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ILLINOIS LIBRARIES



SPECIAL REPORT:

A Review of the Illinois Library Records Confidentiality Act

Illinois Libraries

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and State Librarian

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Articles are solicited that will address the interests of the publication's audience. Individuals are also encouraged to submit unsolicited articles for consideration. Articles are not limited to Illinois contributors, and guidelines for manuscript submission are available upon request. *ILLINOIS LIBRARIES* will not compensate authors for submitted or requested articles. The editor and/or director of the Illinois State Library has the right to reject and/or edit articles before printing. Edited manuscripts and/or galley-proofs cannot be sent to individuals for approval.

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Vol. 84 No. 3

Table of Contents

SPECIAL REPORT: A Review of the Illinois Library Records Confidentiality Act... Michael P. Ragen	1
Guidelines for Illinois Libraries Manuscripts	59
Directory, Illinois State Library	60

**Illinois State Library Advisory Committee
2002**

Name	Term Expires
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Nancy Buikema River Bend Community Unit School District #2, Fulton	2005
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OFFICE OF THE SECRETARY OF STATE



Jesse White
Secretary of State

Dear Friends,

During recent visits with Illinois librarians, I have encountered growing concern about issues related to the confidentiality of library records. Librarians are still trying to comprehend how new laws aimed at combating terrorism affect them. All of us are committed to cooperating with law enforcement officials as they search for information that may lead to the capture of terrorists who threaten our freedoms and our way of life. At the same time, we are concerned about civil liberties, and whether patrons will continue to utilize libraries if they believe the confidentiality of their transactions with us is at risk.

Long before the horrible actions of September 11, 2001 prompted new laws affecting the library community, Illinois enacted a law aimed at protecting the records of a library. The Illinois Library Records Confidentiality Act is almost 20 years old. In this special issue of *Illinois Libraries*, Mike Ragen engages in a thorough and timely analysis of this important Act.

I am pleased that so many of you have worked with your legal advisors, your local library boards and your staff to develop policies so that everyone understands what their role is in these challenging times. As always, I applaud you for your hard work and commitment to excellence in all that you do.

Sincerely,

A handwritten signature in cursive script that reads "Jesse White".

JESSE WHITE
Secretary of State
and State Librarian

Preface

Patrick McGuckin

It is imperative that we in the library community be proactive in emphasizing how important confidentiality is to our profession. Public officials, interest groups and media commentators can grab headlines and shape the public relations battle by framing the issues in simple terms. We know the issues are far more complex, and we must take our case to the public to make sure our opinions and positions are understood.

Some of the formats available to explain our position on issues such as Internet filters and confidentiality of records are letters to the editor, guest columns, talk radio programs and meetings held by local organizations such as the Kiwanis Club. Our libraries are an important part of our local communities, and the citizens we serve count on us to fulfill specific needs. We can enhance and strengthen our relationship with the public by letting them know how important issues will affect the way we serve them.

Patrick McGuckin
Editor
Illinois Libraries

A Review of the Illinois Library Records Confidentiality Act

Michael P. Ragen

The author is Chief Deputy Director of the Illinois State Library.

Introduction

The Illinois Library Records Confidentiality Act became law on January 1, 1984. The law is meant to protect the registration and circulation records of a library from both the casually curious individual and from law enforcement or other government officials unless a court order for such records is obtained.

The initial reason for reviewing the Act was due to a situation at the public library of Carbondale, Illinois. A sixteen-year old girl had requested some books be placed on hold when the books were returned from circulation. When the books were returned, the library contacted the girl's home. The father of the girl received the notice call. He wanted to know what books the girl had placed on hold. The library refused to answer this question. The father threatened legal action but nothing further ensued. The library personnel had contacted the author's office at the Illinois State Library to determine if the Act had covered this situation. This incident, plus the rash of library confidentiality clashes as the result of the terrorist attacks of September 11, 2001, raises the question of the validity of the Act in this era.

The Act itself has never been tested in court. That essentially means that the meanings of the words used in the Act and the possible effect of the Act upon libraries and their patrons is legally unknown. There can be speculation on these effects, as provided by this paper, but until a court makes a ruling, library personnel can make their own interpretations. Obviously legal counsel should be consulted prior to taking such action.

The purpose of this paper is to provide an analysis of the Illinois Library Records Confidentiality Act. In order to provide that analysis, several steps were taken. First, a review of the academic literature available on the issue of library records confidentiality was undertaken. Oddly enough, while this is a very hotly debated topic, there are only two substantive scholarly articles on the issue of state confidentiality laws. Both of these appeared in the *Law Library Journal* for the Fall, 1989. There are numerous articles in *American Libraries* and other publications on incidents affecting the topic, but none of that give the topic a scholarly treatment.

The next step was to review the procedural process undertaken by the Illinois General Assembly to enact the law. This involved obtaining the debate transcripts for the House of Representatives and the Senate on the bill. A natural extension of that exercise is to analyze the statutory language of the Act. In that process, the specific words and phrases of the Act are discussed with the possible ramifications of the language upon libraries. This exercise is possible in light of the absence of any court ruling on the language of the Act.

In order to adequately analyze the Illinois law, a review of the laws and governing attorney general opinions of the remaining 49 states and the District of Columbia was undertaken. This involved summarizing and providing commentary on common traits and unique provisions in those laws and opinions. The addendum provides the summary of the other state laws.

Illinois is not the only state without a guiding court ruling on library confidentiality laws. Only two court cases were found on this topic, one in the state of Iowa and one in the state of New York. Both of those cases are discussed in this paper.

In order to gain insight into the topic, interviews were conducted with the lobbyist for the Illinois Library Association who shepherded the legislation through the General Assembly and a practicing attorney who advises libraries on incidents involving the Act. Both of these interviews are commented upon in this paper.

Finally, a commentary summary is provided. Library confidentiality is certainly topical in this day and age of the Internet and a crushing public demand for information. How the Illinois law affects these factors, and indeed, these factors affect the law, is discussed.

The Illinois Library Records Confidentiality Act

Citation: 75 ILCS 70/1

Sec. 1. (a) The registration and circulation records of a library are confidential information. Except pursuant to a court order, no person shall publish or make any information contained in such records available to the public.

(b) This Section does not prevent a library from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation where those reports are presented so that no individual is identified therein.

(c) For the purpose of this Section, (i) "library" means any public library or library of an educational, historical or eleemosynary institution, organization or society; (ii) "registration records" includes any information a library requires a person to provide in order for that person to become eligible to borrow books and other materials and (iii) "circulation records" includes all information identifying the individual borrowing particular books or materials.

(Source: Illinois Public Act 83-179.)

A Discussion of the Issues Affecting Library Records Confidentiality

The Necessity for the Laws

A general question could be asked as to why are these laws protecting the confidentiality of library records necessary? After all, most libraries are public places and most of the materials, especially books, are in full display for everyone to see who is interested in what type of materials. The answer seems simple enough, why does anyone have anything to hide when it comes to utilizing a library?

In an Iowa court case involving a law enforcement officer requesting library records (*Brown v. Johnson*, 328 N. W. 2nd 510/ discussed later in this paper) the request for confidential library records can take on a serious meaning. In that situation access to the records had the potential of a serious invasion of the privacy of the library user. In *Brown v. Johnson* just the fact that a library patron had checked out a book on the occult would have led the police to their door and made them a suspect in a criminal case. If someone had a casual interest in the occult or was just doing research on this issue, their intellectual curiosity would be subject to official government scrutiny. While the intent of this paper is not to present a deep seated intellectual review of how the doctrines of the US Constitution apply to libraries, the basic tenets of that document are important to review.

Perhaps the most casual and seemingly innocent actions that affect the confidentiality of library records should be listed. *College and Research Libraries News* (February, 1992) published a listing of these types of requests for the records, in an academic situation. The University of Illinois at Urbana-Champaign published this list as part of a task force report on confidentiality. The list of requests is as follows:

- The circulation records of a faculty, student, staff or other library cardholder;
- By a faculty member for the identification of students who borrowed reserved items;
- A review of the circulation records of a student accused of plagiarism;
- For interlibrary loan records of an individual;
- For addresses, phone numbers, identification numbers or other personal information contained in a patron database;
- A listing of patrons who are not members of the university community but who have been granted library-borrowing privileges;
- A parent requesting information on the fines or other fees imposed on the library;

- The request for the name of someone who has checked out a particular item;
- To review the past use of study rooms, listening room, study carrel or CD-ROM workstation;
- To reveal the name of a person who has made a reference request or database search;
- The names of persons who have used audio -visual materials;
- A list of items photocopied for or faxed to a particular patron;
- A list of suggested acquisitions submitted by a particular person; and
- By law enforcement authorities for the identity of anyone conducting research on a particular subject.

Of course what is not among this list are the logs of computer workstations used by patrons to access the Internet. This type of access generally came after the widespread growth of the Internet in the mid to late 1990's.

Anyone of the items on this list could seem innocent enough if placed in the right context. What parent would not want to know what books they are paying overdue fines in behalf of their child? Asking a librarian what someone else had requested as a reference question might give the inquirer an idea on some research. Knowing who has a book checked out might allow the inquirer to ask that person when they will be finished with the book so they can borrow it. What is wrong with a law enforcement officer having the records of someone if those records help solve a crime? The list of "why not's" could go on into perpetuity.

Weigand (Library Records, p. 140) also presents a list of reasons why public library circulation records were sought:

- A divorced father in Illinois who sought to obtain his daughter's library records to determine if she was using his last name or the name of his ex-wife's new husband;
- A Florida religious group who wanted to know who checked out certain books so they could be recruited into religious organizations;
- A husband in Virginia who sought to obtain his wife's records to prove that she had been contemplating divorce for some time; and
- A hospital staff member who wanted to obtain the hospital library records to determine who was viewing sex therapy films.

These and many more situations were listed in Weigand. While the *CRLN/UIUC* list was generic, the Weigand list (taken from testimony given by Judith Krug of the American Library Association Intellectual Freedom Committee) brings home the case from the practical defense of confidentiality. Who would want to knowingly check out a book or use material to then be subjected to ridicule, uninvited scrutiny or promotional exploitation? In two of the situations a divorce was the central issue for the record request. Why should a library be thrust into the legal issues affecting a family? Also, while not evidenced in any readings, the situation where a commercial vendor might seek confidential records to promote a product. Borrow a book on car repair and get a flyer from the local Ford dealer about a great new car. Those possibilities are endless. There again, does a library want to be put in the position of being a conduit of commercial enterprise? The answer, while the money could be alluring, is probably “no” by nearly every professional librarian.

Constitutional Issues

Just saying “no” to the types of inquiries presented is not reason enough for libraries to protect the confidentiality of patrons. The reasons are grounded in the Constitution. Unfortunately, there is no clear cut Constitutional edict that prevents disclosure. The basic theory offered by the defendants of the privacy of library records is that this protection is an adjunct of the freedom of speech guaranteed by the First Amendment.

In Kennedy (*Confidentiality of Library Records: A Survey of Problems, Policies and Laws; Law Library Journal*, Fall 1989, p. 747), Justice Brennan of the US Supreme Court was cited for his pronouncement about the right to receive information in *Lamont v. Postmaster General* (381 US 301, 1965). Justice Brennan postulated that:

“The Bill of Rights goes beyond the specific guarantees to protect from congressional abridgement those equally fundamental personal rights necessary to make the express guarantees fully meaningful...I think the right to receive publications is such a fundamental right. The dissemination of ideas can accomplish nothing if otherwise willing addresses are not free to receive and consider them. It would be a barren marketplace of ideas that only had sellers and no buyers”.

In *Lamont* the issue before the Court was if a person had the right to receive mail from a Communist country via the US Postal Service. The issue did not involve libraries. However, Kennedy cites a case in which the Court explores the concept of the right to receive ideas.

In the case of the *Board of Education, Island Trees Union Free School District No. 26 v. Pico* (457 US 853, 1982), (Kennedy, p. 748), the issue before the Court was if the school board had the right to withdraw books that were considered obscene. The Court was split on the decision. Justice Brennan and three other members of the Court wrote that the school board was in error to withdraw the books. Chief Justice Burger and three members of the Court agreed with the action of the school board. Justice Blackmun disagreed with both sides.

In *Pico*, Brennan echoed what he stated in *Lamont*, et al.:

“The right to receive information and ideas is an inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution in two senses. First, the right to receive ideas follows ineluctably from the sender’s First Amendment right to send them...More importantly, the right to receive ideas is a necessary predicate to the recipient’s meaningful exercise of his own rights of free speech, press and political freedoms”.

Kennedy paraphrased Burger’s opinion which held “that nothing suggested that the state must affirmatively assist the speaker in reaching a recipient, nor does the right to receive information and ideas carry with it the constitutional right to have those ideas affirmatively provided at a particular place by the government.” (p. 749).

