



PRIVACY, LIBRARIES, PATRONS AND THE LAW

Privacy 101



Privacy Can Mean Many Things



Confidentiality



Limits on
information
use



Freedom from
surveillance



Personal
choice and
control

Privacy, Libraries, Patrons and the Law

- Sources of Privacy Law
- State Laws
- Protecting User Privacy in the Library
- Teton County Library Privacy Policy and Practices



SOURCES OF PRIVACY LAW

The legal foundations of privacy

Sources of Privacy Law in the United States



CONSTITUTIONS



STATUTE LAW



AGENCY
REGULATION



CASE LAW: CRIMINAL
AND CIVIL



CONTRACTS AND
PRIVATE
AGREEMENTS

Legal Foundations: Constitutional Privacy

The Constitution and Bill of Rights protect a “zone of privacy” that shields and defends personal autonomy in decision-making and the individual interest in avoiding disclosure of personal matters.

- *Griswold v. Connecticut*, 381 U.S. 479 (1965)
- *Whalen V. Roe*, 433 U.S. 425 (1977)



Legal Foundations: First Amendment Privacy

The proscription that “Congress shall make no law...abridging the freedom of speech, or of the press” encompasses the right to read and receive ideas anonymously, without government intrusion or observation, in order to avoid chilling individuals’ freedom of inquiry. It also protects the privacy of one’s relationships and associations.

- *NAACP v. Alabama*, 377 U.S. 449 (1958)
- *Lamont v. Postmaster General*, 381 U.S. 301, 307 (1965)
- *Stanley v. Georgia*, 394 U.S. 557 (1969)
- *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995)



Legal Foundations: Fourth Amendment Privacy

The Fourth Amendment provides “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizure [by the government] shall not be violated.” (1791)

Modern formulation: “[T]he Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.”

- *Katz v. United States*, 389 U.S. 347 (1967)

“Third Party Doctrine”: If a person agrees to share information or records with a third party, the person no longer has a reasonable expectation of privacy in the information or records shared with the third party.

Therefore, Fourth Amendment protections do not apply to information or records shared with a third party, such as a bank or telecommunications company.

- *United States v. Miller*, 425 U.S. 435 (1976)
- *Smith v. Maryland*, 442 U.S. 735 (1979)

Libraries and Privacy Law

Statutes that may govern privacy, confidentiality, and data security in libraries:

- Freedom of Information Acts
- Electronic Communications Privacy Act
- Foreign Intelligence Surveillance Act
- Open Public Records Acts
- Video Privacy Protection Act
- State Library Confidentiality Statutes

In addition, there is case law regarding constitutional rights and interpretation of statutes.



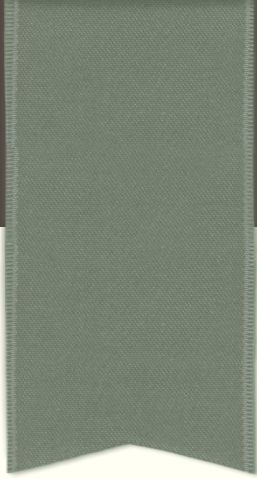
Summary: U.S. Privacy Regime

Individuals have some constitutional rights to privacy derived from the First and Fourth Amendments that protect against unreasonable privacy intrusions by the government.

A person has no reasonable expectation of privacy in personal data and records shared with a third party.

Government collection and use of personal information and data is governed by federal and state statutory law, subject to constitutional limitations.

Private, commercial use of personal data and records is allowed, subject to regulation by federal and state statutes and agencies like the Federal Trade Commission.



STATE LAWS

Wyoming Confidentiality Statute

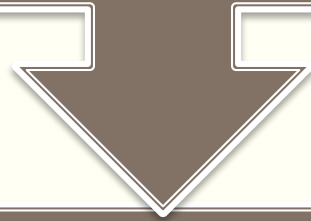
State Library Confidentiality Statutes

- Movement to adopt state library confidentiality statutes inspired by several incidents in which the federal government sought to obtain library users' records for the purpose of investigating terrorism or other crimes.
- 48 states and the District of Columbia have adopted laws addressing the confidentiality of library records.
- Most library confidentiality statutes were adopted or amended in the 1980s, prior to the advent of the internet and widespread use of third party, cloud-based platforms to manage digital content, user records and information.



