DRAFT 12-10-01

Privacy: An Interpretation of the Library Bill of Rights

Introduction

Privacy is essential to the exercise of free speech, free thought, and free association. The courts have upheld the right to privacy based on the *Bill of Rights* of the U.S. Constitution.[1] Several states provide an explicit guarantee of privacy in their constitutions and statute law.[2] Further, just as the courts have established a First Amendment right to receive information and to use a publicly funded library, numerous decisions in case law have defined and extended rights to privacy.[3]

Protecting user privacy and confidentiality has long been an integral part of the mission of libraries, library trustees, librarians, and all other library staff. The ALA *Code of Ethics* has affirmed a right to privacy since 1939. Article III of the current *Code* (1995) states: "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." Existing ALA policies affirm that confidentiality is crucial to freedom of

---

[1] See in particular the Fourth Amendment's guarantee of "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," the Fifth Amendment's guarantee against self-incrimination, and the Ninth Amendment guarantee that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." This right is also explicit in Article Twelve of the *Universal Declaration of Human Rights*: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." See: http://www.un.org/Overview/rights.html.

[2] See: http://www.ala.org/alaorg/oif/privacy.html.

[3] Cases recognizing a right to privacy include *NAACP v. Alabama*, 357 U.S. 449 (1958); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Katz v. United States*, 389 U.S. 347 (1967); and *Stanley v. Georgia*, 394 U.S. 557 (1969). Congress recognized the right to privacy in the Privacy Act of 1974, which addresses the potential for government's violation of privacy through its collection of personal information. It states, in part: "[T]he right to privacy is a personal and fundamental right protected by the Constitution of the United States."

inquiry.[4] Rights to privacy and confidentiality also are implicit in the *Library Bill of Rights'* guarantee of free access to library resources.

Rights of Library Users

The *Library Bill of Rights* affirms the ethical imperative to provide unrestricted access to information, and to guard against impediments to open inquiry. Article IV states: "Libraries should cooperate with all persons and groups concerned with resisting abridgement of free expression and free access to ideas." When privacy or confidentiality is compromised, or users fear they might be, freedom of inquiry no longer exists.

In all areas of librarianship, best practice should leave as many choices as possible in the hands of the user. These include decisions about the choice of, access to, and use of information. Lack of privacy and confidentiality has a chilling effect on users' choices. Because the library belongs to its entire community, individual users may be required to provide a minimal amount of personally identifiable information for purposes of administration (e.g., checking out a book). Policies and procedures should carefully limit both the amount and retention of this data, based strictly on the effective accomplishment of the mission of the library. Users have an expectation, and in many cases a legal right, for their information to be protected and kept private and confidential

---

[4] See these ALA Policies: *Policy Concerning Confidentiality of Personally Identifiable Information About Library Users* (http://www.ala.org/alaorg/oif/pol_user.html); *Policy on Confidentiality of Library Records* (http://www.ala.org/alaorg/oif/pol_conf.html); *Suggested Procedures for Implementing Policy on the Confidentiality of Library Records* (http://www.ala.org/alaorg/oif/sugpolcn.html); *Freedom to Read* (http://www.ala.org/alaorg/oif/freeread.html); *Libraries: An American Value*

by library staff, trustees, and service personnel. Users have a right to be free from any unreasonable intrusion or surveillance of their library use.[5]

In addition, Article V of the *Library Bill of Rights* states: "A person's right to use a library should not be denied or abridged because of origin, age, background, or views." This precept precludes political or ethnic profiling as a basis for any breach of privacy rights. The American Library Association opposes all attempts to infer an individual's beliefs or predict behavior from that person's use of library services, materials, and facilities.

Responsibilities of Librarians

The library profession has a long-standing commitment to an ethic of facilitating access to information, not monitoring it. Librarians have a responsibility to maintain an environment respectful and supportive of the privacy of all users. Librarians have a legal and ethical obligation to protect the confidentiality of users' personally identifiable information regardless of the format or technology used in collecting data. This should include developing and adhering to privacy policies approved by the appropriate governing body. For administrative purposes, librarians may implement appropriate time, place, and manner restrictions on the use of library resources. The collection of personally identifiable information should only be a matter of routine or policy when necessary for the fulfillment of the mission of the library.

(http://www.ala.org/alaorg/oif/lib_val.html); and the newly revised *Library Principles for a Networked World* (http://www.ala.org/oitp/prinintro.html).

Conclusion

The American Library Association affirms that rights of privacy are necessary for intellectual freedom and are fundamental to the ethics and practice of librarianship.

DRAFT

[5] Refer to your state confidentiality statute, available at http://www.ala.org/alaorg/oif/privacy.html .