Justice Blackmun disagreed with both pluralities of the Court on the issue of *Pico*. The Justice opined that the government did not have an affirmative obligation to provide information or ideas to students. He did contend that the first amendment protects against “certain forms of state discrimination between ideas...The state may not act to deny access to an idea simply because state officials disapprove of that idea for partisan or political reasons” (Kennedy, p. 749).

In these two cases before the nation’s highest court, the issue of intellectual freedom by an individual was boiled down to three divergent theories:

- 1) the government has no right to interfere with the access of information by the individual;
- 2) the government has no right to guarantee an audience for ideas and information; and
- 3) the government cannot discriminate between ideas or information.

Kennedy (p. 750) postulates that privacy interrelates with library confidentiality by virtue of the fact that libraries are depositories of ideas and that the individual has the right to access ideas. The connection is made through another case before the US Supreme Court in *Griswold v. Connecticut* (381 US 479, 484, 1965). The issue in this case has nothing to do with libraries and the intellectual freedom of ideas. *Griswold* deals with the issue of privacy involving the use of contraceptives, marital relations and medical advice. However, Kennedy theorizes that this case can be used to prevent the disclosure of library records based upon the Court’s pronouncement in *Griswold* that the first, third, fourth, fifth and ninth amendments all protected the constitutional right of privacy. According to Kennedy, “the essence of that right (of privacy) is that the Constitution forbids state intrusion in certain highly personal associations and decisions”. Of course *Griswold* related to the privacy of reproduction rights. Does that relate to the right of privacy to explore ideas encapsulated in library materials? The Supreme Court has not been asked to answer that question. We can only theorize lacking a case before the Court.

The Historical Grounding for Library Records Confidentiality

According to Johnson (Law Library Journal, Fall 1999) the American Library Association (ALA) did not have any provision within a code of ethics or standards for librarians to follow until 1938. Johnson states that no reason for the ALA action was given, but he speculates that the book burning and intellectual control exhibited by the totalitarian governments of that era may have prompted the organization to adopt the provision. Prior to that time, libraries generally applied confidentiality standards to their standard operating procedures.

In 1973, *Johnson* (p. 777) notes that the ALA adopted a policy on confidentiality as part of the Code of Ethics for the organization. The policy stated, “The Librarian ... should seek to safeguard the essential privacy of the relationship between user and material, being careful not to divulge anything one may have learned about individual clients in the course of one’s professional activities unless required to do so by competent legal authority”. A code of ethics unfortunately had no status before a court. A judge could acknowledge the code, but there was no state law or federal law that prohibited the virtually free access to library records.

In 1978 Florida became the first state to enact legislation to protect the privacy of library records (*Johnson*, p. 796). Soon thereafter, numerous other states began to enact such laws. However, there is no indication in any of the literature of the reason for the states to begin this action. Perhaps, this was due to the Watergate scandal era in which the privacy of the individual became a major issue. Regardless, the Florida legislation began a trend that eventually generated laws in 48 states and the District of Columbia and two governing attorney general opinions in the remaining two states.

Scandals, Terrorism and the Press: Testing the Strength of the Laws

Watergate

In an odd circumstance, *Johnson* (p. 769) cites a passage from the book “All the President’s Men” by Bob Woodward and Carl Bernstein, the two Washington Post reporters who broke the Watergate scandal. The reporters sought to obtain information about persons involved in the scandal by reviewing their circulation records at the Library of Congress. One librarian refused based upon a confidentiality policy. In their book, the reporters stated they eventually found a “more cooperative clerk” who allowed them to “look at thousands of slips of paper.” At the time there was no law against such searches.

September 11, 2001

In a fast-forward to 2001, a report in the Washington Post (*Hijackers May Have Accessed Computers at Public Libraries*, September 17, 2001), cited several incidents in which the terrorists associated with the World Trade Center airplane attacks had used computer workstations at public libraries. Within the contents of the article was the following brief paragraph:

“In Fairfax County (Virginia), library officials said today none of the five men suspected in the Dulles hijacking possessed a library card. The suspects’ names also do not appear on the logs, which library officials provided to the Washington Post, on the three days leading up to the attacks.”

There is no indication in the article that the Washington Post reporters obtained a court order or any other legal device to obtain these records. Virginia law permits a custodian of public records (which includes library circulation records) to be disclosed at the discretion of the custodian of the records (Administration of Government Code 2.2-3705 (A-10)). Evidently the library cooperated with the request by Washington Post reporters and did so with the protection of the law. However, by turning over the “logs” of the library, did the reporters have access to more than just the information about the suspected terrorists? Did these logs contain the names of all the library users? Without specific details of this transaction of information there is no evidence of the exposure of private records.

In regards to the World Trade Center attacks, the sentiment of the public in all sectors was to assist by any means the effort to bring the terrorists to justice and hopefully prevent any further attacks on American soil. Librarians were no exception to this effort. According to a *New York Times* report (November 23, 2001) shortly after the attacks, Kathleen Hensman, a librarian at the Delray Beach, Florida public library, saw some publicly released photographs of the suspected terrorists and recognized them as men who had used computers in her library. She immediately called the police. This broke the Florida law. According to the article, the Federal Bureau of Investigation (FBI) did obtain a court order to confiscate the computers and related records. Hensman stated that she knew that her actions broke the law. “People were murdered...and people have the right to know that terrorists were here in our library using our public facility”. Hensman was not charged with any violation of the law, although a violation carries a 2nd degree misdemeanor (\$500 maximum fine).

Unabomber

Another notable library records and terrorist story is that of Ted Kaczynski, known more commonly as the “Unabomber”. Kaczynski was a terrorist who used mail bombs to kill and maim his victims. His crimes spanned over 18 years. He was eventually captured as the result of his demand that newspapers publish his manifesto. Kaczynski’s brother recognized the writings and turned that information over to the FBI.

Kaczynski lived in a remote area of Montana and was a frequent user of the branch library at Lincoln, Montana. *American Libraries* (March, 1998) conducted an interview with the librarian in charge of the branch, Sherri Wood. According to Ms. Wood, once the FBI discovered that Kaczynski was a suspect an undercover agent began to frequent the library in the guise of a freelance photographer and as a patron. This occurred prior to the public announcement of Kaczynski as a suspect. The FBI agent spent a lot of time going through the collection and asking questions of the staff. Occasionally he would ask about Kaczynski but was rebuffed by the staff.

Once the news broke that Kaczynski was the prime suspect the news media converged upon the library. While the media attempted to obtain Kaczynski's circulation records they were unsuccessful because the library staff had told them the records were confidential and protected by Montana law. A volunteer worker, Bev Coleman, did divulge to the press everything she knew about Kaczynski's reading habits and the materials the library had ordered in his behalf. She continued this disclosure even after being told about the law and the right of privacy. Montana law imposes a misdemeanor penalty for the unlawful disclosure of library records and allows the victim to seek recompense of actual damages or \$100, whichever is greater. There is no press report if Coleman was ever charged.

In an unusual Constitutional twist, two of three instances noted involved the press obtaining or seeking to obtain library records in a manner not permitted by policy or by law. In an odd way, the press and libraries are both Constitutional twins. The First Amendment sanctions freedom of the press. The same amendment guarantees the right to free speech, which has been used, as noted in this paper, to protect the right of individuals to have access to information at a library in private. The press cannot be faulted for obtaining information to inform their public, but can they be faulted if the information was obtained as the result of unlawful actions? As in the case of the Unabomber, the probable flattery of press attention is alluring to a volunteer clerk. But in the Watergate case, a more "compliant clerk" allowed the press to access confidential library records. With Watergate, the release of the records may have led to the exposure of criminal action by the highest levels of government. Did the end justify the means? With the Unabomber case, the potential existed that the case against Kaczynski could have been damaged by the disclosure of his library records.

The case of the World Trade Center attacks and the Florida librarian is similar to other professionals. In the same *New York Times* article, there are reports of a pharmacist, also bound by the ethic of the confidentiality of patients, who divulged to the FBI his recommended treatment for one of terrorists for chapped hands. Also noted was that the Federation of American Scientists who removed information about US intelligence operations and nuclear weapons facilities from their public website to prevent any terrorists from accessing this information. So librarians are not alone in the struggle over the right of privacy and the access to information.

Legislative Enactment of the Library Records Confidentiality Act

According to the State Constitution, Article IV, Section 8, each bill must be read on three separate days. As the result of tradition and practice, the three readings are essentially as follows: "First Reading"-introduction and assignment to committee; "Second Reading"-a bill has been discharged from committee with a recommendation for passage; and "Third Reading"-the final action of the legislative body's members voting for or against a bill. In Committee and on Second Reading any member of the body in which the bill is being considered can offer an amendment to change the language of the bill. Generally amendments are offered to change intent or add or subtract language affecting the subject matter of the introduced bill. Action subsequent to Third Reading is the bill moves to the second chamber, either the Senate or the House of Representatives. The same three readings are required of the second chamber. While there are a number of permissible maneuverings available under the rules of both the Senate and the House of Representatives, generally the subsequent action of final passage in the second chamber means the bill is then sent to the Governor for his constitutional action.

The Library Records Confidentiality Act was introduced as legislation on April 15, 1983 as House Bill 1669. The sponsor of the bill in the House of Representatives was Representative Harry "Bus" Yourell.

Upon introduction, the bill was assigned to the Committee on Cities and Villages. On May 4, 1983 the bill was heard and passed the Committee by a 14-0-0 vote (Fourteen yes, no nays and no legislator voting present). The bill was placed on the order of second reading "Short debate". No amendments were offered on the bill.

According to the Rules of the House of Representatives for the 83rd General Assembly (1983-1985), Section III-Rule 10- "Short Debate" meant that House Bill 1669 was recommended by the Committee on Cities and Villages for this order of business. Rule 10 (e) specified that the Third Reading debate on such bills be limited to two minutes for the proponents, two minutes for the opponents and one-minute for the chief sponsor of the bill to close debate.

On May 24, 1983 House Bill 1669 was read a third time on the order of Short Debate. In presenting the bill, Representative Yourell stated the following:

"Thank you Mr. Speaker. Ladies and Gentlemen of the House, this Bill creates the Library Records Confidentiality Act and provides that the registration and circulation records of a library are confidential information. The reason for the bill is that we want to protect those individuals who when they take out or subscribe to a library, take out books, they have to fill (sic) out a card and certain information is on that card, such as the name, address, phone number and so forth, and we believe this is confidential information and not...should not be used for any other purpose. I'd be happy to answer any questions you might have."

The only question to Representative Yourell came from Representative Topinka. She wanted to know why the Illinois Press Association was against the bill. To which Representative Yourell responded, "They don't understand it, number one. They think it applies only to public libraries. It applies to all libraries academic, private and so forth". There were no other questions or statements raised by any member of the House.

With that response, Speaker Madigan, the presiding officer of the House of Representatives, put forth the question for passage to the House. The bill passed on a vote of 100 yeas, 12 nays and none voting present. The total membership of the House of Representatives is 118. The bill then went to the Senate for consideration.

In the Senate, House Bill 1669 was sponsored by Senator Sam Vadalabene. The bill was read a first time and assigned to the Committee on Executive. The bill was reported out of Committee by a vote 16 yeas, one nay and no present votes. Oddly enough, the Committee report sheet indicates no "nay" votes, but the Journal of the Senate reported the 16-01-00 vote. The practice in the Senate was not to officially record the comments and questions on legislation. No amendments were offered in committee or on Second Reading

The Senate, at that time, had a practice that was not specified in the Senate Rules. Upon agreement of the Senate President and the Senate Minority Leader, an "Agreed Bill List" was compiled. The intent of this List was to combine a number of bills that were non-controversial onto one roll call for Third Reading, the final passage stage of a bill. Once a bill is on the Agreed Bill List there was no debate or questions raised about a bill. The Secretary of the Senate simply read the bill number and title (a brief statement summarizing the bill) and the presiding officer of the Senate put forth the question for a roll call for all the bills on the list. As noted on the legislative transcripts for the day of Third Reading for the Agreed Bill List, any member of the Senate had the right to remove any bill from the list. If a bill were removed the bill would then be subject to the regular debate and discussion.

HB 1669 was added to the Agreed Bill List in the Senate. The roll call for the Agreed Bill List on June 25, 1983 was 57 yeas, no nays and no members voting present. There were a total of 147 bills on the Agreed Bill list.

Each bill that passes the General Assembly must be signed by the Speaker of the House of Representatives and the Senate President so as to certify that the bill has met the Constitutional requirements for passage (essentially the three readings in each chamber). The legislative leaders have 30 days to take this action. On July 22, 1983 House Bill 1669 was sent to Governor Thompson for action. Under the Constitution the Governor has 60 days from the date of receipt to take action on the bill. The Governor signed the bill into law on August 30, 1983. The Index Department of the Illinois Secretary of State, as required by law, assigned the new law as Public Act 83-0179.

