



FOLLOWING THE LAW

Chapter 10, Patron Privacy and the
USA PATRIOT Act

West Virginia Library Commission

What we will cover today



- ▣ The Right of Privacy
- ▣ National Laws/Ethics Regarding Privacy
- ▣ Chapter 10, Article 1, Section 22, WV Code
- ▣ “The police are here. What do we do?”
- ▣ USA PATRIOT Act and the library’s response

Please remember...

- ▣ Presenter is NOT a lawyer!
- ▣ The best protection for libraries is having sound, attorney-approved policies in place and staff who are educated in the procedures for carrying them out.
- ▣ Following procedure should be consistent whenever possible to protect the library and to provide due process

Definitions...

- ▣ **Personally identifiable information** can include many types of library records
- ▣ **Patron** means any person/customer/user of a library



The Right to Privacy



- ▣ Privacy is **NOT** protected by Federal Law.
- ▣ Bill of Rights
- ▣ Privacy is implied to preserve rights guaranteed by Constitution/Bill of Rights

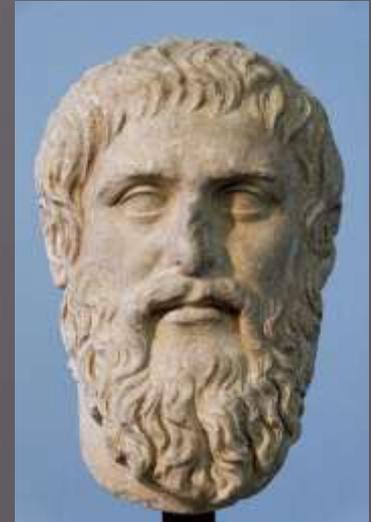
State laws regarding privacy



- ▣ All states with the exception of Kentucky and Hawaii have laws protecting data held in library records
- ▣ Generally allow for transmittal of data for library purposes only
- ▣ Protect against search and seizure without due process, requiring subpoena or court order
- ▣ Generally provide for parents/guardians to inspect/access the records of children

Ethical Considerations

- ▣ Ethics - also known as moral philosophy, is a branch of philosophy that involves systematizing, defending, and recommending concepts of right and wrong conduct. It comes from the Greek word ethos, which means "character".



Library Bill of Rights

- ▣ Article IV states: “Libraries should cooperate with all persons and groups concerned with resisting abridgement of free expression and free access to ideas.” When users recognize or fear that their privacy or confidentiality is compromised, true freedom of inquiry no longer exists.

American Library Association Code of Ethics



“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.”

RESPONSIBILITY



West Virginia's Law

Chapter 10, Article 1, Section
10 of the *West Virginia Code*



West Virginia Code

Chapter 10, Article 1, Section 22

10-1-22. Confidential nature of certain library records

(a) Circulation and similar records of any public library in this state which identify the user of library materials are not public records but shall be confidential and may not be disclosed except:

(1) To members of the library staff in the ordinary course of business;

(2) Upon written consent of the user of the library materials or the user's parents or guardian if the user is a minor or ward; or

(3) Upon appropriate court order or subpoena.

West Virginia Code

Chapter 10, Article 1, Section 22

- ▣ (b) Any disclosure authorized by subsection (a) of this section or any unauthorized disclosure of materials made confidential by that subsection (a) does not in any way destroy the confidential nature of that material, except for the purpose for which an authorized disclosure is made. A person disclosing material as authorized by subsection (a) of this section is not liable therefor.

(1) To members of the library staff in the ordinary course of business;

- ▣ “Library staff” only means paid library workers.
- ▣ Volunteers or Board members are excluded.
- ▣ “Aggregate” compilations of information used in the course of business are not included as long as identifiable information is excluded.

(2) Upon written consent of the user of the library materials or the user's parents or guardian if the user is a minor or ward;

Parents and Guardians have the right to access information about their children



(3) Upon appropriate court order or subpoena.

- ▣ Could be issued by Circuit Judge, Magistrate, Municipal Judge





- ▣ Have policy in place reiterating the state privacy law.
- ▣ Train staff in the law and in procedures to follow the law.
- ▣ Take all necessary steps to insure patron privacy.
- ▣ Do not retain any information which you really do not need.

And remember...

- ▣ Be aware of library practices and procedures that place information on public view. Some examples are the use of postcards for overdue notices or requested materials; staff terminals placed so that the screens can be read by the public; sign-in sheets to use computers or other devices; and the provision of titles of reserve requests or interlibrary loans provided over the telephone to users' family members or answering machines.

THE POLICE ARE HERE!



- ❑ Do NOT be afraid.
- ❑ To access records or seize items, officers must have a subpoena or court order. Keep a copy.
- ❑ If not, explain the law and that they could jeopardize their case.
- ❑ Assist the officers as much as possible.
- ❑ Keep a record of what items were taken (receipt from officer), identity of the officer, etc.
- ❑ Notify WVLC Library Development

The USA PATRIOT Act

Protection from Terrorism or infringement on liberties?



USA PATRIOT Act

- ▣ Passed in aftermath of 9/11/2001
- ▣ "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism" Act
- ▣ Increased surveillance and search capabilities of the FBI and federal anti-terrorism agencies
- ▣ Allows federal officials to search/seize library records with court order, subpoena or "National Security Letter"
- ▣ Prohibits library staff from informing the subject of anything about the investigation

What to do BEFORE the feds arrive...



- ▣ Consult with legal counsel
- ▣ Study the subject and keep up with recent rulings/decisions
- ▣ Review policies and train staff

What to do WHEN the feds arrive...

- ▣ FOLLOW YOUR POLICIES!
- ▣ Call legal counsel
- ▣ Call WVLC Library Development if allowed
- ▣ Document your costs



What to do AFTER the feds leave...

- ▣ Consult with legal counsel, WVLC and WVLA Intellectual Freedom Committee
- ▣ Follow up

WVLC recommendations...

- ▣ Review policies and train staff
- ▣ Do not keep records about patrons if you do not need them
- ▣ Refrain from any discussion of the situation with unnecessary persons.
- ▣ When faced with such a situation, document everything and keep copious notes

REMEMBER....

- ▣ Avoid creating unnecessary records. Only record a user's personally identifiable information when necessary for the efficient operation of the library.
- ▣ Avoid retaining records that are not needed for efficient operation of the library. Check with your local governing body to learn if there are laws or policies addressing record retention and in conformity with these laws or policies, develop policies on the length of time necessary to retain a record. Ensure that all kinds and types of records are covered by the policy, including data-related logs, digital records, and system backups.

REMEMBER...

- ▣ Once record retention policies are in place, ensure that records are destroyed or archived on schedule. A library cannot destroy records after it receives notice from law enforcement agents that the records may be subject to judicial process.

REMEMBER...

- ▣ Be aware of library practices and procedures that place information on public view. Some examples are the use of postcards for overdue notices or requested materials; staff terminals placed so that the screens can be read by the public; sign-in sheets to use computers or other devices; and the provision of titles of reserve requests or interlibrary loans provided over the telephone to users' family members or answering machines.

And finally, remember...

- ▣ Remember that there is no affirmative duty to collect or retain information about library patrons on behalf of law enforcement.

More information...

- ▣ West Virginia Library Commission-Library Development Division
- ▣ West Virginia Library Association Intellectual Freedom Committee
- ▣ American Library Association, Office of Intellectual Freedom
- ▣ Resources and links will be emailed and posted after the training sessions.

THANK YOU!



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West Virginia
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