

BERKSHIRE ATHEAUEUM

GUIDELINES FOR CONFIDENTIALITY WHILE COOPERATING WITH LAW ENFORCEMENT

5/02/03 Draft

INTRODUCTION:

Increased visits to libraries by law enforcement agents, including FBI agents and officers of state, county, and municipal police departments, are raising considerable concern among the public and the library community. These visits are not only a result of the increased surveillance and investigation prompted by the events of September 11, 2001 and the subsequent passage of the USA Patriot Act, but also as a result of law enforcement officers investigating computer crimes, including email threats and possible violations of the laws addressing online obscenity and child pornography.

These guidelines, developed to assist Berkshire Athenaeum employees in dealing with law enforcement inquiries, rely upon the ALA's *Policy on the Confidentiality of Library Records*, its *Policy Concerning Confidentiality of Personally Identifiable Information*, and the *Code of Ethics*.

FUNDAMENTAL PRINCIPLES:

Librarians' professional ethics require that personally identifiable information about library users be kept confidential. This principle is reflected in Article III of the *Code of Ethics*, which states that "[librarians] protect each library user's right to privacy and confidentiality with respect to information sought or received, and resources consulted, borrowed, acquired, or transmitted."

The Commonwealth of Massachusetts, along with forty-seven other states and the District of Columbia, has laws¹ protecting the confidentiality of library records. Confidential library records should not be released or made available in any format to a federal agent, law enforcement officer, or other person unless a court order in proper form has been entered by a court of competent jurisdiction after a showing of good cause by the law enforcement agency or person seeking the records.

The Berkshire Athenaeum supports our nation's efforts to preserve and protect the many hard-fought freedoms we enjoy as Americans, however public libraries across the country face a dilemma of having the responsibility of protecting the privacy of our patrons while responding to legitimate national security and law enforcement concerns. The Berkshire Athenaeum recognizes the confidentiality of information sought or

¹ MGL Chapter 78, Section 7

received and materials consulted, borrowed or acquired by a library user. The Athenaeum strives to create a library environment that is a safe, crime free place for learning and the pursuit of knowledge and information on any topic, a place where patrons can ask any question and discuss any topic. As the final sentence of the Athenaeum's mission statement asserts, "our reason for existence is to initiate, nurture and feed a passion for knowledge and learning." To the best of our ability, the Athenaeum will uphold the privacy and confidentiality of patrons' free access to information. The Athenaeum will rely on existing laws and library policy to control behavior that involves public safety or criminal behavior.

USA PATRIOT ACT DEFINED:

HR-3162 became Public Law 107-56 in response to the events of 9/11/01. The full title of the law is: *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*. The Act may provide law enforcement broader boundaries when investigating information accessed and transmitted by patrons with regards to national security concerns. Access to patron information may include, but not be limited to: database search records, circulation records, computer use records, interlibrary loan records and reference interviews.

Significantly, the Act provides that "no person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the [law enforcement authority, presumably the FBI] has sought or obtained tangible things under this section."

INFORMATION ACCESS AND CONFIDENTIALITY:

C/W MARS Database Search Records: These records refer to the searches of the collection a patron may conduct on the online Public Access Computer terminals (PAC). These searches are conducted by utilizing the Athenaeum's automated circulation and collection management system, C/W MARS, which is a product of the Innovative Interface Incorporated. Once a search has been conducted, the software does not retain a copy of the search, and any records of the search will not exist.

Circulation Records: *Books and other borrowed materials are checked out to the public via the C/W MARS system. The circulation software, which is housed and maintained at the C/W MARS central site office in Paxton, Massachusetts, tracks items checked out to the current borrower and also retains the name of the patron to whom the item was last circulated. Items, whether currently checked out or on the shelf, retain the link to the previous borrower. When the item is returned, the link to the prior borrower is severed so long as all fines are paid. With unresolved accounts – i.e. items lost and unpaid for – the link between the delinquent borrower and the borrowed item remains intact until the account is resolved.*

?? **Item Search:** *A search of the C/W MARS database by item will reveal the current borrower (if the item is in circulation) and the previous borrower.*

?? **Borrower Search:** *A search of the C/W MARS database by name of borrower will reveal the names of books that borrower currently has checked out; the names of*

books kept overdue with associated fines yet unpaid; the names of books kept overdue and the fines paid for the offense.

