

Library Records Confidentiality Act

Initial Question from Library

In regards to the Library Records Confidentiality Act could a parent sign a written permission slip that gives the library the right to disclose records on behalf of a child? The example that we talked about was serving a homebound child and needing to keep a record of what that child checked out/read.

Response from Bob Cooper, February 1, 2010

Acting on advice from earlier work by the Law Revision Task Force, the answer the State Library provides to this question is no, the parent or legal guardian cannot sign a records release form on behalf of the child. Montana's Constitution provides that minors have the same fundamental rights as adults so only the individual named in the record can sign. And then, the permission granted must be specific not general in nature. Thus, the records can be released to a named individual only. An entity like a school or a daycare would not be specific enough. Also, a date range associated with this grant of permission should be included, somewhat limited in nature, and definitely not left open-ended. The type of information that can be released (books checked out as opposed to identifying personal information) can also be specified in the request if desired.

Initial question from Library

Another library's patrons dropped that library's books off at our library. We returned the items and were contacted by the library wondering if we could tell them if we could give them the patron's address. The patron has taken a lot of books from the library and wants the items back. I know that it's against the Library Records Confidentiality Act to give them the patron's information, but could we forward a letter from the library to the patron?

Response from Tracy Cook, August 30, 2011

1. You are correct in that the Library Records Confidentiality Act (MCA 22-1-1103) says you cannot disclose library records. So no you cannot tell the other library whether or not you have the same patron. There are three exceptions, but none of them apply here. You can disclose library records if you have a search warrant, need to obtain overdue books (that would be your library not the other library), or the patron gives you written permission. I suppose you could contact the patron and ask for written permission, but I doubt that would work very well.....

2. So can you forward a letter from the other library to the patron? This is definitely a gray area, and I can't find anything specifically addressing it. I'm going to recommend not doing this. Here's why. First if you say to the library that I will forward that information to the patron then you are basically admitting that this is a patron at your library. It's not the same as giving out the patron's address. You could probably get away with it, but you are disclosing the patron's information in a roundabout sort of way. Other reasons that I recommend not doing this are the Code of Ethics (MCA 2-2-103) which talks about public trust and public duty and the expectation that we won't use patron information for anything other than library services. Although the law primarily deals with how you might benefit from something you do as a public employee it also talks about the responsibility of protecting people's information. My standard is would I feel comfortable if I saw my actions in the paper, and I don't know that I would in this case. I think people would be taken aback at this situation. Finally I'm not sure

that sending the letter would help in this situation. It might alienate the patron and cause you some headaches as people question your decision, and I'm not sure that the other library would receive their books anyway.

I can't find anything in the law that says you cannot do this, so you can disregard my advice if you want. This is a tough one because it would be nice to try and help the other library, but it raises some concerns. I think a lawyer could make an argument that you are disclosing patron information and that you are using that information for purposes other than the intent of the law which is why I recommend not forwarding a letter to the patron. I was channeling Bob Cooper on this question and can hear him saying "it's always good to encourage people to follow the spirit of the law, not just the letter of the law."

Initial Question from Library

Also, I have a question about a reference to Montana Code 22-1-1103 Nondisclosure of library records that's being discussed by the committee to revise the Partners SOP. Another library states that they do not allow people to pick up friends' or family members' holds unless they have a written notice from the patron allowing it. They think that this is required by the law that states:

"No person may release or disclose a library record or portion of a library record to any person except in response to: a) a written request of the person identified in that record..."

We have been allowing patrons to give us verbal permission for a friend or family member to pick up their items (we make a note in the record to this effect) and we also assume that if a friend or family member has a patron's card in hand that is implied consent for them to be able to pick up a hold for another person.

Do you think that picking up a hold qualifies as "disclosing a library record or portion of a library record" as referred to in the law cited above?

Response from Bob Cooper, July 15, 2010

The library record being protected here includes protecting the identity of the patron from being associated with that patron's choice of reading material. Although most patrons consider it a convenience to have others retrieve their materials for them, the law clearly instructs public library personnel not to allow such a practice unless specific written permission is provided by the patron in advance. I do not believe it would be prudent to assume that possession of another's library card may substitute for specific written instructions provided by the person to whom the card was issued. The concept of implied consent is not likely to stand up to scrutiny when the law requires a written request. To comply with this law in the area of holds, several libraries have recently opted to adopt more secure methods (like the use of partial library card numbers instead of names or initials) to label books on hold shelves designated for self-service hold pickup by patrons. In responding to most questions about library services, I normally suggest that when in doubt librarians should err on the side of providing better, more convenient service to patrons. In the case of compliance with library confidentiality law, I would insist that librarians be extremely cautious and insure they are doing everything they can to protect the patron's right to privacy. The potential liability of the individual librarian in this instance is significant.