

# George Culver Community Library Policy

POLICY: Confidentiality of Library Records

AUTHORIZED BY: Library Board of Trustees

APPROVED DATE: November 8, 2004

DATE OF LAST REVIEW/REVISION:

The Board of trustees of the George Culver Community Library recognizes that the reading activity and interests of library users are and should be private and is protected under Wisconsin Statute 43.40 (1), which read as follows:

## **2003 WISCONSIN ACT 207**

**An ACT to renumber and amend 43.30 (1); and to create 43.30 (1b) and 43.30 (4) of the statutes; relating to: the disclosure of public library records.**

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 43 (1) of the statutes is renumbered 43.40 (1m) and amended to read:

43.30 (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 as required under sub. (4), or to libraries as authorized under subs. (2) and (3).

SECTION 1m. 43.30 (1b) of the statutes is created to read: 43.30 (1b) In this section, "custodial parent" includes any parent other than a parent who has been denied periods of physical placement with a child under s. 767.24 (4).

SECTION 2. 43.30 (4) of the statutes is created to read: 43.30 (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.

SECTION 3. Initial applicability.

(1) This act first applies to requests for disclosure that are received by a library on the effective date of this sub-section.

B. The Board interprets this document to include all transactions associated with the use of library materials including interlibrary loan hold shelf, records of reference questions, computer use and other documents or electronic records which would link the individual with particular materials or services.

1. Any library record inquiries by someone other than the cardholder will not be honored unless the inquiring patron has the permission from that cardholder. In most cases possession of the library card is considered consent by the cardholder to divulge library records.

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2. Parents who inquire about the library records of their children under the age of 16 may be asked to present reasonable evidence that they are the “custodial parent”. Custodial parent in this policy has the following meaning:
  - i. If the mother and father are married, either is considered a custodial parent.
  - ii. If the mother and father are not married but each has periods of physical placement under a court order, either parent is a custodial parent.
  - iii. If the mother and father are not married and there is a court order awarding physical placement solely to one of the parents, that person is the custodial parent.
  - iv. If the parties are not married and there is no court order regarding physical custody, the parent with whom the child resides is the custodial parent.

C. It is the policy of the Library to contact legal counsel immediately and to 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. Requests for registration and circulation information by law enforcement officials should be referred to the Director.

The above Wisconsin Law is overridden by the USA PATRIOT Act. (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism). Among other provisions, the USA PATRIOT Act:

- 1) authorizes the FBI, or any police department deputized by the FBI, to obtain a search warrant for “any tangible thing” which can include books, records, papers, floppy disks, data tapes and computers with hard drives. It permits the FBI to compel immediate production of records from a library including circulation, borrower registration, and Internet usage records, without probable cause, (but with a search warrant)
- 2) prohibits a library employee who receives such a request under the law from talking with anyone, except an attorney about the request (search warrant from the Foreign Intelligence Act includes a “gag order”)
- 3) prohibits notification to a patron that his/her records have been requested
- 4) preempts and overrides all state laws declaring library records to be confidential.

Though we cannot guarantee complete privacy, the George Culver Community Library uses several measures to maintain the privacy of our patrons according to library policies:

- 1) the library does not keep any records relating to patrons that contain personally identifiable information, which are unnecessary to the efficient operation of the Library
- 2) the library keeps records of Internet usage only long enough to record a circulation count
- 3) the library system will not save online catalog searches, previous fine free loans, or Interlibrary loan requests.

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## I. Staff Procedures

### A. For custodial parent (Act 207)

1. When parents inquire about their children's library records the library staff will answer as required by Wisconsin statute 43.30 as amended by Act 207. (See policy above.)

2. Staff should take reasonable measures to ensure that the inquiring patron is the "custodial parent" of the juvenile (See definition of "custodial parent in policy.) (Juvenile is child under the age of 16.) This may include verifying that the addresses of both parties match.

- i. If parent has the child's card, it is considered consent.
- ii. If parent has a library card and it is determined that the addresses for parent and child match.
- iii. If parent doesn't have a library card or doesn't have it with them, then a government issued picture ID may be used to determine address match.
- iv. The library staff will accept any other set of documents that demonstrates to the library staff's satisfaction that the requester is the custodial parent or guardian of the child.

3. In some cases verifying the relationship may be more difficult and then the staff may ask the Library Director to handle the matter. In such a case, the patron may have to wait up to 48 hours until identities can be verified and the inquiry filled.

### B. For Patriot Act

- If anyone approaches staff alleging to be law enforcement official requesting information, s/he will immediately contact the director. (In the director's absence, staff will contact senior staff members or the Library Board President or Library Board members.) **Do not disclose any information to that individual.**
- The director, senior staff members or Library Board members will ask to see official identification and will photocopy the ID.
- If the law enforcement official presents a **subpoena\*\***, the library director will contact the city attorney for advise on how best to proceed. It is desirable for legal counsel to be present when the subpoena is executed.
- If the law enforcement official presents a **search warrant\*\*\***, it is executable immediately. The library director will notify legal counsel and will attempt to have legal counsel present during the search to be sure that the search conforms to the terms of the warrant. If time does not allow for this, the search must be allowed to proceed. The library director or her/ his representative will cooperate with the search to ensure that only the records identified in the warrant are produced and that no other users' records are viewed or scanned. Library staff should not interfere with the search and / or seizure of library property.
- If the search warrant is issued by a FISA (Foreign Intelligence Surveillance Act) court it contains a "gag order." That means that no person or institution has been served or that records have been produced pursuant to the warrant.

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- The library and its staff must comply with this order. No information can be disclosed to any other party, including the patron whose records are the subjects of the search warrant.
- The gag order does not change a library's rights to legal representation during the search. The library can still seek legal advice concerning the warrant and request that the library's legal counsel be present during the actual search and execution of the warrant.

### *\*Order or court order*

*n. every direction or mandate of a judge or a court which is not a judgment or legal opinion (although both may include an order) directing that something be done or that there is prohibition against some act. This can range from an order that a case will be tried on a certain date, to an order that a convicted defendant be executed at the state prison.*

### *\*\*Subpoena*

*(subpoena): n. an order of the court for a witness to appear at a particular time and place to testify and or produce documents in the control of the witness (if a "subpoena duces tecum"). A subpoena is used to obtain testimony from a witness at both depositions (testimony under oath taken outside of court) and at trial. Subpoenas are usually issued automatically by the court clerk but must be served personally on the party being summoned. Failure to appear as required by the subpoena can be punished as contempt of court if it appears the absence was intentional or without cause.*

### *\*\*\*Search warrant*

*An order signed by a judge that directs owners of private property to allow the police to enter and search for items named in the warrant.*