?? **System Blocks:** *The C/W MARS system automatically blocks a patron from borrowing materials if there is an outstanding debt in excess of \$10.00.*

?? **Manual Blocks:** *Member libraries may attach notes to a borrower's record that will show when that borrower attempts to check out materials.*

Short-Term Internet Workstations: The Athenaeum has available several short-term workstations with Internet access (through C/W MARS) that patrons may use on a first come, first served basis for periods up to thirty minutes at a time. There are no reservations or sign-ups for these workstations. *The Centurion security program used on these computers wipes out the cache and/or history files each time the computer is shut off or restarted, so a record of any searching done on these computers will by design never be more than twenty-four hours old.*

Long-Term Internet Workstations: The Athenaeum has available four long-term workstations with Internet access (through C/W MARS), and a variety of other office and educational software, that patrons may use on a first-come-first-served basis, as available, for periods up to an hour. Patrons must sign in to use these four workstations and may reserve time up to forty-eight hours in advance. These sign-up sheets are retained by the library for a period of three months. *The Centurion security program used on these computers wipes out the cache and/or history files each time the computer is shut off or restarted, so a record of any searching done on these computers will by design never be more than twenty-four hours old.*

PAC Only Workstations: The Athenaeum has a number of Public Access Computers (PAC) that do not have Internet access, but are exclusively connected to the library's online catalog. There are no reservations or sign-ups for these workstations that may only check on the bibliographic collections of the Berkshire Athenaeum and other C/W MARS member libraries. The search history of each PAC is automatically erased every twenty-four hours.

System Wide Holds: A hold placed online by a C/W MARS member library on an item in the collection of their own or another member library, System Wide Holds (SWH) create a link (which is manually executed by a member library employee) between an item and a reader before the item is actually checked out. When that item is acquired by the Athenaeum and is then checked out to that reader, the link is changed from a "hold" to a "circulation" record (see "Circulation Records" above). No long-term record of System Wide Holds is retained by C/W MARS beyond the point of the circulation transaction.

Patron Placed Holds: A hold placed online by a patron registered as a borrower in a C/W MARS member library that secures an item from their own or another participating C/W MARS member library, Patron Placed Holds (PPH) create a link between an item and a reader before the item is actually checked out. Once that item is acquired by the library and is then checked out to the reader, the link is changed from a "hold" to a "circulation" record (see "Circulation Records" above). No long-term record of Patron Placed Holds is retained by C/W MARS beyond the point of the circulation transaction.

Interlibrary Loan Records: Interlibrary loans are transactions in which library materials are made available by one library to another. While these technically include System Wide Holds, it is generally assumed that interlibrary loans cover those transactions beyond the C/WMARS network of libraries. The Athenaeum tracks items currently being borrowed and generates a paper record with patron information. After a period of six months, once the materials are returned to the owning library and all appropriate fines and/or fees are paid by the borrower, the paper trail record is destroyed.

Reference Interviews: A reference interview occurs when a patron looking for information approaches a library staff and that employee questions or interviews the patron to narrow down the specific information needed. Notes may be taken during the interview to facilitate organizing a search, and patron information may be included to allow for a return call, however any paper record is destroyed as soon as the requested information has been delivered.

COMPLYING WITH LAW ENFORCEMENT:

Berkshire Athenaeum employees will comply with law enforcement when supplied with legal subpoena or warrant. Such requests will always be in writing. If anyone approaches you alleging to be a law enforcement official requesting information that may in any manner compromise reader confidentiality, do not disclose to that individual any information. If allowed to do so, immediately contact the Library Director or supervisor (*as directed in the Athenaeum's "Command Hierarchy" statement*). The Library Director or supervisor will ask to see official identification and will photocopy the identification.

Subpoena: If law enforcement present a subpoena, library staff should direct that person to the Library Director or departmental supervisor, who will in turn direct the subpoena to legal council (City Solicitor: 499-9352). Legal council will advise the library how best to proceed.

Warrant: A warrant is executable immediately, and library staff presented with a warrant should not interfere with their search and seizure. The library employee presented with the warrant should as soon as possible contact the Library Director or departmental supervisor, who should contact legal council.

Gag Order: As noted in the defining paragraph above, staff must not disclose to any other person, other than legal council (this includes co-workers not directly involved in the process, library trustees, and the City's governing authority), that the FBI has obtained records or things pursuant to the Act. If a "gag order" is not in effect, the Library Director will notify the American Library Association.

Record of Legal Requests: The Athenaeum will keep a record of all legal requests. The staff served with the subpoena or warrant should file an Incident Report with the library Director. A record of all cost incurred by any search and/or seizure should also be retained.

EMERGENCY DISCLOSURES OF COMMUNICATION:

If in the normal course of business, the library staff observes what can be reasonably construed to be a threat of imminent danger to life and limb, they are to contact law enforcement immediately. They should then contact the Library Director or the departmental supervisor and fill out an Incident Report form.

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