House Bill 1669 did not contain an effective date clause. These clauses stipulate when the law is to become legally effective. The effective date of a law is governed by Article IV, Section 10 of the State Constitution and by Section 1 of the Effective Date of Laws Act (5 ILCS 75/1). Without an effective date, the legislation became effective on January 1, 1984.

A review of the subsequent General Assemblies following enactment of the Act found there were no enacted or proposed amendatory changes to the Act. The only exception was an unrelated proposal to enact the National Voter Registration Act of 1993. That legislation was never enacted in Illinois. Several bills over the course of several General Assemblies were introduced to enact the election registration law. The proposed change to the Library Records Confidentiality Act was to allow the disclosure of voter registration information as provided for in a proposed Section 3A-5 of the Illinois Election Code. Therefore, there was no effort to make any substantive change to the basic protective provisions of the Library Records Confidentiality Act.

Freedom of Information Act

Winding its way through the legislative process at the same time as House Bill 1669 was legislation to enact the Freedom of Information Act (FOIA). That legislation is now law (5 ILCS 140/1). Section 7 of the Act lists those records and items that are exempt from inspection and copying. Listed among the exemptions is subparagraph “l-library circulation and order records identifying library users with specific materials.” Therefore, two laws in Illinois protect library records. FOIA provides for anyone who is denied a public record based upon an exemption from the Act, such as for library records, to appeal to the circuit court. If the court finds that the exemption was wrong, the records can be disclosed. The FOIA exemption is probably strengthened by the Illinois Library Records Confidentiality Act. This strengthening is due to the fact the legislature specifically protects such records in a separate law and therefore leaves no doubt about the intent to protect library records.

Analysis

The legislative action review reveals there was no substantive discussion of the intricacies of the proposed law by the Illinois General Assembly. The action on the legislation by the legislature is not uncommon, as evidenced by the number of “Agreed” bills on call with House Bill 1669 in the Senate. The result is there is no legislative guidance on what could be critical issues in the enforcement of the Act. The following is a discussion of the elements of the Act and how these elements could affect the enforcement of the Act.

<Note: the following discussion of the words and phrases of the Act does not reflect the views of the author. Rather, this is an exercise in dissecting the words of the Act for varied interpretations. A court would take much the same action.)

The Library Records Confidentiality Act consists of four sections. Section 1 is the operative section containing three sub-paragraphs that establishes restrictions, permissible activities and definitions. Section 2 of the Act provides for the title reference (The Library Records Confidentiality Act). Section 3 and Section 4 amend, respectively, the Illinois Local Library Act and the Illinois Public Library District Act. These laws govern how public libraries must operate in the State of Illinois. By including the citation of the Library Records Confidentiality Act within those laws, the intent is to make clear that the Act applies to all public libraries operating in the State of Illinois.

As noted, Section 1 is the operative provision of the Act. Sub-paragraph (a) is basis of the Act: “The registration and circulation records of a library are confidential information. Except pursuant to a court order, no person shall publish or make any information contained in such records available to the public”.

There are words in sub-paragraph (a) that could raise issues. First, to clarify statutory construction, the term “person” as used in this context is not restricted to an individual. According to the “Statute on Statutes” the Illinois law governing general statutory construction, the term “person” or “persons”, “as well as all words referring to or importing persons, may extend and be applied to bodies politic and corporate as well as individuals.” (5 ILCS 70/1.05). Therefore, for the purposes of the Act, “person” applies both to individuals and to the management of a library.

The most basic statement, and indeed the most compelling and operative statement, is the leading phrase “The registration and circulation records of a library are confidential information.” This statement leaves no doubt about the intent of the Act that the books, materials and personal information that are used for registration of a library patron are confidential. However, the use of the term “public” could be debated.

According to Black’s Law Dictionary “public” is defined as “the whole body politic, or the aggregate of the citizens of a state, district or municipality.” The Illinois Statute on Statutes does not offer a definition of the term “public”. Without legislative or judicial guidance, conceivably, the term “public” could mean only individuals and the general population. The term could be extended to include the press and media. Could the term exclude the police or prosecutors? Both of these institutions are part of the government. The release of information to the police and to prosecutors could be permissible since the “public” is not involved and the information could be used for investigation purposes. The police or a prosecutor could state very simply to the management or personnel of a library that the term “public” means a general publication or casual disbursement of the records and does not mean law enforcement officials. In fact, the Act does not mention either the police or prosecutors (in Illinois the prosecutors are either the county State’s Attorney or the Illinois Attorney General). This is not to imply that the police or prosecutors would take advantage of this language or disregard the tenets of the Act. This is only to state that the application of the term “public” could be debated.

However, the most important phrase in the entire Act is “except pursuant to court order, no person shall publish or make any information contained in such records available to the public”. The term “court order” is a legally chilling phrase because that automatically requires the court to become involved in any action involving the disclosure of library registration and circulation records. There is no debate as to whether or not the court would be involved, the Act requires that action. To that end any member of a police force or representative of a State’s Attorney’s office would be sufficiently informed of the court’s required involvement if they read the Act.

A concern about the construction of the Act is there is no direction for anyone to file a request with the court to seek such an order or any direction given for a court to take upon receipt of such a request. Given that the Act has never been tested in court this could be clarified. However, in discussion with members of the library community regarding the Act, this failure of clarification has not prevented a court from issuing orders.

Sub-paragraph (b) allows libraries to publish statistical information about circulation or registration records. This permission is granted so long as “no individual is identified.” Essentially this means that a library can publish general statistics about users and the circulation of books and materials. The need for this information is obvious to the library community. Such information assists in decision making about acquisitions and providing service to the various demographic segments of a community.

Sub-paragraph (c) is the definition section of the Act. The term “library” is defined as any public library or library of an educational, historical or eleemosynary institution, organization or society. An “eleemosynary” institution is one that is funded by a charity. As noted before, the Act also amended the Illinois Local Library Act and the Illinois Public Library District Act. Both of these Acts define and govern the operation of “public” libraries operated by municipalities and territorial library districts. Therefore the term “public” as used in sub-paragraph (c) cannot be disputed. The sub-paragraph also clearly states that the Act applies to educational libraries, meaning school and academic libraries and libraries that are operated by charitable organizations.

The term “registration records” is defined to clearly include “any information a library requires a person to provide in order for that person to become eligible to borrow books or other materials”. The operative function of this term is to include within the privileged information any identifying factors required by the library of persons seeking to borrow books and materials. To lend books and materials is the normal course of business of a library. To require a person who desires to borrow books and materials to render identification information is also typical of a library. This phrase prohibits a blanket invasion of individual privacy by prohibiting anyone from finding out what books and materials a particular patron has checked out.

The term “circulation records” is defined as “all information identifying the individual borrowing particular books or materials”. This phrase essentially ties the library user with the books and materials they may have borrowed. This prevents someone from finding out who has checked out a certain item. For example, a simple but often asked question at a library is “who has checked out (a stated book)?” The intent of the question may be innocent. The questioner simply wants the book and probably wants to inquire of the legitimate borrower when he or she they will finish the book. However, to do that is an invasion of the privacy that is meant to be protected by the Act.

Due to the statutory construction of the Act, no person can obtain any information about a library user. A library cannot answer the basic question “who are they and what have they checked out?” without a court order. This holds true no matter how innocent the inquiry or who makes the inquiry, including a relative. On the reverse, no one can obtain information about who has checked out a certain book or material item either.

The Illinois law raises many questions after the review of the other state laws and a review of the literature regarding the confidentiality of library records. That discussion is presented in the commentary summary section of this paper. In essence though, the Illinois basically protects the right of privacy of a patron’s use of library materials and requires a court order to invade that privacy. A court ruling on the meaning and impact of this law would be helpful to clarify some of the ambiguities. However, to invite such a ruling without a serious challenge to the basic right of protection afforded by the Act might just force an undesirable consequence as well.

State Confidentiality Laws -Review

To gauge the effect and scope of the Illinois law, a review of the laws of the remaining forty -nine states and the District of Columbia have on confidential library records. This is not an exhaustive attempt to review the subtle nuances of each jurisdiction's legal procedure that affects such laws. Such a review would include the style and process of obtaining a court order, the internal procedures of libraries to enforce and process requests for the records, and the legislative intent for the choice of statutory language. The purpose of this review is to examine the enacted laws of these jurisdictions. This review will discuss the similarities and differences of the laws and comment upon any peculiar legal requirement or procedure. The addendum to this paper provides a summary of the laws of each jurisdiction. This review is based upon the laws as published in the annotated statutes for each state and the District of Columbia (D.C.).

Forty-eight states, including Illinois, and the District of Columbia (D.C) have statutory laws regarding the privacy of library circulation and registration records. In the states of Hawaii and Kentucky, an Attorney General's opinion provides the guideline for such records. The statutes vary widely in scope and in applicability. Unlike Illinois, not all states have a separate law for this specific purpose. Also, statutory construction in each state and D.C. is not consistent. In Illinois, the statutes are categorized by major subject matters, but each law is considered a separate act of law. Many states categorize their laws by title, much like the federal government. Some states simply have subject matter headings for a grouping of laws. Also, simply reading the statutes may not always provide a clear review of the library confidentiality laws. Each state has different system of for the administration of justice. For example, the Supreme Court in New York is similar to the Circuit Court, or lower court, system in Illinois. Each state also has a different approach to law enforcement and the connection with prosecutors. In essence, each state has a distinct legal culture.

A discussion of the attorney general opinions of the states of Kentucky and Hawaii are included at the end of this section.

Given that there are fifty-one separate and dissimilar legal applications to library confidentiality laws, there is no simply means to categorize or summarize these laws. Twenty-three states and D.C. have separate a separate category for library law or have a specific law for confidential records, as does Illinois. The remaining states have the restrictions to access of confidential library records embedded within a Freedom of Information Act or an open records law. In the case of the latter, these can vary widely. In most of these types of laws, confidential library records are included in a list of other types of records that considered confidential by that jurisdiction. These include records on medical information, academic grades, proprietary business filings, trade secrets, etc. These states essentially consider confidential library records no different from other personal information that a governmental unit might compile upon an individual.

Categories of Statutory Provisions

A rather thorough legal analysis of the various elements of the library confidentiality laws was discussed by *Kennedy* (p. 754). Specifically those elements include: statutory design (relationship with open records laws of the state); scope of the privacy right (what kind of libraries are covered); exceptions to the right of privacy (to whom and how can the records be disclosed); disclosure procedure (the permitted process of accessing the records); and sanctions (penalties for wrongful disclosure). While similar in vein, this paper utilizes different categories to achieve the same results. That is, to effectively dissect these laws into substantive segments for comparative purposes.

Even though there is a wide variance on the type of confidential laws, there are similarities. There are some major categories of statutory provisions that cross all the laws regarding confidentiality, which are: parental disclosure of a child's records; the imposition of penalties for violations; limitation of applicability to publicly supported libraries; the requirement for court orders to release records; release of records to the affected patron and release of records to law enforcement officials. The following is a discussion of each of those categories.

Penalties and Violations

"A statute without a penalty is only a suggestion", so goes an old legal saying. The Illinois law does not contain a penalty or violation section. However, the laws of eight states and D.C. do have penalty sections for violations of the stipulated law.

The violation provisions for these jurisdictions are virtually all the same; any person who wrongfully discloses the confidential library records of a patron or of the library can be subject to a specific penalty. All the jurisdictions that impose a penalty impose a monetary fine. Violations in some states do carry the possibility of imprisonment.

The following is a listing of the penalties for violations of the confidentiality laws of the mentioned jurisdictions:

Jurisdiction	Maximum monet	Maximum impris	Comment
Arizona	\$300		Class 3 Misdemeanor
Arkansas	\$200	30 days	Can be both
Colorado	\$300	No provision	Class 3 Petty Offense
District of Columbia	\$300	No provision	Aggrieved person may receive damages plus legal fees
Florida	\$500	No provision	2 nd degree misdemeanor that carries \$500 fine
Michigan	\$250	No provision	The fine or actual damages, with legal fees for aggrieved
Montana	No provision	No provision	Imposes a misdemeanor. Per se seek actual damages or \$100, with plus legal fees.
New Mexico	No provision	No provision	Violators subject to civil liability determined by the court
South Carolina	1 st Offense-\$500 2 nd offense-\$1000 3 rd & subsequent	1 st Offense-30 day 2 nd offense-60 day 3 rd & subsequent	

The penalties cited for violations are only for states that have specified laws for the disclosure of confidential library records. A review was not taken of the Freedom of Information Act or open record laws of which library record disclosure is included. However, a cursory review of many of the state laws indicated no penalties for disclosing such records. Generally, there are appeal procedures for a person or organization seeking to obtain such records but was denied access.

The imposition of fines, jail time and the possibility for the payment of damages certainly does add to the weight of the seriousness of the offense. Of course, the penalties listed above are only maximums. A court would have the authority to impose much more lenient fines and no jail time. However, the imposition of penalties in these states raises the level of seriousness these jurisdictions have for the privacy of confidential library records.

