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This webinar contains legal information provided for educational purposes

Consult with your library attorney for legal advice (applying the law to your specific situation)

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Roadmap



Privacy as a Library Value



Privacy as a Legal Concept



Addressing Your Questions

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"All people, regardless of origin, age, background, or views, possess a right to privacy and confidentiality in their library use. Libraries should advocate for, educate about, and protect people's privacy, safeguarding all library use data, including personally identifiable information."

- Article VII, Library Bill of Rights, American Library Association

Privacy as a Core Library Value

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Personally Identifiable Information (PII)

Generally, information that when used alone or with other relevant data, can identify an individual.

Definition may vary slightly by source (legal or otherwise), e.g., I.C. § 4-1-6-1

May encompass:

- Direct identifiers, such as: name, address, e-mail address, telephone number, Social Security number, other identifying numbers/codes, images of identification that include these elements
- Indirect identifiers, which identify a person when combined with other data elements, such as gender, race, birth date, age, geographic indicators (zip code), hobbies, interests, purchases, or other information that permits the physical or online contacting of a specific individual.
- Data points maintained in either paper, electronic, or other media

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"We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted."

- Article III, ALA Code of Ethics

Privacy as an
Ethical
Principle

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Privacy: An Interpretation of the Library Bill of Rights

- <https://www.ala.org/advocacy/intfreedom/librarybill/interpretations/privacy#Notes>
- Rights of Library Users
 - To be free from unreasonable intrusion into or surveillance of their lawful library use
 - To have their personally identifiable information and library-use data protected and kept private and confidential by anyone with access to that information
 - To be informed about policies and practices governing the collection, security, and retention of personally identifiable information and library use data
 - To have the choice to opt-in to any data collection that is not essential to library operations and the opportunity to opt-out again at any future time
- Responsibilities in Libraries
 - Facilitate, not monitor, access to information
 - Adopt and adhere to library privacy policies that are consistent with applicable federal, state, local, and where appropriate, international law.
 - Maintain an updated, publicly available privacy policy that states what data is being collected, with whom it is shared, and how long it is kept.
 - Maintain an environment respectful and protective of the privacy of all users and provide ongoing privacy education and training to library workers, governing bodies, and users in order to fulfill this responsibility.

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Legal Foundations

- There is a constitutional right to privacy with respect to protecting a citizen from government intrusion into their personal affairs
 - Not explicitly mentioned in the U.S. Constitution or Indiana Constitution, but explicit in U.S. Supreme Court jurisprudence
- The right to privacy has perhaps been abridged in recent court decisions (*Dobbs*)
- However, the right has always been a bit “fluid” and context-dependent
 - For example, the right to privacy in home is greater than in public
 - Generally, no expectation of or right to privacy in a public place

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Legal Foundations (continued)

Federal, state, and local laws may protect disclosure of certain information to the public.

Federal, state, and local laws may mandate or allow for the disclosure of certain information to the public.

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Question

What patron or employment records must be disclosed and to whom?

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Access to Public Records Act

Ind Code § 5-14-3

Expresses a public policy for allowing liberal access to records of public agencies

Applies to public agencies – includes public libraries, school corporations, public university

Gives a "person" the right to **inspect and copy** records during regular business hours

Numerous exceptions

Sets out the process for dealing with requests

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Public Record Defined

- "Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine-readable media, electronically stored data, or any other material, regardless of form or characteristics.
- Includes materials created by a private individual for or on behalf of a public agency. *Knightstown Banner, LLC v. Town of Knightstown*, 838 N.E.2d 1127 (Ind. Ct. App. 2005).

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Exceptions to Access (Confidential)

I.C. § 5-14-3-4

- (a) **Mandatory** confidential categories - 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) **Discretionary** categories - 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**:

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Confidential - Mandatory

I.C. § 5-14-3-4(a)

- (1) Those declared confidential by state statute.
- (2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.
- (3) Those required to be kept confidential by federal law.
- (4) Records containing trade secrets.
- (5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.
- (7) Grade transcripts and license examination scores obtained as part of a licensure process.
- (12) A Social Security number contained in the records of a public agency.

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Confidential – Discretionary

I.C. § 5-14-3-4(b)

- (8) Personnel files of public employees and files of applicants for public employment, with some parts of the personnel file excepted
- (16) Library or archival records

To give force and effect:

- The agency/unit should take affirmative steps
- Write a policy

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Personnel Files

I.C. § 5-14-3-4(b)(8)

May be confidential, except this information must be disclosed:

- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) information relating to the status of any formal charges against the employee; and
- (C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative.

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Library Records

I.C. § 5-14-3-4(b)(16)

May be confidential (discretionary)

(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 persons specified at the time of the acquisition or deposit.

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Some states mandate certain library information is confidential.

In Indiana, where maintaining the confidentiality of library records is a discretionary act, **policies are critically important.**

APRA gives libraries the opportunity to craft policies that protect library users.

Libraries **MUST** take action.

APRA Creates Opportunity

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BRAINSTORMING ACTIVITY

Write a list of library records
“which can be used to identify
any library patron.”

