

2.4 Library Confidentiality

The freedom to read encourages responsible citizenship and open debate in the marketplace of ideas. The beneficial objectives of a free democratic society will be promoted if citizens have, and are assured that they have, the freedom to read and the opportunity to consider all types of information.

The First Amendment of the Constitution of the United States protects free speech and a free press. The constitution of the State of Texas provides that “no law shall ever be passed curtailing the liberty of speech or of the press.” A corollary of those constitutional guarantees is the corresponding freedom to read what is written, hear what is spoken, and view other forms of expression without fear of intrusion, intimidation, or reprisal. The guarantee of privacy for readers, hearers and viewers will ensure this freedom.

The library is a central resource where information and differing points of view are available. Library users will be free to use the library and its materials and services without government, community, or individual interference.

This library policy is pursuant to Texas Public Information Act, Local Government Code Chapter 552 (Appendix D) relating to making confidential a record that would identify a person who uses library services or materials. (See the [Complete Texas Open Records Act](#))

I. Policy

Records of this library that identify or serve to identify a person who requests, obtains, or uses library materials or services are confidential and are excepted from required disclosure under the Texas Open Records Act, Local Government Chapter 552 or the U.S.A. Patriot Act.

Exceptions

Such records generally may be disclosed only if:

1. The library determines that disclosure is reasonably necessary to the operation of the library and the records are not confidential under other state or federal law.
2. The records are released to the person to whom the information relates; or the person to whom the information relates has given permission, in writing, for the information to be released.
3. The records are required under a valid court order or subpoena, as provided for under the provisions of the Texas Open Records Act.
4. The records are required under a valid search warrant, as provided for under the provisions of the U.S.A. Patriot Act.

The library subscribes to the philosophy expressed in the American Library Association Policy on Confidentiality of Library Records and the American Library Association on Professional Ethics and hereby incorporates them as a part of this policy (Appendices A-C).

II. Privacy of the Borrower Record

The New Braunfels Public Library considers individual control of a borrower's card to be the most effective protection of privacy of the individual. How each individual chooses to use and share his or her card will determine the degree of privacy that the library can provide for that borrower record.

To support this choice, the library will provide access to information associated with a valid library card under the following circumstances:

- Presentation of a borrower's card, provision of the card number on the library smartphone app or over the telephone or presentation of the card number on an official library notice permits access to information about that record.
- Presentation of the identification necessary to obtain a library card will permit full access to the record of the person named on that identification only.

The library protects the right of privacy of the individual by forming a partnership with the individual or family and allowing the individual or family to choose who has access to the library card of any one individual. This approach to privacy enables parents to adjust their awareness of their children's borrowing patterns to a degree that satisfies that family's system of values. It enables adults to accomplish their library business by permitting access to the record by another adult or child. It creates a partnership for privacy and assumes that individuals will protect themselves to the degree they choose.

III. Privacy and the Payment of Fees

The library believes that the protection of privacy of a borrower's record is compromised by the individual who chooses to keep materials past their due date. The library will therefore permit individuals other than the holder of the borrower's card to settle unpaid fees on that card. It will provide information regarding the amount of the replacement costs of lost materials to individuals who are willing to pay the fees. No identification will be required of these individuals. Information about the authors, titles, or subjects of the overdue or lost materials will not be discussed without presentation of the borrower's card, provision of the card number on the library smartphone app or over the telephone, or presentation of the borrower's number on an official library notice.

IV. Privacy and the Recovery of Overdue Materials

The recovery of overdue materials often requires the provision of the description of those materials. Insofar as it is possible, the library will confine information about subjects, authors, or titles loaned to persons who have reasonable chance of locating and returning the library's materials. All borrowers are cautioned that they can best protect their privacy by returning materials on time.

V. Privacy and Video Surveillance

The New Braunfels Public Library strives to maintain a safe and secure environment for its patrons and staff and to responsibly guard publicly funded resources. In pursuit of this objective, selected public areas of the main library premises, the Westside Community Center and library, and the RIOmobile are under continuous video surveillance and recording. Signs disclosing this activity will be posted at library entrances at all times.

The use of video surveillance is solely for the purposes of preventing theft, ensuring the safety of patrons and staff, and identifying individuals who behave in a disruptive manner, cause damage to library property, or are otherwise in contravention of the Library's Rules of Conduct.