Parental Disclosure

Perhaps one of the most contentious issues affecting libraries, and indeed the basis for this particular research effort, is the ability of a parent or guardian to obtain the library records of their child or guardian. The reasons for disclosing the child's or minor records to a parental authority are to allow parents to monitor and perhaps control the reading habits of their children. The reason for not allowing children's records to be accessed by parental authorities is to protect their right of privacy and freedom of speech. Such a generational battle may never be settled, even beyond the issue of library records confidentiality. However, there are probably can never be settled, even beyond the confines of a library. The Illinois law does not have a parental disclosure provision.

A total of eleven states have specific provisions within the library records confidential records statutes that directly permit a parent or guardian to obtain the confidential library records of their minor child or ward. Those states are: Alabama, Alaska, Florida, Georgia, Louisiana, New Mexico, Ohio, West Virginia, South Dakota and Wyoming. The statutory language is fairly standard: the release of records to the parent or guardian of a child or minor is generally exempted from the prohibition of the disclosure of the records. Only in two states, the specific age of the child is mentioned. In South Dakota the age is 18 and in Florida the age is 16. In all other states with these provisions no age is listed. With a lack of statutory direction, the most likely procedure would be to be used when there is a legal contest over the release of such records would be the age of legal emancipation of a minor could be utilized to make the determination. Here again, that age limit probably varies from state to state.

Public Supported Libraries

An interesting qualification for the access to public library records in many states is that the confidentiality law only applies to publicly supported libraries or what is referred to as a "public" library. The general limitation appears to limit the right of confidentiality to only those libraries that are financially supported by public funds. In the states of Arizona, Colorado, Louisiana, Mississippi and Nebraska the statutes specifically refer to publicly supported library. In the states of Mississippi, Louisiana, Arizona and Nebraska the statutes specifically state the statute is limited to only libraries that receive public funds. The other states statutes mention the right of confidentiality only applies to public libraries. An example of the publicly funded language is that of Mississippi, as follows:

"Records maintained by any library funded in whole or part by public funds, which contain information relating to the identity of a library user, relative to the user's use of books or other materials at the library, shall be confidential. Such records may only be released with the express written person or as the result of a court order." (Mississippi: 39-3-367).

There is a curiosity as to why this restriction would be placed on only publicly supported libraries. Since this restriction is not limited to one state, but is applied in nine states, the possibility exists that a legal theory was applied to ensure that a certain type of library is intended to not be protected. Speculation is that the right is not afforded to subversive organizations that might want to prevent law enforcement scrutiny of what might be termed "records". However, without an examination of the legislative intent the reason for this restriction remains unknown. An issue that could be raised is if a privately funded library would receive state or federal funded grants. Would the grant allow the library to claim the term of "publicly funded"? Without a court ruling, there is no certainty to the result of this question.

Court Orders

In addition to Illinois, twenty-seven states require the issuance of court orders or subpoenas prior to a library releasing confidential library records as follows:

Alaska	Minnesota	New York
Arizona	Mississippi	Oklahoma
Arkansas	Missouri	Pennsylvania
Colorado	Montana	South Carolina
District of Columbia	New Mexico	South Dakota
Georgia	New Jersey	Tennessee
Louisiana	North Carolina	Texas
Maine	North Dakota	West Virginia
Michigan	Ohio	Wisconsin

In nineteen of these states, the statutes simply state that the release of confidential records is subject to court order without any condition for that order. This is the situation in Illinois as well. The lack of a judicial condition means that a judge need not justify the release of records. This does not mean a judge would release the records without a valid reason presented by the petitioner, the statutes simply do not require a judge to issue a reason for issuing an order.

Seven states condition the judicial order. In Florida, an Attorney General opinion specifies that a judge must sign an order. In Iowa, the statute states that the records shall be released to a criminal or juvenile justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime and requires a judicial determination that a rational connection exists between the requested release of the records and a legitimate end and that the need for the information is cogent and compelling. In Missouri, the court must find that disclosure is necessary to protect the public safety or to prosecute a crime. In Montana, the court must find that the disclosure is necessary because the merits of public disclosure clearly exceed the demand individual privacy. In Pennsylvania the court order must be issued in a criminal proceeding. In South Carolina the judicial order must find that the disclosure is necessary to protect public safety, to prosecute a crime or upon showing good cause before the judge in a civil matter. In Texas the district court must find that disclosure is necessary for public safety or that the record is evidence of an offense or constitutes evidence that a particular person committed an offense. The conditions imposed by these states require a judge to issue a rationale for the release of records. Without reviewing past orders there is no indication of the extent the rationale submitted. A court could simply state the records are necessary for a legitimate purpose as provided by the statute without going into the details of the case at hand. The judicial statement would serve the purpose for both the defendant and the prosecution.

The Florida Attorney General opinion that requires a judge to sign a court order raises another question. Does the judiciary in a state permit a court official, such as clerk or other officer other than a judge, to sign a court order? Obviously the rules of procedure for each state court system must be reviewed before that question could be answered. However, without clear statutory direction, the possibility does exist if court orders of any type (not just those related to library records) can be issued by court officials other than judges.

Another question that is raised by the review of the court order condition of the release of records is who is allowed to request such an order. In none of the statutes reviewed is the request for a court order limited to the state or local prosecutor (in Illinois the county State's Attorney or the Attorney General). Without this statutory limitation the possibility exists that anyone could request such records. Most unlikely would be a situation where someone on a whim of curiosity would attempt to go through the judicial process to seek such records. However, in marital divorce cases, business disputes or other similar situations, a court could be petitioned to issue an order to release such records. In the case of a business, this situation was subject to a New York court case that is discussed in a later section of this paper. Therefore, the release of records is simply not for criminal proceedings, but for any inquiry that might involve the person or records affected.

Patron Requested Release

A legal curiosity is the fact that seventeen states specifically mention in the statutes that patrons may request the release of their own library records. Illinois is among the states statutes that do not mention this type of release. The states that do specifically state within the statutes that a person can obtain their own records are:

Arizona	Missouri	Oklahoma
Arkansas	Montana	South Carolina
Colorado	New Jersey	Tennessee
Georgia	New Mexico	West Virginia
Maine	New York	Wisconsin
Mississippi	Ohio	

The practice of local libraries for issuing patrons their own records probably comes more into play than any legal procedure in these situations. The question raised is what happens in those states where there is no statutorily sanctioned release of such records and the patron makes such a request. Does the library issue the record in violation of the law? Does the fact there is no mention of such situations mean the legislature did not intend to regulate those particular types of records? These may seem like frivolous questions in light of the fact a patron should know what he or she has checked out of a library.

However, if a library issues a family card, or a card to a single household regardless of the number of residents, the question could come into play. As noted the genesis for this paper was due to a father seeking to find out what books his daughter was seeking. If the library in question issued a family card and there is no law for the right of release of personal records, then could the father obtain the records? Here again, without a judicial interpretation of the law the question cannot be sufficiently answered.

Law Enforcement Officials

Four states have statutory provisions that permit the release of confidential library records to law enforcement officials. The following is a discussion of each of those statutory provisions.

- The Iowa statute was noted before in connection with the release of records being subject to a court order. That statute limits the release of records to criminal or juvenile justice agencies that have sought a conditioned court order.
- Arkansas permits the release of personally identifiable information patron records to a law enforcement agency or a civil court pursuant to a search warrant.
- Ohio permits a law enforcement officer who is acting in the scope of his or her duties by investigating a matter involving public safety in exigent circumstances to have access to library patron records.
- Texas law specifically mentions the release of records to a law enforcement officer or a prosecutor under a court order or subpoena obtained after showing that the disclosure is necessary to protect public safety or the record is evidence in a crime.

In the case of Iowa, Arkansas and Texas, the statutes specifically require a court order prior to the release of records. Only Ohio permits a law enforcement officer to access records without a court order, subpoena or other legally sanctioned means of access. The Ohio statute does emphasize that the law enforcement official must be involved in an investigation that demands immediate attention to justify the access of confidential library records. However, there is no judicial or administrative control factor mentioned in the statute. That means a law enforcement officer does not have to provide any proof of need or report to any other official his or her reason for the investigation. Under the law in Ohio, a law enforcement official could just be on a “fishing” expedition for a record, perhaps to obtain a clue or a link to a crime or just be curious about the records of an individual. A library in such circumstances would have no means verify the purpose of the investigation. A professional law enforcement official would not abuse this legal privilege and perhaps administrative rules for law enforcement agencies or for libraries do cover these situations.

Unique Provisions

While the categories discussed cover the major issues of statutory provisions associated with confidential library records, many states have unique statutory provisions that apply to these statutes.

Appeals

The statutes of District of Columbia and Michigan both have procedures that permit the affected person to appeal the release of confidential library records. In D.C., the patron is served a subpoena and has ten days to appeal the disclosure of the records. In Michigan the appeal process is a bit different. Unless otherwise ordered by a court, a library that is requested to release records by a person, must first obtain the permission of the affected patron to release the records. Obviously a court has priority, but for anyone else seeking records, the patron has the right to refuse the release.

The specified appeal process, especially in D.C., raises the issue about the procedures for all other states. Only in D.C, and to a limited extent in Michigan, is the affected patron even notified about a request for their library records. That certainly gives rise to the question of fairness and due notice about the release of such records. If a person's home is subject to a search warrant or a person is the subject of a subpoena, they are personally served with court documents authorizing such action. In the case of library records, separately located from the patron's person or personal belongings, but which do involve the privacy of that person, there is no prior notice of the inspection or copying of those records by a law enforcement agency or any other entity.

Administrative Rules

Administrative rules are generally those that are permitted by the laws of a state to allow state agencies affected by a statute to clarify procedures to implement a statute. In only one state, New Jersey, does the statute specifically allow the State Librarian to adopt rules to implement the procedures to govern the disclosure of confidential library records. All other states, including Illinois, are silent on the issue. That does not mean however, that states cannot implement administrative procedural rules. This process most assuredly varies from state to state.

The issue of the application of administrative rules was raised in the discussion about the Ohio statutory authority for a law enforcement inspection of records with only the grounds of the investigation being an exigent matter. There is no indication in the Ohio statute that administrative rules are permitted. Ohio law may very well permit such rules. The Ohio statute does give rise to need for clarification so as to resolve any conflict of opinion on such procedures. Certainly a court ruling on that statute and those of many other states would add clarity to the procedural process. Barring that, administrative rules would certainly be of great assistance to libraries and law enforcement officials.

Constitutional Reference

New Mexico has the only statute that refers to the rights of individuals being protected by the state's constitution. The library confidentiality law specifically states: "The purposes of the Act is to preserve the intellectual freedom guaranteed by Sections 4 and 17 of Article II of the constitution of New Mexico by providing privacy for users of public libraries of the state with respect to the library materials they wish to use."

Section 4 (Inherent Rights) of Article II of the New Mexico constitution states: All persons are born equally free and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property and of seeking and obtaining safety and happiness.”

Section 17 (Freedom of speech and press; libel) of Article II of the New Mexico constitution states: “Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted.”

Clearly the authors of the New Mexico law envisioned that library records are indeed personal and subject to the higher standards of constitutional protection. The rights of patrons in other states could be protected by their constitutions. Perhaps the US Constitution protects those rights. However, New Mexico law takes the guesswork from any discussion or debate on the state constitutional level.

Custodial Disclosure

As noted, many library records are protected by Freedom of Information Act laws or by open record laws of the various states. Those laws vary widely from state to state and govern how records or certain types of information may be disclosure. However, these laws do not guarantee the privacy of records. In fact there may not be a guarantee at all.

For example, both Virginia and Nebraska laws that govern the protection and release of government records include library patron records. These statutes permits the custodian of the records to disclose in his discretion unless prohibited by law (as noted previously in this paper regarding the Virginia law). In a review of the provisions affecting library records there does not appear to be any statutory prevention of disclosure of those records by the custodian. The custodian in the case of a library would most likely be the library director. Here again, unless there is an administrative rule or an undiscovered statute affecting library records, a library director can disclose patron records at will. That certainly does not offer the type of statutory protection offered to other residents of other states.

Report of Criminal Activity

The Louisiana statute governing library records also contains an interesting provision regarding criminal activity occurring in the library. Specifically, the statute permits a library or librarian to dis close their witnessing any criminal activity that occurred in the library to investigating law enforcement officials. Here again, without knowledge of legislative intent, the reason for this provision is not clear. The intent appears to assure librarians that if a crime is indeed committed in the library, they can report the crime and the identity of the suspects to the police without fear of violating patron confidentially.

The statute defines “criminal” act those occurring within the confines of the library, upon any library building or near any library property. The law was enacted in 1983 and amended in 1992. There is no indication if the witnessing of criminal activity was in the original legislation or added by amendment. However, both years were considerably ahead of the time of the widespread use of the Internet in the library. The accessing of pornography, especially illegal child pornography, by the Internet probably predated those dates.