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Possible PII (non-exhaustive)

circulation
records

library card
application

computer
sign-up
sheet

financial
records
(fines/fees)

account
notices

study room
sign-up

meeting
room
requests

program
registration
sheets

internet
search
history

video
surveillance
recordings

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Policy Goals



Ensure that confidential information in all formats is protected.



Communicate the library's commitment to protecting user information.



Prevent liability and public relations problems.

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Policy Development Checklist

Counsel	Consult with legal counsel or other experts to develop the policy.
Purpose	State the purpose of the policy, how often it will be reviewed, and where to address questions
Mission	Explain how protecting user privacy and confidentiality relates to the mission of the library
Principles	Refer to the principles on which the library's commitment to protecting privacy is based
Law	Refer to any federal, state, and local laws that impact library privacy, such as I.C. § 5-14-3-4(b)(16)(A)
Release	Include situations in which confidential information can be released, such as patron authorization, court order, warrant, subpoena

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Additional considerations

- Limit the collection of PII to legitimate business purposes
- Limit the storage of PII (in conformity with state law on record retention)
- Make "opt-in" to data sharing the norm (rather than opt-out)
- Implement technologies that protect exposure of user information to others
- Avoid practices and procedures that place PII on public view (hold shelves)
- Address how the library will approach minors and privacy
- Evaluate and negotiate vendor contracts consistently with privacy policy
- Provide notice to library users of what information is collected and why
- Post library privacy and data use policies
- Notify patrons of data breaches
- Regularly update the policy based on changing technology and vendor contracts

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Privacy Audits

- Privacy audits are procedures to ensure that your organization's goals and promises of privacy and confidentiality are supported by its practices.
- They can protect confidential information from abuse and the organization from liability and public relations problems.
- A privacy audit provides a library an opportunity to examine:
 - How privacy matters are handled at all levels
 - The flow and storage of data
 - The role data plays within the organization
 - Staff training about privacy matters
 - Existing and needed privacy policies
- Resource: <https://www.ala.org/advocacy/privacy/audits>

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Question

Could you address how to handle questions from patrons about other staff? For example, a patron asking if a staff member still works here, or more often "Is ____ working today?" Usually, we get these questions from regular patrons (sometimes even kids) asking about their favorite staff members. We enforce a strict policy on not giving out staff information. Is there a way to balance saying "Sorry, I can't give out that information" in a way that sounds less "cold" and awkward?

Also, we have a patron who listens in to our conversations from across the room and then uses the info that they have learned to ask us personal questions later about what was said, and it has made staff uncomfortable. So that situation in particular has taught my staff to be more aware of what they talk about at the front desk.

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Privacy & Customer Service

Politely offer patron assistance without sharing information.

Pivot Questions

- "I'm not sure if they are working today. How may I help you?"
- "I'm not sure if they are working today. May I give them a message from you?"
- "I believe they are working today but are busy with a research project right now. Is there anything I can help you with while they are busy?"
- "I believe they may be in a meeting. How may I help you?"

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Privacy & Customer Service

- Train staff to be mindful that anyone may be listening, which goes for staff or patron information.
- Protecting patron and staff privacy requires a conscious effort and training
 - Discourage talk about patrons and staff at public service desks or in public spaces
 - You may have to redirect staff or colleagues to take a conversation "off-desk"
 - Have a process in place to protect any PII collected in public spaces
 - To the extent possible, set up public spaces to create some privacy for patrons (while maintaining safety)
 - In patron interactions, discussion about materials should be initiated by the patron - not everyone wants to talk openly about their library material selections, even if there is nothing "obviously" sensitive about them

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Question

Will you be addressing what information we are to provide to the police if they come into the library and request patron information without a warrant or subpoena?

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Law Enforcement Requests

Create a policy and procedures for responding to law enforcement requests

POLICY

- Clearly state/define what information is protected from disclosure
- Clearly state the circumstances under which information can be disclosed, e.g., court order/warrant

PROCEDURE

- Designate a person in charge of receiving and responding to law enforcement requests
- Involve local counsel if able
- Train staff and volunteers to direct law enforcement to the person in charge
- Once established, follow your procedures!

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Law Enforcement Requests



COURT ORDER

- Verify law enforcement identification.
- Follow your internal procedures.
- Review the order carefully.
- Provide only requested information.



NO COURT ORDER

- Explain that the library's privacy policy, professional ethics, and law do not permit disclosure without a court order.
- Wait for police to obtain an order.
- Preserve the information in the interim.

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Cooperation with Law Enforcement

1. If you have reason to believe a crime is being committed in the library, report it, cooperate with law enforcement, and preserve evidence.
2. If there are exigent circumstances, privacy may not be the top concern.
3. If a law enforcement request is made outside of (1) and (2), cooperate by preserving records/evidence until a court order is obtained.

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Question

How far do the privacy rights of children extend? I know we don't share their book selections with anyone, but what if we have to ban a 13-year-old child due to extreme misbehavior? Does his right to privacy prevent us from telling his parents about this? What if we just want some help with misbehaving teens? Would it be a violation of their privacy to reach out to their parents regarding their behavior in the library?