While it is recognized that video surveillance will not prevent all incidents, its potential deterrent effect and resource as a means of identifying and prosecuting offenders is considered worthwhile.

Video Record Retention and Use

Images from the library surveillance system are stored digitally on hardware in the library. It is the intent of the library to retain all recorded images for a minimum of 14 days, or until the image capacity of the storage system is reached. Then, the oldest stored images will be automatically deleted by system software to create room for storage of new images.

Incidents on library premises may require the following steps to be taken:

- Video image recordings will be used to identify the person or persons responsible for library policy violation, criminal activity, or actions considered disruptive to normal library operations.
- Video records may be used to assist law enforcement agencies in accordance with applicable state and federal laws.
- Video recordings of incidents can be retained and reviewed as long as considered necessary by the Library Director or City Manager's office.

- Images may be shared with other library staff to identify person(s) suspended from library property and to maintain a safe and secure environment.

Reasonable efforts shall be made to safeguard the privacy of patrons and employees. Video cameras shall not be positioned in areas where there is a reasonable expectation of personal privacy, such as restrooms and the employee breakroom.

Responsibility for and Privacy of Video Surveillance Records

The Library Director will ensure that video surveillance is monitored when necessary to maintain a safe environment. Reception and monitoring equipment is located in the secure and locked computer facility; access is limited to members of the Library Management Team and others only as authorized by the Library Director or City Manager's office.

Only the Library Director, IT Manager, Assistant City Manager, City Manager, and other employees and/or service providers ("Authorized Employees") designated by the Library Director or City Manager are authorized to operate the video security system. Access to video records shall be limited to Authorized Employees and service providers, when accompanied by an Authorized Employee, who shall only access such records during the course of their regular duties. Only the Library Director or the City Manager shall be authorized to release any video record to anyone other than an Authorized Employee, including, but not limited to, law enforcement personnel, media, patrons, and other persons as stated in the Procedures for Implementing Confidentiality Policy in Section ????. Library employees and service providers are to review and comply with this policy and guidelines promulgated in accordance with this policy.

VI. Procedures for Implementing Confidentiality Policy

The following procedures shall be observed when a subpoena or warrant is issued:

1. The library staff member receiving the request to examine or obtain information relating to circulation or other records identifying the names of library users will immediately refer the person making the request to the Library Director, who shall explain the confidentiality policy.
2. The Library Director, upon receipt of such process, order, or subpoena, shall consult with the appropriate legal officer assigned to the institution to determine if such process, order, or subpoena is in good form and if there is a showing of good cause for its issuance.

3. If the process, order, or subpoena is not in proper form or if good cause has not been shown, insistence shall be made that such defects be cured before any records are released. (The legal process requiring the production of circulation or other library records shall ordinarily be in the form of subpoena *duces tecum* [bring your records] requiring the responsible officer to attend court or the taking of his/her deposition and may require him/her to bring along certain designated circulation or other specified records.)
4. Any threats or unauthorized demands (i.e., those not supported by a process, order, or subpoena) concerning circulation and other records identifying the names of library users shall be reported to the City Attorney.
5. Any problems relating to the privacy of circulation and other records identifying the names of library users that are not provided for above shall be referred to the Library Director.

VII. Concluding Comment

An individual's reading habits cannot be equated with his or her character or beliefs. The First Amendment protects dissent and guarantees the right to hold and espouse unpopular beliefs and ideas. The First Amendment protects individuals against the imposition of state or community approved orthodoxy as well as enforced conformity or expression and belief. The First Amendment protects the right of all Americans to read and view information and to arrive at their own points of view and opinions.



Approved by the New Braunfels Public Library Board, Sept. 21, 2001

Endorsed May 19, 2003; Sept. 18, 2006

Revised July 18, 2011

Endorsed Aug. 28, 2012; Sept. 16, 2013; July 20, 2015; Oct. 24, 2016

Revised Oct. 16, 2017;

Endorsed Oct. 16, 2018; Oct. 19, 2020

Revised March 28, 2022

By: _____

President, Library Advisory Board

Attest: _____

Library Director

Appendix A – ALA Policy on Confidentiality of Library Records

The Council of the American Library Association strongly recommends that the responsible officers of each library, cooperative system, and consortium in the United States:

1. Formally adopt a policy that specifically recognizes its circulation records and other records identifying the names of library users to be confidential. (See also ALA Code of Ethics, Article III, "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" and Privacy: An Interpretation of the Library Bill of Rights.)
2. Advise all librarians and library employees that such records shall not be made available to any agency of state, federal, or local government except pursuant to such process, order or subpoena as may be authorized under the authority of, and pursuant to, federal, state, or local law relating to civil, criminal, or administrative discovery procedures or legislative investigative power.
3. Resist the issuance of 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.¹

¹Note: Point 3, above, means that upon receipt of such process, order, or subpoena, the library's officers will consult with their legal counsel to determine if such process, order, or subpoena is in proper form and if there is a showing of good cause for its issuance; if the process, order, or subpoena is not in proper form or if good cause has not been shown, they will insist that such defects be cured.

Adopted January 20, 1971, by the ALA Council; amended July 4, 1975; July 2, 1986.

Appendix B – ALA Code of Ethics

ALA's Code of Ethics is the responsibility of the Committee on Professional Ethics (COPE). The Code of Ethics is the document that translates the values of intellectual freedom that define the profession of librarianship into broad principles that may be used by individual members of that profession as well as by others employed in a library as a framework for dealing with situations involving ethical conflicts.

- Copyright: An Interpretation of the Code of Ethics (amended January 29, 2019)
- Conflicts of Interest Q&A (amended April 30, 2019)
- Enforcement of the Code of Ethics Q&A (amended January 28, 2019)
- Ethics and Social Media Q&A (amended January 28, 2019)
- Speech in the Workplace Q&A (amended April 30, 2019)

As members of the American Library Association, we recognize the importance of codifying and making known to the profession and to the general public the ethical principles that guide the work of librarians, other professionals providing information services, library trustees and library staffs.

Ethical dilemmas occur when values are in conflict. The American Library Association Code of Ethics states the values to which we are committed and embodies the ethical responsibilities of the profession in this changing information environment.

We significantly influence or control the selection, organization, preservation, and dissemination of information. In a political system grounded in an informed citizenry, we are members of a profession explicitly committed to intellectual freedom and the freedom of access to information. We have a special obligation to ensure the free flow of information and ideas to present and future generations.

The principles of this Code are expressed in broad statements to guide ethical decision making. These statements provide a framework; they cannot and do not dictate conduct to cover particular situations.

1. We provide the highest level of service to all library users through appropriate and usefully organized resources; equitable service policies; equitable access; and accurate, unbiased, and courteous responses to all requests.
2. We uphold the principles of intellectual freedom and resist all efforts to censor library resources.
3. 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.
4. We respect intellectual property rights and advocate balance between the interests of information users and rights holders.

5. We treat co-workers and other colleagues with respect, fairness, and good faith, and advocate conditions of employment that safeguard the rights and welfare of all employees of our institutions.
6. We do not advance private interests at the expense of library users, colleagues, or our employing institutions.
7. We distinguish between our personal convictions and professional duties and do not allow our personal beliefs to interfere with fair representation of the aims of our institutions or the provision of access to their information resources.
8. We strive for excellence in the profession by maintaining and enhancing our own knowledge and skills, by encouraging the professional development of co-workers, and by fostering the aspirations of potential members of the profession.
9. We affirm the inherent dignity and rights of every person. We work to recognize and dismantle systemic and individual biases; to confront inequity and oppression; to enhance diversity and inclusion; and to advance racial and social justice in our libraries, communities, profession, and associations through awareness, advocacy, education, collaboration, services, and allocation of resources and spaces.

Adopted at the 1939 Midwinter Meeting by the ALA Council; amended June 30, 1981; June 28, 1995; January 22, 2008; and June 29, 2021.

Appendix C – ALA Policy Concerning Confidentiality of Personally Identifiable Information about Library Users

"In a library (physical or virtual), the right to privacy is the right to open inquiry without having the subject of one's interest examined or scrutinized by others. Confidentiality exists when a library is in possession of personally identifiable information about users and keeps that information private on their behalf" (Privacy: An Interpretation of the Library Bill of Rights).

The ethical responsibilities of librarians, as well as statutes in most states and the District of Columbia, protect the privacy of library users. Confidentiality extends to "information sought or received and resources consulted, borrowed, acquired or transmitted" (ALA Code of Ethics), and includes, but is not limited to, database search records, reference interviews, circulation records, interlibrary loan records and other personally identifiable uses of library materials, facilities, or services.

