comes from a 2006 Attorney General's opinion:

*Some might suggest that the Legislature did not intend to include surveillance tapes of common areas, parking lots, entrances and exits within the statute's proscription. But the clear language of the statute belies that suggestion. Certainly, an individual who parks in the library's parking lot, enters the library through its entrance, and walks through the library's hallways, stacks, and sitting or study areas is an individual who is using the library's "resources". A community group using the library's meeting room is using the library's "resources". The Legislature's intent is reflected in the statute's unambiguous language.*

**When can records be released?**

Statute lays out several exceptions to the prohibition on releasing library records that identify library users.

First, any record must be released if the library has been issued a court order (subpoena or other order).

You *must* also release records, without a court order, under these circumstances:

- Records produced by a surveillance device (security camera) must be released to law enforcement personnel investigating criminal conduct alleged to have taken place at the library
- To persons authorized by the individual to view the records
- To custodial parents or guardians of children under the age of 16
- Although not listed in this statute there is a generally accepted “exigent circumstances” exception. If someone's life or safety is at risk, or if release of the records would stop a crime in progress or one about to occur, you must release the records.

In addition, records *may* be released without a court order under these circumstances:

- To persons acting within the scope of their duties in the administration of the library (or library system)
- To the staff of another library to allow the individual to borrow materials from that library
- Records produced by a surveillance device (security camera) may be released if the library director has requested the assistance of a law enforcement officer and the director believes these records may assist the officer.
- If the library is trying to retrieve overdue materials or collect money owed it may release information to a collection agency or to law enforcement. Information released is limited to the person's name, contact information, amount owed, and number and types of materials that are overdue. The person must owe at least \$50 before information can be released to law enforcement. There is no minimum amount for collection agencies.

### **What if someone commits a crime in the library?**

If you see someone committing a crime in the library you should, of course, call the police immediately. You should also call police if you find evidence that criminal activity has occurred.

Under 42.30(5) you may release surveillance device (security camera) records without a court order. Before obtaining other records, however, law enforcement personnel must obtain a court order.

### **If a law enforcement officer asks for records that I cannot release without a court order may I tell the officer whether the record might be useful or not?**

Yes, if you know by looking at the record whether it might or might not be useful you can certainly tell the officer whether you think the record will be useful. You can also give negative information: "You've asked me if [name] used our computers this morning. Our records show he did not."

### **What about staff knowledge or observations?**

Staff knowledge is not a "record" under the law. If a law enforcement officer asks if a certain person has been in the library, checked something out, or used other library resources, they should answer the question.

The following comes from a 2006 Attorney General's opinion:

*Librarians may disclose information regarding crimes to law enforcement officers without a court order. The statute only prohibits the disclosure of library records that identify patrons. If a librarian observes a patron steal library materials or assault a child the librarian may report the crime to law enforcement officers and identify the patron to officers. "*

### **What about library computers and photocopiers?**

Many library users use library public access computers and photocopiers for personal and confidential information. Libraries should take steps to prevent identity theft or other misuse of this information.

Public access computers should be set to reboot after each use and should have software that prevents the user from saving anything permanently.

Most photocopiers and some printers and faxes manufactured since 2002 contain hard drives which store all documents copied or printed by the machine. Before these machines are disposed of the hard drive should either be erased or removed.

### **Where can I find more information?**

- Wisconsin Division for Libraries and Technology's FAQ on library privacy: <http://dpi.wi.gov/pld/boards-directors/administration/faq#Privacy>
- Library policies on confidentiality and privacy: <http://dpi.wi.gov/pld/boards-directors/policy-resources#Confidentiality>
- Before the Police Arrive: Be prepared before the police arrive to request library records (From the South Central Library System) <http://www.scls.info/management/law/enforcement/police.html>

- Guidelines for Developing a Library Privacy Policy (from ALA)  
<http://www.ala.org/Template.cfm?Section=ifissues&Template=/ContentManagement/ContentDisplay.cfm&ContentID=25304>

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### **43.30 Public library records.**

**(1b)** In this section:

- (ae) "Collection agency" has the meaning given in s. [218.04 \(1\) \(a\)](#).
- (ag) "Custodial parent" includes any parent other than a parent who has been denied periods of physical placement with a child under s. [767.41 \(4\)](#).
- (b) "Law enforcement officer" has the meaning given in s. [165.85 \(2\) \(c\)](#).

**(1m)** 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, to custodial parents or guardians of children under the age of 16 under sub. [\(4\)](#), to libraries under subs. [\(2\)](#) and [\(3\)](#), or to law enforcement officers under sub. [\(5\)](#).

**(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 [\(c\)](#).

**(4)** Upon the request of a custodial parent or guardian of a child who is under the age of 16, a library supported in whole or part by public funds shall disclose to the custodial parent or guardian all library records relating to the use of the library's documents or other materials, resources, or services by that child.

- (5) (a) Upon the request of a law enforcement officer who is investigating criminal conduct alleged to have occurred at a library supported in whole or in part by public funds, the library shall disclose to the law enforcement officer all records pertinent to the alleged criminal conduct that were produced by a surveillance device under the control of the library.
- (b) If a library requests the assistance of a law enforcement officer, and the director of the library determines that records produced by a surveillance device under the control of the library may assist the law enforcement officer to render the requested assistance, the library may disclose the records to the law enforcement officer.
- (6) (a) Subject to par. (b) and notwithstanding sub. (1m), a library that is supported in whole or in part by public funds may report the following information as provided in par. (c):
1. Information about delinquent accounts of any individual who borrows or uses the library's documents or other materials, resources, or services.
  2. The number and type of documents or materials that are overdue for each individual about whom information is submitted under subd. 1.
- (b) If a public library discloses information as described in par. (a), the information shall be limited to the individual's name, contact information, and the amount owed to the library.
- (c) A library may report the information as described in par. (a) to any of the following:
1. A collection agency.
  2. A law enforcement agency, but only if the dollar value of the individual's delinquent account is at least \$50.