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Children and Privacy

- ALA Policy Statement: "ALA and its members recognize that children and youth have the same rights to privacy as adults."
- Parents and guardians have the ultimate authority to guide their own children's use of library resources and services.
 - Libraries should not assume the role of parent
- Parental/caregiver responsibility is key to a minor's use of the library.
- Parents of minor children assume responsibility for their children's use of the internet through the Library's connection.
 - There are some laws that impact children's library use, particularly with respect to the internet

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Library Policies

The library's behavior, privacy, and borrowing policies may need to address children/minors.

Because APRA is discretionary, a public library may enact policies that distinguish adult records from minor records.

The library should notify minors and parents/caregivers about the library's behavior, privacy, and borrowing policies as a part of the process of issuing library cards to minors.

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Behavior Policies and Minors

- Behavior policies should be designed to create an environment where everyone is able to use the library for its intended purpose
- Behavior policies should be tied to the library's mission
 - See "Carefully Crafted Codes of Conduct" webinar (Cheri Harris, 3/18/2019)
- Behavior considerations for minors:
 - How to handle unattended minors
 - When to contact parents/guardians
 - Safety concerns
- The library should apply its behavior policy equally and fairly

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Policy Enforcement and Privacy

- As a practical matter, may not be able to enforce behavior policies without sharing with a parent/caregiver the fact that a child was present in the library.
 - Mere fact that a minor is in the library is not a "library record" subject to APRA
- In many cases, you may be able to maintain confidentiality with respect to resources and materials accessed by a minor while also addressing behavior.
 - When addressing behavior issues, focus on the behavior as it relates to your policy
 - Do not focus on the content of speech, views expressed, or materials/content accessed
- Other considerations such as child's safety may require you to contact a parent/caregiver before asking them to leave the library.

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Monitoring/Surveillance of Minors

- Excessive monitoring of the behavior of certain groups such as teens could (probably will) have a chilling effect on library use
- This would be in direct contrast to the library's goal of facilitating access to services, regardless of age
- If severe, could potentially expose a public library to liability for abridging the First Amendment rights of minors
 - For example, a library patron who is permanently banned from a library could challenge the library's action as a violation of their First Amendment right to free speech and to receive information.

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Question

I heard that "Children under the age of 13 may only register for a library card and use the library's services with parental consent and supervision" under The Children's Online Privacy Protection Act, which applies to "businesses that operate websites/online services and collect data of children under 13." Further, "COPPA must be strictly adhered to and requires a children's privacy policy and specific notice to parents."

This is the first I've heard of this. Is it a federal or state law? Does it apply to public libraries?

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COPPA

Children's Online Privacy Protection Act - 15 U.S.C. §§ 6501-6506

Goals:

- Increase parental involvement in children's online activities
- Protect children's personal information

Applies to:

- operators of commercial websites and online services **directed at children**

Requires:

- parental consent prior to collection of personal information from a child under age 13
- disclosure to parents of information collected on their children by a website
- opportunity to revoke consent/delete information, and
- protection of confidentiality and security of information collected

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CIPA & NCIPA

- Children's Internet Protection Act - 20 U.S.C. § 9134
- Neighborhood Children's Internet Protection Act - 47 U.S.C. § 254
- Upheld *United States v. American Library Association*, 539 U.S. 194 (2003)
- CIPA requires internet safety policies and internet filtering of
 - (1) obscene material,
 - (2) child pornography, and
 - (3) material harmful to minors,
 at libraries that accept **E-Rate** funding and **LSTA** grants.
- Additional requirements for school libraries
- NCIPA states what needs to be in the internet safety policy

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FERPA – School Libraries

- Family Educational Rights and Privacy Act (FERPA) - 20 U.S.C. § 1232g
- Protects the confidentiality of student educational records from release to unauthorized persons
- Public or private elementary, secondary, or post-secondary schools
- Provides:
 - students the right to inspect their own records
 - parents the right to inspect their minor student's records
 - sometimes, school officials access to a minor's records
- Prohibits schools from disclosing personally identifiable information in education records without student's (or minor student's parents') consent
- Records include library circulation records / other library records (not explicit, but agency guidance says so)
- Many exceptions

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Videos in the Library

Can a citizen take video of staff and other patrons – and the materials they are accessing – in the library without their consent?

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Video Recording in Public Spaces

- This issue may pit a library user's First Amendment right to make a video in a public place against another's right to privacy in their library use
- Library users should not expect to be free from observation, except in those spaces within libraries where users have an expectation of privacy, such as bathrooms, study rooms, or offices, and those spaces should be clearly marked as private spaces.
- The library should have a policy that supports protecting the privacy of user records, particularly the confidentiality of materials and programs accessed
- See "First Amendment Audit" webinar (Cheri Harris, 12/16/2021)

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Photos in Marketing

Can a staff member post cute photos of children participating in library programming on the library's social media?

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Photos in Marketing

- Similar to video recording, no expectation of privacy in a public place.
- However, if the library is generating content for marketing, the library should take care to protect user privacy
- Obtain written permission from any library user – including a minor's parent/guardian - before using images in library marketing materials, whether printed or electronic