Invalid Evidence

The Arkansas law permits a library to disclose personally identifiable information about patrons to the patron, to any person with the informed written consent of the patron or to a law enforcement agency or civil court pursuant to a search warrant. Another section of the Act (Section 13-2-706 of the Arkansas Code) stipulates that any personally identifiable information obtained in any manner other than that prescribed may not be received as evidence in any trial or legal proceeding. This protection might be afforded in all of the other statutes by implication. However, for Arkansas to explicitly protect the records in this fashion certainly add credence to the serious nature of protecting the personal library records of individuals.

Library Records Affected by Attorney General Opinions

The states of Kentucky and Hawaii do not have specific statutes regarding the confidentiality of library records. Both states do have laws affecting public records and in both states the attorney general issued an opinion on the impact of these laws on library records.

<Note: in the course of researching this topic, it was discovered that there are numerous state attorney general opinions on the effect of the laws in those respective states. This paper did not research those opinions. The intent of this paper is to research the laws affecting the confidentiality of library records. The attorney general opinions for the states of Kentucky and Hawaii were reviewed since those are the operative legal guidelines (as are the laws of the other states) for protecting and disclosing patron records.>

Attorney generals are in essence the law firms for the states, defending the laws and officials of state governments in all legal matters affecting the operation of state government. The impact and force of attorney general opinions for all states is probably best summed up from a statement found on the Kentucky Attorney General’s website: “Kentucky Attorney General opinions do not have the force of law, but they are persuasive and public officials are expected to follow them. Formal opinions are thoroughly reviewed and represent the official position of the Office of the Attorney General.” Thus, while not officially law or a court ruling, an attorney general opinion is probably more of a directive to public officials. Laws enacted by the legislature and court ruling would have precedence over such opinions.

Kentucky (OAG 81-159)

A letter of inquiry that was not included in the opinion prompted the attorney general's opinion on library records confidentiality. The gist of the inquiry was if the registration and circulation records of public libraries must be open to the public under the Kentucky Open Records Law (KRS 61 -61.844). The opinion cited the following section of the law that is exempt from the disclosure provision with the only exception to disclosure being a court order:

“(a) public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

Based upon that language, the opinion goes on to state:

“We think the individual's privacy rights as to what he borrows from a public library (books, motion picture film, periodicals or any other matter) is overwhelming. In fact we can see no public interest at all to put in the scales opposite the privacy rights of the individual.

“We would point out, however, that Kentucky has no privacy statute and the exceptions to mandatory disclosure of public records are permissive and no law is violated if they are not observed by the custodian.

“In summary, it is our opinion that the custodian of the registration and circulation records of a public library is not required to make such records available for public inspection under the Open Records Law.”

The opinion also cites a federal court case (*Wine Hobbies USA v. US Internal Revenue Service*, 502 F 2d 133, 1974) that involves the “weighing of an individual's right to privacy against the public interest in the transaction involved”. This case was used to determine the “weight” of the library records in matters affecting person privacy.

What stands out in the opinion is that the custodian of the records (i.e., the library director) could disclose the records without any legal penalty due to the fact there is no privacy statute in the state. So in essence, the privacy of individual's library records is only as good as the librarian's intent to maintain that privacy.

Hawaii (OIP Op. Ltr. No. 90-30)

While the Kentucky opinion is quite short (less than one page in length), the Hawaiian attorney general opinion exceeds 14 pages. The Hawaiian Attorney General opinion is quite detailed in citing numerous court cases, opinions of other state's attorney generals, the views of the general counsel of the American Library Association and academic journals on the issue. While there may not be a formal law or judicial ruling on the issue, the opinion is perhaps the most comprehensive legal discussion on the confidentiality of library records.

The opinion was generated by an inquiry from John R. Penebacker, Special Assistant to the State Librarian. The inquiry was “if patron circulation records maintained by the Hawaii State Public Library System which identify materials used, requested, or obtained by a patron, must be made available for public inspection and copying?” The Uniform Information Practices Act (UIPA) controls government records. The Hawaiian library public library system is a single state agency unlike most other states that have locally controlled and funded public libraries.

The opinion cites the UIPA clause that states it “does not require agencies to disclose government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy”. The opinion goes on to state, “in order for this exception to apply to a particular government record, it must be a record in which an individual has a significant privacy interest. Based upon attorney general opinions from several other states, and decision of the Supreme Court of Hawaii, we conclude that individuals have a significant privacy interest in information, such as library circulation records, which reveals their thoughts, associations or beliefs.” The Hawaiian Supreme Court ruling was the *State v. Tanaka* (67 Haw 658, 701 P 2d 1274/ 1985).

Though the opinion does not mention the issue in *Tanaka*, a statement from the court’s opinion was used to defend the right of privacy for this issue. In *Tanaka* the court stated “that Article I, Section 7 of the Constitution of Hawaii was intended to protect individuals from unwarranted intrusion in activities or matters which reveal an individual’s ‘activities, associations and beliefs’, such as an individual’s choice of reading materials” (*Tanaka* 67 Haw. At 662).

The opinion does state very clearly that the opinion only applies to the *public* disclosure of library records and does not address issue of subpoenas or interagency disclosure of such information. So in essence, the opinion prohibits the disclosure of circulation records to the individuals only with a curiosity. The ability to obtain such records through the courts and through other means is permissible.

The Hawaiian opinion is a most thorough legal statement on the issue of the confidentiality of library records. As noted, numerous other legal opinions and analysis of the issue from throughout the country were used to arrive at the opinion. If nothing else, the Hawaiian opinion could be used by any court in the nation as a starting point for developing a court ruling on the laws controlling library circulation records.

Summation of State Laws

The one central aspect of the various state laws (and D.C.) affecting the confidentiality of library records is that none of the laws are identical. This is almost an oddity given the universal nature of the concern and the national alliance of the library community. There are state laws on different subject matters that are virtually identical, most notably in the commercial code area of law. However, this is not the case for the confidentiality of library records. While the basic common element is to protect the records of patrons, the procedural details for releasing those records and indeed, the applicability to only certain types of libraries (i.e. publicly funded) in many states, ends that similarity. For all laws, not just those for libraries, each state has a distinct tradition and method for dealing with a problem. This practice of course is sanctioned by the federal constitution.

Also, the fact that only two states, Kentucky and Hawaii, do not have such a law is a common bond among the remaining jurisdictions. This common bond is actually a national indication of the right of privacy for library records. Even in Kentucky and Hawaii, the attorney general opinions are apparently strong enough to withstand any casual interference with the right of privacy of a patron's records. If ever there were a case before the US Supreme Court, or the Congress sought to impose a national law, the fact that all states have some type of legal protection for library records should stand as a national statement of concern over this issue.

As for library law, the statutory laws probably reflect the status of libraries within the culture of a particular state. As noted, some states have penalties for violations while some do not have these provisions. Many states have separate distinct laws to address the issue, while many have the protection listed among a variety of other records (such as medical records and records for trade secrets). This difference is reflective in other aspects of librarianship. For example, some states have universal library service for all residents; many do not have such service.

The fact that the library record confidentiality laws are not identical is probably not significant. The most important thread among all the states and D.C. with these laws is that there is a law protecting the right of individuals to be free to read taxpayer supported information materials with the confidence of anonymity. This freedom to read and to explore intellectual pursuits is a cornerstone of our democracy. These little laws and protections afforded by these jurisdictions make a big difference in the lives of library patrons.

Court Cases

In the review of the annotated statutes for the fifty states and D.C., two court cases involving library record confidentiality were found. The case in Iowa involved the ability of a law enforcement officer to inspect circulation records for a criminal investigation. The other case in New York involved the authority of an employer to access the records for the purpose of employee disciplinary purposes. The following is a brief discussion of both of those cases.

Iowa

Brown and the Board of Trustees of the Des Moines Public Library v. Dan I. Johnston, Polk County Attorney.
(Case citation: 328 N.W. 2nd 510)

Due to a series of cattle mutilations, an agent of the Iowa Division of Criminal Investigation inquired of the Des Moines Public Library if certain library circulation records were available for inspection. The agent was advised that the records were confidential as a matter of policy. The State's Attorney for the county then obtained a subpoena to inspect "all records of persons who have checked out the books described in the State's application for the subpoena". The books dealt mainly with witchcraft and related topics. The issuance of the subpoena was challenged in court by a library card holder (Brown) who filed suit alleging the US Constitution protected the records. The Des Moines Library Board also filed suit to protect the records.

Iowa does not have a specific law regarding library records. Library records are considered public records and such records are covered by the title on the Examination of Public Records (22.7 (13). The specific section listing the confidential records that are protected states that the records may be released by the lawful custodian or by a court order. At the time of the case, the paragraph read:

“The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item of information from the library”.

The case eventually ended in the Iowa Supreme Court. The Court dismissed the suits filed by the individual library cardholder and the library. The court stated, “that the county attorney’s investigative authority is comparable to and in some instances in lieu of the grand jury. As such the county attorney’s investigative power must be broad to adequately discharge his public responsibility”. The court went on to say that this authority overrides the claim of confidentiality since a court issued the subpoena. However, as the ruling proceeded, there is no clear indication that a judge actually issued the subpoena. The court rules of Iowa permit a clerk of the court to issue subpoenas. The Supreme Court was unsure if a judge authorized the subpoena.

The ruling cited two federal Supreme Court cases that support their legal theory in deciding the case. One case involved the notes of a reporter and his first amendment rights. The other case involved President Nixon’s refusal to release his personal papers due to the legal theory of executive privilege. The Iowa Supreme Court noted that these privileges must be weighed against a societal need for the information and the availability of it from other sources. The Iowa court stated that the privilege of confidentiality, based upon a patron’s right of privacy, is only a qualified privilege. The court stated, “we must weight the effect of forced disclosure of these records against the society need for the information.

The Iowa Supreme Court technically was correct in the ruling. The governing statute stated very clearly that a court order was necessary for the release of the records. The State’s Attorney, in accordance with procedure, sought and obtained a court ordered subpoena for the records in question. The right of a court to order the release of the records was envisioned by the legislature when drafting the law.

Since that case, the legislature added the following provision was added to the paragraph:

“The records shall be released to a criminal or juvenile justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.”

The end result of the case indicated that the confidentiality of library records does have a limit. This limit is the societal need for the information. The legislature’s subsequent addition to the paragraph clarified the process for obtaining the information in question. Evidently the thought that a clerk could issue a subpoena for such records without judicial approval must have given the lawmakers grave concern. The limitations by the subsequent amendment require that a request for library records by a law enforcement agency must meet certain standards and be subjected to a judicial determination that the release to the agency is necessary.

The curious aspect about this amendment is that this only applies to law enforcement agencies. The controlling language at the beginning of the section that lists all records that are to be kept confidential was not changed. Records may still be released by the custodian (in this case the librarian), a court order or by another person duly authorized to release such information. The librarian, as custodian of the records, could release the information at will. Law enforcement agencies typically embody the notion of government agencies that could encroach the right of privacy. However, the release of such records to other agencies, such as those involving public health, could be just as damaging to the individual.

New York

Quad/Graphics Inc v. Southern Adirondack Library System
(Case citation: 664 N.Y.2nd 225)

Quad/Graphics is an employer with multiple office locations. The primary office is in Wisconsin with a field office in Saratoga Springs, New York. The company had received an unusually large telephone bill (\$23,000 according to a supplementary note to the annotated statutes). The reason for the bill was that a number of employees in the New York office had made an Internet connection through the Wisconsin office to the local "library without walls" Internet service of the Southern Adirondack Library System (SALS). Access was gained to the Internet via a "password" issued by SALS. In order to discipline the employees, Quad/Graphics sought to obtain the names of the employees by accessing the records of SALS.

Quad/Graphics had sought to obtain the records through the New York Freedom of Information Act. However, the title for Civil Practice Law and Rules, Section 4509, governs library records. Section 4509 lists numerous types of library transactions and materials that are protected from disclosure. The Section also states that the patron records shall be held confidential except for routine library operations, upon request of the patron or upon a subpoena, court order or where otherwise required by law. Under that Section, the SALS had denied the request.

The Supreme Court of Saratoga Springs ruled on the case. The court noted that Section 4509 did allow for a limited pursuant to a court order. However, Quad/Graphics did not seek a court order for the records. The court noted that a criminal complaint (evidently the basis for a court order) was not before the court. Therefore, the court was not at liberty to order the release of the records. The court stated that to honor the Freedom of Information Act request "would open the door to other similar requests made, for example, by a parent who wishes to learn what a child is reading...or by a spouse to learn what type of information his or her mate is reviewing at the public library" The court went on to state that "the Legislature has expressed, in rather direct and unequivocal fashion, a public policy that the confidentiality of a library's records should not be routinely breached and this court, in denying the petitioner's request, is following the clearly expressed legislative purpose of Section 4509".