The First Amendment's guarantee of freedom of speech and of the press requires that the corresponding rights to hear what is spoken and read what is written be preserved, free from fear of government intrusion, intimidation, or reprisal. The American Library Association reaffirms its opposition to "any use of governmental prerogatives that lead to the intimidation of individuals or groups and discourages them from exercising the right of free expression as guaranteed by the First Amendment to the U.S. Constitution" and "encourages resistance to such abuse of governmental power . . ." (ALA Policy 53.4). In seeking access or in the pursuit of information, confidentiality is the primary means of providing the privacy that will free the individual from fear of intimidation or retaliation.

The American Library Association regularly receives reports of visits by agents of federal, state, and local law enforcement agencies to libraries, asking for personally identifiable information about library users. These visits, whether under the rubric of simply informing libraries of agency concerns or for some other reason, reflect an insensitivity to the legal and ethical bases for confidentiality, and the role it plays in the preservation of First Amendment rights, rights also extended to foreign nationals while in the United States. The government's interest in library use reflects a dangerous and fallacious equation of what a person reads with what that person believes or how that person is likely to behave. Such a presumption can and does threaten the freedom of access to information. It also is a threat to a crucial aspect of First Amendment rights: that freedom of speech and of the press include the freedom to hold, disseminate and receive unpopular, minority, extreme, or even dangerous ideas.

The American Library Association recognizes that law enforcement agencies and officers may occasionally believe that library records contain information that would be helpful to the investigation of criminal activity. The American judicial system provides the mechanism for seeking release of such confidential records: a court order, following a showing of good cause based on specific facts, by a court of competent jurisdiction.¹

The American Library Association also recognizes that, under limited circumstances, access to certain information might be restricted due to a legitimate national security concern. However, there has been no showing of a plausible probability that national security will be compromised by any use made of unclassified information available in libraries. Access to this unclassified information should be handled no differently than access to any other information. Therefore, libraries and librarians have a legal and ethical responsibility to protect the confidentiality of all library users, including foreign nationals.

Libraries are one of the great bulwarks of democracy. They are living embodiments of the First Amendment because their collections include voices of dissent as well as assent. Libraries are impartial resources providing information on all points of view, available to all persons regardless of origin, age, background, or views. The role of libraries as such a resource must not be compromised by an erosion of the privacy rights of library users.

¹See “Suggested Guidelines: How to Respond to Law Enforcement Requests for Library Records and User Information,” excerpted from the *Intellectual Freedom Manual*, 10th Edition.

Adopted July 2, 1991, by the ALA Council; amended June 30, 2004.

Appendix D – Texas Public Information Act Sections 552.023 and 552.124

Sec. 552.023. SPECIAL RIGHT OF ACCESS TO CONFIDENTIAL INFORMATION.

- a. A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.
- b. A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.
- c. A release of information under Subsections (a) and (b) is not an offense under Section 552.352.
- d. A person who receives information under this section may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.
- e. Access to information under this section shall be provided in the manner prescribed by Sections 552.229 and 552.307.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, Sec. 4, eff. Sept. 1, 1995.

Sec. 552.124. EXCEPTION: CONFIDENTIALITY OF RECORDS OF LIBRARY OR LIBRARY SYSTEM.

- a. A record of a library or library system, supported in whole or in part by public funds, that identifies or serves to identify a person who requested, obtained, or used a library material or service is excepted from the requirements of Section 552.021 unless the record is disclosed:
 1. because the library or library system determines that disclosure is reasonably necessary for the operation of the library or library system and the record is not confidential under other state or federal law;
 2. under Section 552.023; or
 3. to a law enforcement agency or a prosecutor under a court order or subpoena obtained after a showing to a district court that:
 - a. disclosure of the record is necessary to protect the public safety; or
 - b. the record is evidence of an offense or constitutes evidence that a particular person committed an offense.
- b. A record of a library or library system that is excepted from required disclosure under this section is confidential.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.03(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1035, Sec. 11, eff. Sept. 1, 1995.

Amended by Acts 2011, 82nd Leg., R.S., Ch. 1229 (S.B. 602), Sec. 16, eff. September 1, 2011.