

Libraries as Sanctuaries for Criminals?

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In October, several Illinois libraries received Freedom of Information Act (FOIA) requests for incident reports and records concerning patron and staff complaints about crimes and disturbing behavior taking place in the library. The requests were made by the Chicago Channel Two Investigators for a program aired on November 2 and 3 titled “Library Confidential: Library Crimes Kept Secret.” (See *In the News*, p. 34).

In October, ILA recommended that libraries seek legal advice in complying with Freedom of Information (FOI) requests to assure that the library meets all of its obligations under state law, including the state library confidentiality statute. ILA also noted that it was important to remember that incident reports are official records that may become evidence in a court of law and should contain only a neutral record of the facts of the case.

This article is in response to those developments. It presents practical advice on three topics, which have surfaced in the Chicago Channel Two Investigation:

- [Guidelines for Handling Freedom of Information Act Requests;](#)
- [Talking Points on the Illinois Library Records Confidentiality Act; and](#)
- [When Should Police Be Called to the Library?](#)



General Guidelines for Handling Freedom of Information Act (FOIA) Requests :

1. Consult the Illinois FOI Act (for example, *see Illinois Library Laws & Regulations in effect January 2006*, pp. 63–72) and any municipal open records laws to ascertain the library’s obligation under those laws. In general, if there is a printed or written record, it is covered by FOI laws.
2. If a library receives a FOIA request, the library should consult with legal counsel, who will assist the library in ascertaining whether the library can or must provide the information requested. According to the statute, the library must comply with or deny a written request for public records within seven working days after its receipt. If additional time is required, an additional seven working days are allowed. (75 ILCS .140/3; *See Illinois Library Laws & Regulations in effect January 2006*, pp. 64–65.)
3. Identify possible exemptions under the FOIA:
Library Privacy — Illinois exempts library circulation records and any other records identifying library users with specific library materials from inspection and copying under the state FOIA. (5 ILCS 140/7(l); *See Illinois Library Laws & Regulations in effect January 2006*, pp. 68–71.) In addition, Illinois bars disclosure of library users’ circulation and registration information unless the library is presented with a valid court order. (75 ILCS 70/1; *See Illinois Library Laws & Regulations in effect January 2006*, pp. 56–57.)
Personnel Records
Ongoing Investigations (75 ILCS 140/1 (c); *See Illinois Library Laws & Regulations in effect January 2006*, p. 69.)
4. If only a portion of a record is exempt from disclosure, libraries will be required to produce redacted versions of the records (that is, records edited to eliminate identifying information such as names and addresses). (5 ILCS 140/8; *See Illinois Library Laws & Regulations in effect January 2006*, p. 71.)
5. Libraries are entitled to charge a reasonable amount per page calculated to reimburse the library for its actual costs for reproducing and certifying public records, but cannot charge for staff time or search fees. (5 ILCS 140/6; *See Illinois Library Laws & Regulations in effect January 2006*, p. 65.)



Talking Points

In light of the Naperville police department's past, current, and anticipated future efforts to change the Illinois Library Records Confidentiality Act (75 Illinois Compiled Statutes 70/1), ILA offered the following talking points on library confidentiality.

Key messages

- Library staff cooperates expeditiously with law enforcement within the framework of the law.
- Law enforcement officials always have been able to access library records when they have demonstrated to a court specific and articulable facts (“probable cause”) establishing the need for those records.
- Libraries and librarians have both legal and ethical obligations to assure every library user's Constitutional right to freely access information without the threat of government surveillance or intervention.
- Every state has confidentiality laws, including Illinois, to protect the privacy and freedoms Americans hold dear. These laws provide a clear framework for responding to law enforcement while safeguarding against random searches, fishing expeditions, or invasions of privacy.
- If anyone sees a crime in a library, they should call the police and alert library staff. Period.
- Anyone who has been to their library knows librarians care deeply about children and all of their users. We are committed to helping people find the best and most appropriate information for their needs.

Additional talking points on confidentiality

- In our country, we punish crimes, not thought or opinion. The First Amendment assures us of the right to read freely, without the government looking over our shoulders. Librarians protect this right by assuring the confidentiality of patron records, in accordance with the law and the best practices of the profession.
- The danger librarians seek to avert is the use of library records to simply raise suspicions about a person based upon their reading habits — fishing expeditions predicated upon the belief that merely reading about certain opinions or ideas marks you as a potential criminal, terrorist, or spy.
- A vital democracy depends on an informed citizenry, able to access a broad range of opinion across the political spectrum.
- The Fourth Amendment of the U.S. Constitution requires that law enforcement officials produce a warrant when they seek to gather information from citizens. The Illinois Constitution specifically protects citizens from invasions of privacy and requires a showing of probable cause before a search warrant can be issued.

“We do not want to tread on anybody’s rights to privacy or anything else, but we do not believe that the libraries should be sanctuaries for criminals.”

—Naperville Police Chief David Dial

Safety in public libraries

- Nationally, U.S. public libraries are visited more than 1.3 billion times each year. In fact, the number of visits to libraries has climbed every year for the past fifteen years. Our experience is that the vast majority of our visitors use the library and its resources responsibly. They always have and always will. [Give personal example of your last library visit or example of typical library day.]
- Libraries are very safe, but they are open to everyone. Parents should accompany young children to the library and establish rules and expectations for older children. Just as with other public places, individuals may encounter other persons who are behaving inappropriately or illegally.
- Libraries and librarians strive to make their libraries safe and welcoming places by creating policies that assure that every person enjoys their visit to the library. Libraries adopt policies that address both criminal and inappropriate behavior while respecting the right of every person to access information without fear of government surveillance or interference.