Quad/Graphics made an alternative argument in order to obtain the records. As the “owner” of the computer equipment and telephone lines utilized to access the SALS Internet service, the company was therefore the “user” and should be able to have access to the records as provided under Section 4509. The court rejected that argument as well. The court stated: “that the operation of a computer is controlled by the person who gives it commands. The users in this case are the individuals who actually operated the computers guiding them through the Internet”.

What makes this case interesting is the overriding support given for Section 4509 over the Freedom of Information Act. The court clearly states that the protection of library records was a paramount concern of the legislature. The Freedom of Information Law of New York (Public Officers Law -Article 6) does have a request procedure for public records and an appeal procedure if the officer in charge of the records denies access. A court eventually can be petitioned to intervene to rule on whether or not public records are accessible. The court for this particular case ruled that library records are not the same as other public records due to the separate statute governing library records.

The court did imply, rather boldly, that Quad/Graphics might very well have had a criminal case that could have yielded the records. The potential criminality of employees using the computer facilities and telephone lines to access prohibited resources could have warranted a court ordering SALS to issue the pertinent records. However, the request was made through a statute that did not override the law protecting library records. The court had no leverage to change the petition or the request. The court could only rule on the case presented. Section 4509, as noted, permits a court to order the release of the records.

Without knowing more the about the end result of this case, the confidentiality of the library records in question were saved from disclosure by a technicality. There is no mention of library records in the New York Freedom of Information Law. That fact may very well have been a deciding issue for the court since Section 4509 clearly deals only with such records. If anything, this case exposes the tenuous balance of the law, this time in favor protecting library records, unlike the Iowa case.

Discussions on the Law

Two interviews were conducted for this paper to gain insight on the origin of the Illinois Library Records Confidentiality Act and how the law is applied from a legal standpoint. A discussion was held with Debbie Miller, the Illinois Library Association (ILA) lobbyist as the time the legislation was presented to the General Assembly. Miller is now a trustee with the Schaumburg Public Library District in Cook County Illinois. Mr. Phil Lenzini, a Peoria, Illinois attorney who practices library law, was also interviewed on the effects of the law on library administration.

Lobbyist

According to Miller, while Florida has enacted the first state library records confidentiality law, there was no concerted effort on a national basis to enact such a law. Libraries in Illinois had protected patron records as a matter of practice, but there was no law that sanctioned that practice.

At the time prior to enactment, Miller stated that the disclosure of records was more of a casual action by library staff. For example, a librarian might suggest a certain book to a patron because “Sophie has read it, and she loved it”, or parents who were concerned about what books their children were reading. There were also concerns about the legal parameters of confidentiality, but the overriding reason for seeking the legislation was to legally establish what libraries practiced. House Bill 1669, the enabling legislation, was introduced for consideration to the General Assembly to “put into law what libraries were practicing”.

Miller stated that the sponsors of the legislation (Senator Sam Vadalabene and Representative “Bus” Yourell) were chosen by the ILA because they were not only friends and past supporters of libraries, but also because they “could pass anything”. This means they were masters of the legislative process and they would use their expertise to ensure passage. This was certainly evidenced by the fact the bill moved through the legislative process with little effort.

Miller stated that the opposition to the legislation by the Illinois Press Association, as noted in the House floor debate, was based upon their concern the proposed law would somehow prevent the disclosure of the administrative records of a library. Such records would include the contents of contracts, personnel records, record votes of the library board on official actions, etc. This was never the intent of the law Miller stated, and there is certainly no provision within the law that those types of records were intended to be protected.

When asked why there is no penalty clause within law, Miller stated, “with one the bill wouldn’t pass”. The proponents were concerned that a penalty clause would elevate the bill to closer scrutiny. Having such a clause would raise concerns that innocent disclosures, such as “Sophie’s” reading choices, would place well-intentioned library staff in legal jeopardy.

Asked if there were any changes to the law she would recommend, Miller stated she would like to specify electronic record keeping that is widely used now by libraries. Many libraries erase circulation records once an item is returned, but some do not. She would also like to clarify that the law protects the privacy of the patron while using library materials within the library, which would include computer workstations that have Internet access.

Although Miller would like to see changes in the law, she is concerned that any legislation to effect such changes might jeopardize the existing law. Miller, and many other library advocates, are concerned that the legislature could radically weaken the law or make the law more cumbersome in some form or fashion. This possibility exists due to the recent terrorists attacks and the use of public libraries by the terrorists. A well-intentioned legislature might just correct a wrong that does not exist.

Attorney

Lenzini stated that the most common request for library circulation records is by law enforcement officers seeking to solve a crime. He stated that most police are not aware of the Library Records Confidentiality Act and therefore are unaware of the requirements for a court order to obtain records. Most police requests are verbal and are generally made to the circulation staff who themselves may be ignorant of the law. Lenzini advises library administrators to be fully aware of the requirements of the law and to advise their staff of these requirements as well.

Many state laws permit the access of library records by subpoena and not by a court order as required by the Illinois law. Lenzini stated subpoenas are much easier to obtain than a court order. Subpoenas are legal tools that may be issued by an attorney generally through the circuit clerk's office and does not require any judicial approval (in Illinois, the circuit clerk is a county wide elected official who is the administrator for the state court system within the county). Circuit clerks are considered court officials. Court orders reflect their title; a judge must issue the order to affect the search for records. That does not mean a judge gives intense scrutiny to a request for an order, but such an order does mean that judge has given approval to allow the records in question to be accessed.

Lenzini noted that the Illinois law allows courts in other states to issue orders. Illinois law does not differentiate on the basis of Illinois courts. In such circumstances a library is bound by law to issue the records in question.

The discussion arose on the recent Florida case where the librarian notified the police that terrorists had used computer workstations in the library. This violated Florida law. This situation is certainly a concern for libraries throughout the country. The Illinois law does not speak specifically to this issue. Lenzini stated he would be very reluctant to advise a library to disclose this type of information even though the Illinois law is vague on this subject. Such a disclosure could violate the law due to the fact the patron in question was using "library materials". Lenzini noted that a more prevalent issue with libraries is the presence of teenage runaways, usually ages 15 to 17. Libraries, especially in larger communities, are the types of places that runaways would seek refuge. Lenzini believes that if a library is questioned by the police about the mere presence of a runaway, the library could cooperate. Lenzini noted that the police in such situations could certainly walk around a library just like any other citizen. He noted however, that this is a scenario that needs factual circumstances in order to give any pertinent legal advice.

As noted, the Illinois law does not contain any penalty for violations of the Act. Libraries, Lenzini noted, have the expectation of privacy by the public, much in the same manner that the concept of "sanctuary" was provided to legally culpable persons in churches in the Middle Ages. Any violation of the Library Records Confidentiality Act, meaning the disclosure of a patron records without a court order, could be the premise of a federal civil rights suit. Under this scenario, a person whose privacy was violated could claim a constitutional tort, meaning that their state right (to privacy) was denied. If that is proven in court, the damages could be awarded and an injunction could be issued to bar the conduct of disclosure. Here again, Lenzini warned that this is a general theory. Actual specific circumstances would dictate the course of any legal action.

Asked about any suggested changes to the Illinois law, Lenzini would like to the law reflect the modern library. He suggests the law reflect the use of the Internet at computer workstations and the various programs that are conducted by libraries. Such programs include self -help, dance, reading sessions, etc., all the events and activities that a modern library offers to patrons. These records should be protected as well, especially in light of the numerous domestic disputes that arise that affect the right of privacy within the library.

Summary Commentary

The purpose of this paper was to review the relevancy of the Illinois Library Records Confidentiality Act. The simple answer of “yes” is obvious. The Act contains basic protections for library patrons and libraries when the privacy of patron records is challenged. This protection has been a long held policy by libraries prior to enactment and as Debbie Miller stated, the legislation simply put into law what was already practiced by libraries.

The right to use a library in privacy may seem like a “natural right”. By that is meant, this is the type of law that may seem unnecessary simply because that type of right should never come into question. Much like walking down a street, making a speech on a street corner or the ability to join a church. However, as natural as these acts appear, there are legal protections guaranteeing that right. The right to confidentiality at a library should be treated no differently than any other public right.

Perhaps the most interesting aspect of this study was the review of the laws and attorney general opinions that govern the confidentiality of library patron records. As noted, some are quite thorough in the protections and impose harsh penalties for any violations. But the most amazing aspect of these laws, as noted previously, is that no two are alike. Each law is distinctively different in the approach to protecting the privacy of the patron. There is a real strength in difference. Because there was no national uniform law recommended by the American Library Association or another group, each state arrived at the conclusion for the need of such a law on their own. Another important factor is that these laws reflect the legal culture of the individual state. On a legal standpoint, as noted in both of the court cases reviewed in this paper, the judiciary was able to surmise the legislative intent that created the law. This is especially true in the New York court case where the court noted that the records were not subject to the Freedom of Information Act but protected by a separate law. The New York court also referred to legislative support documents to arrive at a decision. If there were a uniform law adopted by each state, the ability of a court to surmise the legislative intent would be clouded. This is because each state has a unique method for drafting laws. While words may be same, the context and format in which they are used varies in each state. For example, as noted in this paper, Illinois law defines the term “person” but not the term “public”. Some states might take a different approach from Illinois for such definitions. Therefore, the culture of the state is reflected in the law that protects their libraries.

After reviewing the laws and opinions of other states and visiting issues such as terrorism, where does this leave the Illinois law? The law speaks only to the privacy of patron records involving “books and other materials”. Should the law be changed to reflect the modern library? Should the law be changed to allow librarians to disclose criminal acts? Should parents or legal guardians have the right to access the records of their children? Should there be a penalty clause for unlawful disclosure of confidential information? There is no absolute answer to these questions, only the Illinois General Assembly can make that determination. However, these issues should be discussed.

The modern library, as noted by Mr. Lenzini, is comprised of a vast array of technical equipment and has programs for the benefit and enjoyment of patrons. New York specifically exempts from disclosure any computer database searches, reference queries, interlibrary loan transactions, photocopy requests, title reserve requests and the use of films, records or other audio -visual equipment. Should the Illinois law be that specific? The problem with specificity is if an item is not covered or if a new technology arrives after the law become effective. Courts have been known to be strict constructionists in interpreting laws. The exclusion of a specific item from such a list could invite an invasion of privacy. If there is ever a court ruling, the ambiguity of the terms “books and materials” would allow a court wide latitude to cover new technology and allow a court to judge the intent of the legislature to include such activities as the use of “materials” since these are tangible items that are part of the normal operations of a library.

As for programs for education and personal enjoyment, these are not covered by the Illinois law. The modern library is a community center that does make its resources available to the public. People have come to expect a certain level of privacy when using the library. The Illinois law could be strengthened by adding the term “programs and activities”. In a legal stretch, anyone participating in a library program is probably using some type of material issued for program by the library. That could be covered under current law. However, to reflect the modern library and clarify intent, defining these terms could be helpful.

The issue of terrorism has unfortunately been interjected into the subject of library patron confidentiality. As noted, this sad fact did not start with September 11, 2001 and may have started with Ted Kaczynski. There is a sympathetic feeling for the Florida librarian who purposely broke the law to disclose the use of that library by suspected terrorists. Certainly no one doubts her motive and ultimate goal of protecting and defending our nation. An interesting situation that could arise as the result of this action is if there are any proposed changes to such laws. The possibility exists that legislators may seek to amend the confidentiality laws to allow librarians to report criminal activity, such as that permitted by the Louisiana statute. This could lead to abuses by library personnel against undesirable patrons. On the other hand, such a provision could give a library employee the legal protection to assist in solving crimes against the community.

Many states afford parents and guardians to have the right to inspect the records of their children. The aegis of this paper was the demand of a parent to know what books his sixteen-year old daughter was seeking to borrow. If Illinois were to include such a provision in the law, what would be the maximum age for parental access? Sixteen? Eighteen? Fourteen? A case could be made for each age. An argument can be made that parents have a moral right to know what their children are reading so as to protect them from harmful information. But does this disclosure jeopardize the constitutional right of a child? Do children of a certain age have the right to privacy? An example often given by abortion opponents is that a sixteen-year old girl can have an abortion without parental knowledge or approval, but she needs parental approval to have her ears pierced. Would giving parents the right to access their child's library records be tantamount to giving them approval to borrow library materials? The response most often given by librarians on this issue is that if parents want to know what their children are reading, they should ask them. Why put the library in the middle of the debate? Allowing parents to have this right might also make libraries reluctant to loan books and materials to teenagers. Could such a right allow a parent to require the library to notify them of their child's intent to borrow any item? Even if the answer to that question is no, a child knowing that his or her parent has the right to inspect such records could diminish that child's intellectual curiosity.

The inclusion of a penalty clause in the Act would certainly be controversial but helpful. As noted in this paper, there are nine state laws with such clauses. A penalty clause in the Illinois law would serve as a reminder to library employees of the gravity of the law and the intent to protect the privacy of patrons. Even though there is civil liability, that remedy is not specified in the law. The type of penalty is debatable. A \$100 maximum fine would serve as a sufficient warning. Any proposal to impose jail time for such an offense might be considered too severe by a court and therefore probably would not be effective.

