

## **2.4 LIBRARY CONFIDENTIALITY POLICY**

### **Introduction**

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

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

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

This library policy is pursuant to Vernon’s Annotated Civil Statutes, Article 6252-17a, referred herein as the Texas Open Records Act, relating to making confidential a record that would identify a person who uses library services or materials. (A copy of the Texas Open Records Act is included.)

### **Policy**

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

Exceptions:

Such records generally may be disclosed only if:

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

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

### **Privacy of the Borrower Record**

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

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

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

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

### **Privacy and the Payment of Fines and Fees**

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

### **Privacy and the Recovery of Overdue Materials**

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

## **Procedures for Implementing Confidentiality Policy**

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

1. The library staff member receiving the request to examine or obtain information relating to circulation or other records identifying the names of library users will immediately refer the person making the request to the Library Director, who shall explain the confidentiality policy.
2. The Library Director, upon receipt of such process, order, or subpoena, shall consult with the appropriate legal officer assigned to the institution to determine if such process, order, or subpoena is in good form and if there is a showing of good cause for its issuance.
3. If the process, order, or subpoena is not in proper form or if good cause has not been shown, insistence shall be made that such defects be cured before any records are released. (The legal process requiring the production of circulation or other library records shall ordinarily be in the form of subpoena *duces tecum* [bring your records] requiring the responsible officer to attend court or the taking of his/her deposition and may require him/her to bring along certain designated circulation or other specified records.)
4. Any threats or unauthorized demands (i.e., those not supported by a process, order, or subpoena) concerning circulation and other records identifying the names of library users shall be reported to the City Attorney.
5. Any problems relating to the privacy of circulation and other records identifying the names of library users that are not provided for above shall be referred to the Library Director.

### **Concluding Comment**

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

### **Attachments to Policy**

1. ALA Policy on Confidentiality of Library Records
2. ALA Statement of Professional Ethics
3. Complete Texas Open Records Act -  
[https://texasattorneygeneral.gov/files/og/OMA\\_handbook\\_2016.pdf](https://texasattorneygeneral.gov/files/og/OMA_handbook_2016.pdf)

4. Sample Pen Register/Trap and Trace Application and Order
5. Sample Warrant for Internet Records
6. Sample Texas Subpoena

*APPROVED BY THE NEW BRAUNFELS PUBLIC LIBRARY ADVISORY BOARD  
SEPTEMBER 21, 2001  
ENDORSED MAY 19, 2003; SEPTEMBER 18, 2006  
REVISED JULY 18, 2011;  
ENDORSED AUGUST 28, 2012; SEPTEMBER 16, 2013; JULY 20, 2015; OCTOBER 24, 2016;  
REVISED OCTOBER 16, 2017; ENDORSED OCTOBER 16, 2018*

By: \_\_\_\_\_ Amy Stone, President  
Attest: \_\_\_\_\_ Gretchen A. Pruett, Library Director