



The Library Network

Libraries Working Together

41365 Vincent Court, Novi, MI 48375
Phone: (248) 536-3100 Fax: (248) 536-3098
Online: <http://tln.lib.mi.us>

Privacy of Records

Michigan law prohibits library staff from disclosing information contained in library records, except as outlined in the Michigan Library Privacy Act. Additionally, recent federal anti-terrorism legislation known as the USA Patriot Act provides for the issuance of certain federal court orders that may be directed at a Public Library requiring disclosure of patron information. Library staff, including cooperative staff, generally may not disclose any personally identifiable library record except under the circumstances described in this document. These procedures provide guidance to staff when member libraries, outside parties, state and local law enforcement officers or federal agents, make record requests.

The Michigan Library Privacy Act, MCL 397.602(2)(i), defines a “library record” as a “document, record, or other method of storing information retained by a library that contains information that personally identifies a library patron, including the patron’s name, address, or telephone number, or that identifies a person as having requested or obtained specific materials from a library.” Library records might include but are not limited to: circulation records, written reference requests from patrons and others, virtual reference requests (e-mail and live), and computer usage metadata.

Member Library asks TLN staff person for a library record:

- TLN shared library system members should have access to all the data they need within the shared system. Occasionally TLN may receive requests from member library staff that do not have access to certain capabilities in the shared system and request TLN provide patron-specific information. Such requests should only be honored if their library director has approved the request.
- Library staff from member libraries that do not participate in the shared library system may, from time to time, request patron information in order to attempt to retrieve their library materials borrowed by a shared library system patron. Such requests should be directed to the home library of the patron whose information is being requested.
- On rare occasions shared system library staff may ask TLN staff to attempt to retrieve patron-specific data from the monthly logger files or back up tapes. Such requests must come from the library director and be approved by the Coordinator of the Shared Library System.

Outside parties ask a TLN staff person for a library record:

- Requests for library records that come from entities other than member libraries or law enforcement personnel cannot be honored by TLN. If such requests are made by patrons (for example, parents seeking information about their children’s library materials) they should be referred to the patron’s home library.
- Requests for library records from outside parties such as the press or other unaffiliated third parties cannot be honored by TLN. TLN staff should contact their department manager, who will speak to the requester.
- The department manager will then briefly explain the requirements of the Library Privacy Act and inform the requester that active records may only be released to law enforcement officers pursuant to a valid court order.

Law enforcement officer requests a library record but does not possess a court order:

- Before doing anything else, the staff person must first contact his or her department manager (or in their absence, another department manager), who from that point on will speak to the officer regarding TLN's response to the request.
- The department manager will first ascertain exactly what record or information the officer seeks. The department manager will then briefly explain the requirements of the Library Privacy Act and inform the officer that active records may only be released to law enforcement officers pursuant to a valid court order.
- If the department manager or the officer has any questions, he/she should contact the Director or Deputy Director.
- The department manager must inform the Director or Deputy Director of all inquiries.
- If an inquiry is made and TLN is asked to retain certain records until a court order can be obtained, we must do so. Ask for a specific definition of the records that are to be retained and immediately assure that such records are retained.

State or local enforcement officer comes in with a court order requiring disclosure (MI Library Privacy Act request):

- The staff person should inform the law enforcement officer that he/she has no authority to release tangible records and that management will be contacted immediately. Contact the Director or Deputy Director.
- The Director or Deputy Director will inform the law enforcement officer that TLN will cooperate with all lawful court orders. They will then consult with TLN's attorney about the law enforcement inquiry with court order.
- If the attorney determines the court order is valid on its face, the officer may begin a search of library records.

Federal law enforcement agent has a court order (USA Patriot Act):

- The staff person should inform that agent that the staff person has no authority to release tangible records to agents and that management will be contacted immediately. Contact the Director or Deputy Director.
- The Director or Deputy Director will inform the agent that TLN will cooperate with all lawful court orders. They will then consult with TLN's attorney about the inquiry with court order.
- The Director or Deputy Director will contact TLN's attorney.
- If the attorney determines the warrant valid on its face, the agent may begin a search of library records as soon as the Director or Deputy Director is served with the federal court order.
- Note: The USA Patriot Act prohibits library personnel from disclosing or discussing the investigation or request for records with anyone other than the people identified in this procedure. This includes the subject patron, staff, general public, press, family members, etc.

If the Director or Deputy Director is not on site, it is always appropriate to contact them via their cell phones, or their home numbers.

The Director or Deputy Director are the only officials who have the authority to furnish tangible records. They may only do so with the advice and consent of TLN's attorneys. If TLN is advised to challenge a court order they will consult TLN's attorney regarding the appropriate procedure to follow.

Other considerations:

- TLN staff on duty outside of normal business hours (evenings and weekends) should not get these types of requests. If such a request does come in after hours TLN staff should ask whether or not the request can be presented during the next business day. If the request must be acted upon immediately TLN staff should contact the Director or Deputy Director via cell phone or at their home numbers.
- If TLN staff receives a request for library records from a member library that may have received a request from law enforcement officials, refer the member library to the Director or Deputy Director.
- Although it is expected that law enforcement requests will be few in number, please refer to these procedures for guidance for those rare instances. In the absence of a department manager, staff persons should always feel free to refer a law enforcement request to any available department manager.
- If a law enforcement officer or federal agent (or security guard) asks for home telephone numbers of staff in order to contact staff at home, explain that it is TLN's policy not to release employee home numbers.
- If a law enforcement officer or federal agent (or security guard) asks a staff person to furnish confidential information, such as the topic of a patron request or the titles of materials someone checked out, refer the request to a department manager.
- In addition to the information in patron records, law enforcement officials occasionally seek access to administrative records which do not pertain to patrons. In these cases, contact your department manager.

ADMINISTRATION / DEPARTMENT MANAGERS ONLY:

- Ask for identification when approached by an officer or agent.
- The Director or Deputy Director should meet with a federal agent only if TLN's attorney and/or another colleague is also in attendance at the meeting.
- If the officer or agent does not have a court order compelling the production of records, the Director or Deputy Director should explain TLN's confidentiality policy, which is based on state law. Without a court order, neither the FBI nor local/state law enforcement officers have authority to compel cooperation with an investigation. Refer the matter immediately to the Director or Deputy Director if the officer or agent tries to compel you to release records without a valid court order.
- If the officer or agent presents a court order, the Director or Deputy Director should immediately contact the attorney for review.
- Since information and records sought are work-related, there is no need to obtain private legal counsel.

If the order is in the form of a **subpoena**:

- The attorney will examine the subpoena to determine whether it is valid or whether for any reason TLN should take legal action to quash the subpoena. Follow closely the instructions of the attorney.
- If an officer or agent takes any record or item, please make a list inventorying all of the records/items seized.

If the order is in the form of a **federal search warrant (USA Patriot Act)**:

- A search warrant is executable immediately (unlike a subpoena). The agent may begin a search of library records as soon as the Director or Deputy Director is served with the court order. Basically, step back and let them search.

- Ask to have an attorney present before the search begins in order to allow the opportunity to examine the search warrant and to assure that the search conforms to its terms.
- 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.
- Keep a list of all records/items taken.
- Do not disclose that the warrant has been served or that records have been produced. No information can be disclosed to any other party, including the patron whose record is the subject of the search warrant.
- The "gag" order does not change TLN's right to legal representation during the search. TLN can still seek legal advice concerning the warrant and request that an attorney be present during the actual search and execution of the warrant.

Approved by TLN Board of Trustees on September 18, 2003