A final question might be raised about any proposed changes in the Illinois Library Records Confidentiality Act; should any changes be proposed by the General Assembly. Throughout the course of research for this paper that possibility was discussed on a casual basis with many members of the library community. The danger of any change would be a weaker law or one that is much more difficult to administer. This is not to denigrate the legislative process. Legislators must interact with all facets of society, not just one member of the community. The law enforcement community, the media, concerned parents and other groups who might be interested in obtaining such records, such as merchandisers of products and services, would subject any proposed changes to the law to scrutiny. The good intentions of the legislature might jeopardize a cherished policy of libraries and library patrons.

The fact that the Illinois law has not been tested in court is a good sign. The law works for law enforcement and libraries and other interested parties. Obviously there are contentious incidents, such as the one in Carbondale, Illinois that test the law. On the whole, the Illinois Library Records Confidentiality Act serves its intentions well.

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Addendum I

State confidentiality laws review/ Excludes Illinois, Hawaii and Kentucky

State	Title of Act/Law Citation	Substance of Language
Alabama	Alabama Library Service 41-8-8 41-8-9	Definition section defines “registration records” and “circulation records”. Operative section recognizes that public library use by an individual should be of a confidential nature. Requires circulation and registration records to be kept confidential. Provides exceptions for the normal course of business and for research purposes. Permits parents or guardians to inspect the registration and circulation records of their children at schools and public libraries.
Alaska	Inspection and Copying of Public Records 40.25.140	Requires records that identify the names, addresses and other personal information about a person to be kept confidential except by court order. Permits parents or guardians to inspect the registration and circulation records of their children.
Arizona	State Government Act: Libraries, Archives and Public Records 41-1354	At any library or library system supported by public monies, the circulation and registration records that identify any individual shall not be disclosed. Exceptions: 1) if necessary for the operation of the library; 2) on written consent of the user; 3) a court order; and 4) if required by law. Violation: Class 3 misdemeanor (\$300)

Page 2-state confidentiality laws

Arkansas	Title 13-Libraries, Archives & Cultural Resources 13-2-701, et al	Defines “patron” as any individual who requests, uses or receives services, books or other materials from a library. Defines “confidential library services” as documents or information in any format retained in a library that identify a patron as having requested, used or obtained specific materials, computer databases searches, interlibrary loan transactions, reference queries, patent searches, requests for photocopies of library materials, title reserve requests or the use of audiovisual materials, films or records. Imposes a maximum penalty of \$200 or 30 days in jail, or both, or a sentence of public service or education or both. No liability accrues for any lawful disclosure. Actions must occur within 2 years of the violation or from the date of discovery. Prohibits disclosure of records. Requires public libraries to use an automated or Gaylord type circulation system that does not identify the patron. Records may be disclosed to the following: 1) patron request; 2) to any person with the informed written consent of the patron; 3) to any law enforcement agency or civil court subject to a search warrant. Permits using records for statistical purposes. Only lawfully obtained records may be used as evidence.
California	Government Title: Inspection of Public Records Act 6254 (j)	Records are exempted from the disclosure requirements of the Act. Records are those “kept for the purpose of identifying the borrower of items available in libraries and library and museum materials made or acquired and presented solely for reference or exhibition purposes. Specifically states the exemption does not apply to records of fines imposed on such borrowers.
Colorado	Colorado Library Law 24-90-119	A publicly supported library or library system shall not disclose any record or other information which identifies a person as having requested or obtained specific materials or services or as other having used the library. Exemptions: 1) when necessary for the operations of the library; 2) consent of the user; or 3) pursuant to a court order, subpoena or where otherwise required by law. Penalty: Class 3 Petty Offense with a maximum fine of \$300.

Page 3-State confidentiality laws

Connecticut	Title 11-Libraries	Notwithstanding section 1-19 (the Freedom of Information Act), personally identifiable information contained in the circulation records of all public libraries shall be confidential.
Delaware	Title 29: Freedom of Information Act 10002 (d-12)	Exemption from the Act: (d-12)-Any records of a public library which contains the identity of a user and the books, documents, films, recordings, or other property of the library which a patron has used.
District of Columbia	Title 39-Libraries and Cultural Institutions 39-108	Prohibits disclosure of records that can be used to identify the identity of the user shall be kept confidential. Permits disclosure for the proper operation of the library. No library employer may disclose records to any 3 rd party except by the consent of the user or as the result of a court order. Permits a person whose records are subject to order to file a motion in court to keep the records confidential. Permits disclosure to legal counsel of a library in such situations. Upon the receipt of a subpoena for the records, the library shall send the following notice within 2 days to the affected library patrons: "Records or information concerning your borrowing records in the public library in the District of Columbia are being sought pursuant to the enclosed subpoena." Prohibits the release of the records for 10 days and allows the patron appeal. Permits the waiver of the notice if there is reason to believe the patron will flee, disclosure will endanger life or safety of any person, destruction of evidence, intimidation of any witnesses or other impede any investigation. Imposes a \$300 penalty for violations. Permits aggrieved patrons to receive \$250 in damages plus legal fees and expenses.

Page 4-State confidentiality laws

Florida	Public Lands and Property 257.261	Generally prohibits the disclosure of registration and circulation records. Defines “registration records” includes any information that a library requires a patron to provide in order to become eligible to borrow books and other materials, and the term “circulation records” includes all information that identifies the patrons who borrow particular books and other materials”. For patrons under the age of 16, permits the release of confidential information relating to the parent or guardian. Imposes a 2 nd degree misdemeanor for violations (60 days in jail/ \$500 fine). Note: AG opinion on the production of records: Although a <i>subpoena duces tecum</i> (a writ requiring the affected person to bring the records to court) is not signed by a judge, a library official may not ignore the writ. If the library official may challenge the writ based upon the confidentiality provisions of the act.
Georgia	Evidence 24-9-46	Circulation and similar records of a library which identify the user of library materials shall not be public records but shall be confidential. Exemptions: 1) the ordinary course of business of a library; 2) written consent of the user or the user’s parents or guardians if the user is a minor or ward; or 3) upon appropriate court order or subpoena.
Idaho	Evidence & Public Writings 9-340-(5-c & d)	Exempts from disclosure: the records of a library, which, when examined alone or when examined with other public records, reveal the identity of the library patron checking out, requesting or suing an item from a library; and the materials of a library, museum or archive which has been contributed by a private person to the extent of any limitation that is a condition of the contribution.

Page 5-State confidentiality laws

Indiana	Public Proceedings/Access to Public Records 5-14-3-4 (b-16)	Records exempt at the discretion of the public (library) agency: 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 passing the specified number of years required by the condition of the acquisition or deposit of a document; and (iii) after the death of persons specified at the time of the acquisition or deposit. Restrictions do not affect contracts entered into by the Indiana State Library.
Iowa	Examination of Public Records 22.7 (13) Court Case Brown v. Johnson 328 N. W. 2 nd 510	Requires specified public records to be kept confidential unless otherwise ordered by a court, by the lawful custodian of the records or by another person duly authorized to release such information. For library records (paragraph 13): the records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item or information from the library. Requires the records to be released to a criminal or juvenile justice organization only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.
Kansas	Public Records, Documents & Information 45-221 (23)	Records exempt from public disclosure. For library records (paragraph 23): Library patron and circulation records which pertain to identifiable individuals.

Page 6-State confidentiality laws

Louisiana	Public Records and Recorders R.S. 44:13	Notwithstanding any other provision of this chapter and any other law to the contrary, records of any library which is in whole or part supported by public funds, including the records of any public, academic, school and special libraries, and the State Library, indicating which of its documents or other materials, regardless of format, have been loaned to or used by an identifiable individual or group of individuals may not be disclosed except to a parent or guardian of a child seeking access to the child's records, to persons acting within the scope of their duties in the administration of the library, to persons authorized by an individual or group of individuals to inspect such records or by court order. Includes records for registration and any records for the eligibility of use of the library. Permits a library to use such records for the normal operation of the library for collecting fines. No provision of the section shall be construed as to prohibit or hinder any library or librarian from providing information to appropriate law enforcement officers investigating criminal activity in the library witnessed by an employee or patron of the library and reported by the administrative librarian to the appropriate law enforcement officials.
Maine	Libraries, History, Culture Title 27, Ch. 4-A (121)	Records maintained by any public library, the Maine State Library, the Law and Legislative Reference Library and libraries of the University of Maine System and the Maine Maritime Academy that contain information relating to the identity of a library patron relative to the patron's use of books or other materials at the library are confidential. Those records may only be released with the express written permission of the patron involved or as the result of a court order (Note: the law was enacted in 1991. A 1997 amendment deleted a 5-year window of compliance for public libraries from the date of the original enactment).

Page 7-State confidentiality laws

<p>Maryland 2 titles</p>	<p>Education Title 23-107</p>	<p>Subject to exceptions, a free association, school, college or university library in this State shall prohibit inspection, use or disclosure of any circulation record or other item, collection or grouping of information about an individual that: 1) is maintained by a library; 2) contains an individual's name or the identifying number, symbol or other identifying particular assigned to the individual; and 3) identifies the use a patron makes of that library's materials, services or facilities. Exceptions: Permits inspection and disclosure of the circulation record of an individual only in connection with the library's ordinary business and only for purposes for which the record was created.</p>
	<p>State Government Title 10-616 (e)</p>	<p>Lists the specific public records that may not be publicly disclosed by the custodian of such records. For library records: A custodian shall prohibit inspection, use or disclosure of a circulation record of a public library or other item, collection or grouping of information about an individual that: (i) is maintained by a library; (ii) contains an individual's name or identifying number, symbol or other identifying particular assigned to the individual; and (iii) identifies the use of a patron makes of that library's materials, services or facilities. A custodian shall permit inspection, use or disclosure of a circulation record of a public library only in connection with the library's ordinary business and only for the purposes for which the record was created.</p>
<p>Massachusetts</p>	<p>Public Libraries Ch. 78, section 7.</p>	<p>Included within the section permitting cities and towns to establish public libraries: That part of the records of a public library which reveals the identity and intellectual pursuits of a person using such library shall not be a public record as otherwise defined by law. Permits disclosure of records for inter-library cooperation and coordination including the sharing of resources.</p>

Page 8-State confidentiality laws

Michigan	Library Privacy Act 397.601 et al	Defines libraries to include public and private libraries. Defines “library record” to be any document, record or other method of storing information retained by a library that identifies a person as having requested or obtained materials from a library. Does not include non-identifying material that may be retained for the purpose of studying or evaluating the circulation of materials in general. Exempts records from the Freedom of Information Act. Unless ordered by a court after giving the affected library notice of the request and an opportunity to be heard on the request, a library or an employee or agent of a library shall not release or disclose a library record or portion of a library record to a person without the written consent of the person liable for payment for or return of the materials identified in that library record. Permits the procedure and form of consent to be determined by the library. Permits library officials to appear in court and be represented by counsel. Imposes a maximum fine of \$250 for unlawful disclosure and actual damages, whichever is greater, plus legal fees.
Minnesota	Government Data Practices Act 13.40 (Subd. 2)	Prohibits the following data from being disclosed except pursuant to a court order: 1) data that link a library patron’s name with materials requested or borrowed by the patron or that link a patron’s name with a specific subject about which the patron has requested information or materials; or 2) data in applications for borrower cards, other than the name of the borrower. A library may release reserved materials to a family member or other person who resides with a library patron and who is picking up the material on behalf of the patron. A patron may request that reserved materials be released only to the patron. (Original law enacted in 1982).

Page 9-State confidentiality laws

Mississippi	Libraries and Library Commission Act 39-3-365 & 39-3-367	Records maintained by any library funded in whole or in part by public funds, which contain information relating to the identity of a library user, relative to the user's use of books or other materials at the library, shall be confidential. Such records may only be released with the express written permission of the respective library user or as the result of a court order. Permits aggregate statistics of registration and circulation records to be used for research, planning and reporting purposes. Permits the use of records to collect overdue books and fines.
Missouri	Education & Libraries Title 11 182.815	Defines "library" as any established by the state or any political subdivision of the state, or combination thereof, by any community college district, or by any college or university, and any private library open to the public. Defines "library material" as any book, document, film, record, artwork, or other library property which a patron may use, borrow or request. Defines "library record" as any document, record or other method of storing information retained, received or generated by a library that identifies a person or persons has having requested, used or borrowed library material and all other records identifying the names of library users. The term excludes non-identifying material that may be retained for the purpose of studying or evaluating the circulation of library material in general. Disclosure section: Notwithstanding the provisions of any other law to the contrary, no library or employee or agent of a library shall be required to release or disclose a library record or portion thereof to any person except: 1) in response to a written request by such person; and 2) in response to an order issued by a court of competent jurisdiction upon a finding that the disclosure of such record is necessary to protect the public safety or to prosecute a crime.