Additional talking points on Internet safety

- The Illinois Library Association asserts and, the Illinois library community concurs, that Internet policy is appropriately developed at the local library level rather than at a state or federal level.
- Librarians are partners with parents. Our role is to guide children in selecting the best materials for their needs, whether it’s a good book or a good Web site. Libraries encourage parents to learn about this important resource so they can guide their children.
- Education, not tools or laws blocking access, is the key to safe use of the Internet.

- Guiding children in their use of the Internet is something the library community takes very seriously. Every day library staff teach children how to evaluate a Web resource, how to locate age-appropriate Internet materials, and how to protect one’s privacy on the Internet.
- There is no technological quick fix. The very best way to protect children is to teach them to be their own filters by making wise decisions about what they see and view — whether it’s at home or the library.
- People of all ages must be able to distinguish between information that is useful and valuable and that which is not — to assess, as well as to access.
- Parents and only parents (not the government) have the right and responsibility to determine their own children’s access — and only their children’s access — to library resources, including the Internet.
- One of the primary concerns of the library community is the safety of children. We know that the best way to protect children is to teach them to guard their privacy and make wise choices. To this end, libraries across the state offer instruction on safe Internet use.

For additional information, please go to the ILA Web site for:

“Confidentiality: A Case Study in Progress,” February 2005 *ILA Reporter*, pp. 18–23, <http://www.ila.org/pub/reporterindex.htm>

Privacy & Confidentiality in Libraries:
<http://www.ila.org/advocacy/privacy.htm>

The Internet and Our Children:
<http://www.ila.org/advocacy/internet.htm>

Library Advocacy:
<http://www.ila.org/advocacy/advocacy.htm>

“The Current Legislative Challenge: DOPA and the Participation Gap,” October 2006 *ILA Reporter*, pp. 16–21, includes Basic Rules of Online Safety for Teens and Talking Points. <http://www.ila.org/pub/reporter.htm>

When Do You Call the Police

A Brief Rule of Thumb

Library staff should call police if they observe the following behavior or discover evidence indicating that the behavior has occurred:

- An individual threatens to or strikes or physically harms another individual, whether a library visitor or library employee, including child abuse;
- An individual threatens to or willfully damages physical (library or patron) property, whether a book, a computer, the library building, or a vehicle in the parking lot;
- An individual refuses to leave library property after being asked to leave. Be prepared to sign a complaint or testify in court;
- An individual is selling, using, or possesses illegal drugs or is drinking alcohol or is publicly intoxicated;
- An individual views or prints out child pornographic images showing children engaged in sex acts;
- A child missing or abandoned in a library, after a thorough check of the facility and in consultation with the parent or caregiver;
- An individual engages in an act of public indecency. This includes:
 - Masturbation (fondling one's own sex organs, breasts, or buttocks either directly or through clothing);
 - Fondling another person's sex organs, breasts, or buttocks either directly or through clothing;
 - Sexual intercourse, including acts of oral and anal penetration;
 - Public nudity, including exposing one's sex organs to another person in a location where the individual can reasonably expect to be observed by other people. (Breast-feeding an infant is not an act of public indecency.) and;
 - Public urination or defecation.

It is not necessary to warn the offender, just call the police. The earlier police respond and see the criminal activity is to the library's advantage. If a crime has been committed, moving that/those individual(s), if possible, to a separate, secure (holding) room is recommended. Moreover, when library personnel have a reasonable belief that a crime has been committed, the library personnel should use reasonable efforts to preserve any direct evidence of that crime and turn it over to the library director or the library's legal counsel and be prepared to turn the evidence over to police.

If allegations of a crime are reported to library personnel, but no library personnel actually observed the activities in question and has no independent basis for knowing a crime has been committed, the library should directly contact the police. (Of course, staff must use judgement and discretion in assessing the credibility of the accusation.) Let the police sort out the facts and interview the witness(es). Libraries can also call the police to do a "walk-through" without saying that a crime has been committed or that anyone's safety is threatened; only that behavior seems disturbing.

Questionable or frequently cited activity which is **not criminal** includes, but is not limited to:

- Violations of library policy, such as cell phone use or talking in quiet areas;
- Abusive comments by library users that do not include threats of physical harm;
- Adults viewing First Amendment protected materials;
- Homelessness, offensive body odor, or poor bodily hygiene; and
- Symbols of gang affiliation.

Library policy needs to be clear and consistent on these matters.

*“It is not necessary to warn the offender,
just call the police.”*

This single list isn't a comprehensive list covering every possible incident that warrants a call to the police. Deciding when a patron's conduct constitutes more than a violation of library policy and rises to the level of a possible criminal violation is often a judgment call for staff, to be made in light of the library's written policies and procedures addressing user behavior. If in doubt, let the police and state's attorney make the judgment call as to whether criminal charges are appropriate.

In the February 2007 *ILA Reporter*, we hope to have some articles on “How to Have Good Police – Library Relations” from librarians and representatives from the police community.

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*“Let the police
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