Page 10-State confidentiality laws

Montana	Libraries Library Records Confidentiality Act 22-1-1101 et al	Includes both public and private libraries. Defines “library records” as any document, record or any other method of storing information retained, received, or generated by a library that identifies a person as having requested, used or borrowed library material or other records identifying the names or other personal identifiers of library users. Excludes those records that are non-identifiers. Prohibits any person from release or disclosing a library record or portion of a library record to any person except in response: 1) the written request of the person identified in that record; 2) an order issued by a court of competent jurisdiction, upon a finding that the disclosure of such record is necessary because the merits of public disclosure clearly exceed the demand for individual privacy; and 3) library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines. Violations carry a misdemeanor and the guilty party is liable to the person whose record was improperly released or disclosed. The aggrieved may bring civil action for actual damages or \$100, whichever is greater and be paid for any legal fees.
Nebraska	General Provisions as to State Officers (public record disclosure) 84-712.05 (10)	Unless disclosed in an open court, open administrative hearing or open meeting disclosed by a public entity pursuant to its duties, specified records may be withheld from the public by the lawful custodian of the records: Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library’s materials or services.
Nevada	Public Records Act 239.013	Any records of a public library or other library which contain the identity of a user and the books, documents, films, recordings or other property of the library which he used are confidential and not public books or records. Such records may be disclosed only in response to an order issued by a court upon finding that the disclosure of records is necessary to protect public safety or to prosecute a crime.

Page 11-State confidentiality laws

New Hampshire	Public Officers and Employees/ Right to Know Law 91-A:5 (IV)	Exempted records from disclosure: Records pertaining to internal personnel practices; confidential commercial or financial information; test questions, scoring keys and other examination data used to administer a licensing examination, examination employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental and other files whose disclosure would constitute invasion of privacy. Permits the release of records for the purpose of health and safety.
New Jersey	Division of State Library 18A:73-43.2	Library records which contain the names or other personally identifying details regarding the users of libraries are confidential and shall not be disclosed except in the following circumstances: a) the proper operation of the library; b) disclosure is requested by the user; and c) disclosure is required pursuant to a subpoena issued by a court or court order. Permits the State Librarian to adopt rules pursuant to the Administrative Procedures Act to effectuate the purposes of the Act.

Page 12-State confidentiality laws

<p>New Mexico</p>	<p>Library Privacy Article 9 18-9-1, et al</p>	<p>The purpose of the Act is to preserve the intellectual freedom guaranteed by Sections 4 and 17 of Article 2 of the constitution of New Mexico by providing privacy for users of the public libraries of the state with respect to the library materials that they wish to use. Defines “library” as any receiving funds, any library that is a state agency and any library established by the state, an instrumentality of the state, a local government, district or authority, whether or not that library is regularly open to the public. Defines “patron record” as any document, record or other method of storing information retained by a library that identifies or when combined with other available information identifies a person as a patron of the library or that indicates use or request of materials from the library. “Patron record” includes patron registration information and circulation information that identifies specific patrons. Prohibition: Patron records shall not be disclosed or released to any person not a member of the library staff in the performance of his duties, except upon written consent of the person identified in the record or except upon court order issued to the library. The library shall have the right to be represented by counsel at any hearing on disclosure or release of its patron records. Exceptions: Does not apply to overdue notices or the release or disclosure of school libraries to the legal guardians of the patron records of unemancipated minors or legally incapacitated persons. Violations: violators shall be subject to civil liability to the person identified in the released records for damages and costs as determined by a court.</p>
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Page 13-State confidentiality laws

New York	Civil Practice Law and Rules 4509 Court Case-Quad/Graphics v. South Adirondack Library System 664 N.Y. 2 nd 225	Library records, which contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems of this state, including but not limited to records related to the circulation of library materials, computer database searches, interlibrary loan transactions, reference queries, requests for photocopies of library materials, title reserve requests, or the use of audio-visual materials, films or records, shall be confidential and shall not be disclosed except that such records may be disclosed to the extent necessary for the proper operation of such library and shall be disclosed upon request or consent of the user or pursuant to subpoena, court or where otherwise required by statute.
North Carolina	Chapter 125-Libraries 125-19	A library shall not disclose any library record that identifies a person as having requested or obtained specific materials, information or services or as otherwise having used the library. Exceptions: Library records may be disclosed: 1) when necessary for the operation of the library; 2) upon written consent of the user; or 3) pursuant to subpoena, court order or where otherwise required by law.
North Dakota	Municipal Government 40-38-12	Library records-Open records exception: Any record maintained or received by a library receiving public funds, which provides a library patron's name or information sufficient to identify a patron together with the subject about which the patron requested information, is considered private and excepted from public records disclosure requirements. These records may be released when required pursuant to a court order or a subpoena.

Ohio	Documents, Reports and Records Release of library record or patron information 149.432	Defines "library" as specified public and private libraries. Defines "library record" as: a) information required of an individual to be eligible to use library services or borrow materials; b) information that identifies an individual as having requested or obtained specific materials or materials on a specific subject; c) information that is provided by an individual to assist a library staff member to answer a specific question or provide information on a particular subject. "Library record" excludes information that does not identify an individual and is used for evaluating library services. A library shall not release any patron information except as follows: 1) the records of a minor or child upon the request of the parent or guardian; 2) subpoena, search warrant or court order; 3) to a law enforcement officer who is acting in the scope of the officer's law enforcement duties and who is investigating a matter involving public safety in exigent circumstances; 4) upon the request of the individual; and 5) for administrative library purposes. A library may release information that document the improper use of the Internet at the library so long as the patron record is removed from those records.
Oklahoma	Libraries Board 65-2-101	Any library which in whole or part supported by public funds including but not limited to public, academic, school or special libraries, and having records indicating which of its documents or other materials, regardless of the format, have been loaned to or used by an identifiable individual or group shall not disclose such to records except: 1) for purposes of library administration; 2) persons authorized to inspect such records in writing, by the individual or group; or 3) by order of a court of law. The requirements of this section shall not prohibit middle and elementary school libraries from maintaining a system of records that identifies the individual or group to whom library materials have been loaned even if such system permits a determination, independent of any disclosure of such information by the library, that documents or materials have been loaned to an individual or group.

Page 15-State confidentiality laws

Oregon	Reports, Records and Meetings 192.502 (22)	Exemption from the disclosure of public documents. The records of a library, including circulation records, showing use of specific library material by a named person or consisting of the name of a library patron together with the address or telephone number, or both, of the patron.
Pennsylvania	Libraries 4428	Records related to the circulation of library materials which contain the names or other personally identifying details regarding the users of the State Library or any local library which is established or maintained under any law of the Commonwealth of the library of any university, college or educational institution chartered by the Commonwealth or the library of any public school or branch reading room, deposit station or agency operated in connection therewith, shall be confidential and shall not be made available to anyone except by a court order in a criminal proceeding.
Rhode Island	Access to Public Records 38-2-2 (U)	Exempt as a public record. Library Records which by themselves or when examined with other public records would reveal the identity of the library user requesting, checking out or using any library materials.

Page 16-State confidentiality laws

<p>South Carolina</p>	<p>Ch. 4-Confidential Library Records</p>	<p>Records related to registration and circulation of library materials which contain names of other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, are confidential records. Records by themselves or when examined with other public records would reveal the identity of the library patron checking out or requesting an item from the library or using other library services are confidential information. The confidential records do not include non-identifying administrative and statistical reports of registration and circulation. The confidential records may not be disclosed except to persons acting within the scope of their duties in the administration of the library or library system or persons authorized by the library patron to inspect his records, or in accordance with proper judicial order upon finding that the disclosure of the records is necessary to protect public safety, to prosecute a crime or upon showing of good cause before the presiding Judge in a civil matter. Defines “registration records” as any information which a library requires a patron to provide in order to be come eligible to borrow books and other materials and the term “circulation records” includes all information which identifies the patrons borrowing particular books and other materials. Penalties: First Offense: \$500 or 30 days in jail; Second: \$1000 fine or 60 days in jail; Third and subsequent: \$2000 or 60 days in jail.</p>
<p>South Dakota</p>	<p>County Libraries 14-2-51</p>	<p>All public library records containing personally identifiable information are confidential. Any information contained in public library records may not be released except by court order or upon request of the parent of a child who is under 18 years of age. “Personally identifiable” means any information a library maintains that would identify a patron. Acts by libraries or employees in maintaining a check out system are not violations.</p>

<p>Tennessee</p>	<p>Public Libraries, Archives and Records. Confidentiality of Library Records Ch. 8 10-8-101, et al</p>	<p>Defines “library” as a library that is open to the public and established or operated by: 1) the state, county, city, town, school district or any other political subdivision; 2) a combination or governmental units or authorities; 3) a university or community college; and 4) any private library that is open to the public. Defines “library record” as a document, record, or other method of storing information retained by a library that identifies a person as having requested or obtained specific information or materials from such library. The term excludes non-identifying material retained for studying or evaluating the circulation of library materials in general. Library records may be disclosed: 1) upon written consent of the library user; 2) pursuant to an order of a court of competent jurisdiction; or 3) when used to seek reimbursement for or the return of lost, stolen, misplaced or otherwise overdue library materials.</p>
<p>Texas</p>	<p>Subchapter B- Right of Access to Public Information Open government; Ethics 552.124</p>	<p>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 services is excepted from the requirements of Section 552.021 (Right of Access to Public Information) 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 any other state or federal law; 2) under Section 552.023 (Special Right of Access to Confidential Information); 3) to a law enforcement agency or a prosecutor under a court order or a subpoena obtained after showing to a district court that: a) the disclosure of the record is necessary for public safety; or b) the record is evidence of an offense or constitutes evidence that a particular person committed an offense. A record of a library or library system that is exempted from disclosure under this section is confidential.</p>

Page 18-State confidentiality laws

Utah	Government Records Access and Management 63-2-302 (1-c)	Records considered private: records of publicly funded libraries that when examined alone or with other records identify a person.
Vermont	Common Law; General Rights T.1, Section 317 (b-19)	As used in this sub-chapter, “public record” or “public document” means all papers, staff reports, individual salaries, salary schedules or any other written or recorded matters produced or acquired in the course of agency business except: records relating to the identity of library patrons or the identity of library patrons in regard to the circulation of library materials.
Virginia	Administration of Government Code 2.2-3705 (A-10)	The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law: Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.
Washington	Campaign Finances- Lobbying-Open Records Act 42.17.310 (1-1)	Exempt record from public inspection: Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

Page 19-State confidentiality laws

<p>West Virginia</p>	<p>Libraries, Recreation, Memorials, Etc. Public Libraries Act 10-1-22</p>	<p>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 a ward; or 3) Upon appropriate court order or subpoena. Any authorized disclosure or unauthorized disclosure of materials made confidential 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 is not liable for such action.</p>
<p>Wisconsin</p>	<p>Libraries 43.30</p>	<p>Records of any library which is in whole or in part supported by public funds, including the records of a public library system, indicating the identity of any individual who borrows or used the library's documents or other materials, resources or services may not be disclosed except by court order or to persons acting within the scope of their duties in the administration of the library or library system, to person authorized by the individual to inspect such records or to authorized libraries. A library supported in whole or in part by public funds may disclose an individual's identity to another library for the purpose of borrowing materials for the individual only if the library to which the individual's identity being disclosed meets at least one of the following requirements: a) the library is supported in whole or in part by public funds; b) the library has a written policy prohibiting the disclosure of the identity of the individual except as authorized; c) the library agrees not to disclose the identity of the individual except as authorized. A library to which an individual's identity is disclosed and that is not supported in whole or in part by public funds may disclose that individual's identity to another library for the purpose of borrowing materials for that individual only if the library to which the identity is being disclosed meet one of the requirements of disclosure.</p>

Page 20-State confidentiality laws

Wyoming	Uniform Municipal Fiscal Procedures 16-4-203 (d-ix)	Requires the custodian of records to deny the right of inspection of the following records unless otherwise provided by law: library circulation and registration records except as required for the administration of the library or except as requested by a custodial parent or guardian to the inspect the records of his minor child. Establishes procedure for persons to undertake to obtain the record through court.
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Guidelines for Illinois Libraries Manuscripts

The purpose of *Illinois Libraries* is to publish articles of general interest to library staff and library governing officials in Illinois and elsewhere, representing all types of libraries and library consortia.

Every effort is made to provide a balanced treatment of library-related issues. Articles are solicited that will address the interests of the publications' audience. Individuals are also encouraged to submit unsolicited articles for consideration. Articles are not limited to Illinois contributors.

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Graphics and Illustrations: All graphs, illustrations and photos must be camera ready. Original copies, apart from the manuscript, should be included for all graphs and illustrations. THIS DOES NOT INCLUDE TABLES.

Author Information: The article should include a title and information about the author: author's name, position and where position is held.

Footnotes: Footnotes should be listed at the end of the article instead of at the bottom of each page.

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