Wyoming Statute 16-4-203

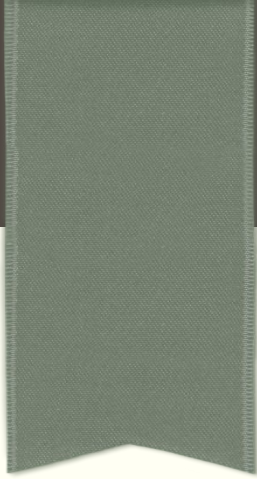
**Right of inspection; grounds for denial;
access of news media; order permitting or
restricting disclosure; exceptions**



**(d) The custodian shall deny the right of
inspection of the following records, unless
otherwise provided by law:**

(ix) Library patron transaction and registration records except as required for administration of the library or except as requested by a custodial parent or guardian to inspect the records of his minor child;





PROTECTING USER PRIVACY IN THE LIBRARY

Professional Guidelines

Library



Patron



American Library Association Guidelines

Library Bill of Rights

VII. All people, regardless of origin, age, background, or views, possess a right to privacy and confidentiality in their library use. Library should advocate for, educate about, and protect people's privacy, safeguarding all library use data, including personally identifiable information.

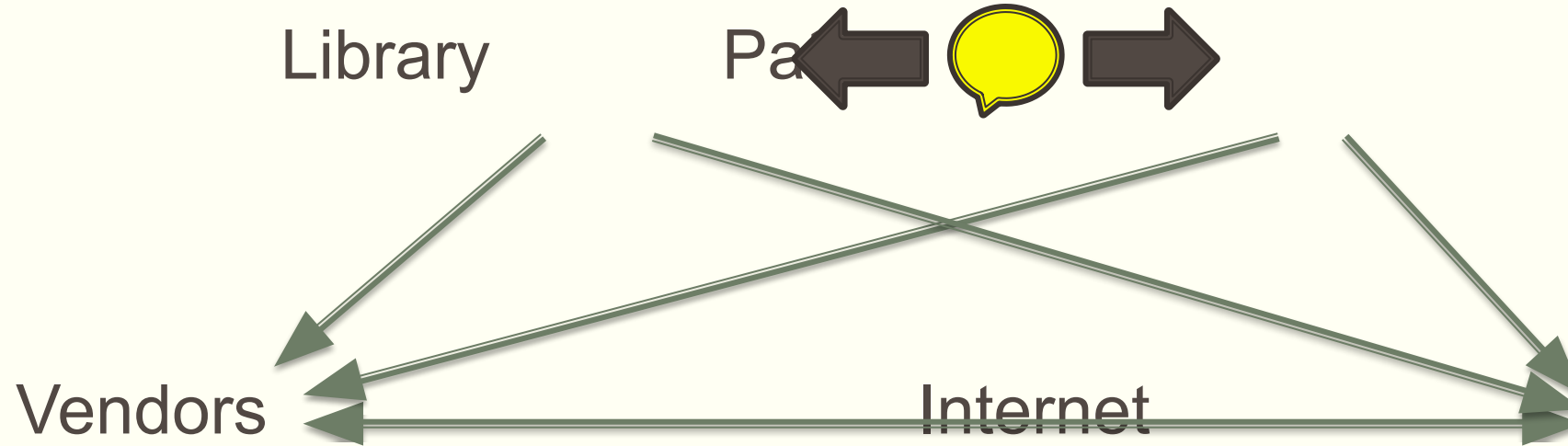
Adopted June 19, 1939; last amended January 23, 1996.

Code of Ethics

3. We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted.

Adopted at the 1939 Midwinter Meeting by the ALA Council; last amended January 22, 2008.

Modern Libraries



USA PATRIOT Act and “Radical Militant Librarians”

The ALA raised public awareness regarding library privacy and opposed Section 215, the most controversial provisions of the act nicknamed the “library records provision.” The three issues of most concern:

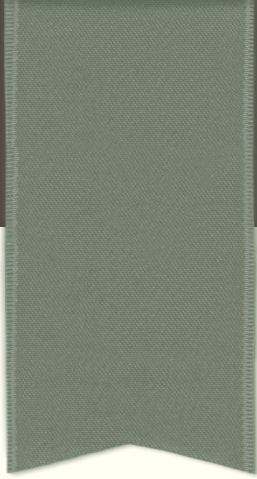
1. The broad definition of terrorism to include any cybercrime
2. Access to library records
3. Use of library systems for active surveillance and wiretapping

Section 215 did not expire until 2015.



Challenges to Patron Privacy





TCL PRIVACY POLICY AND PRACTICES

Policy on the Confidentiality of Library Records



It is the policy of the Teton County Library that confidentiality extends to information sought or received, and materials consulted, borrowed or acquired, and includes database search records, reference interviews, circulation records, registration records, interlibrary loan records, internet use, and other personally identifiable uses of library materials, facilities or services.



The library will provide information to law enforcement agencies when legally required.



Caveat: Complete security is technically difficult to achieve, the privacy of electronic transactions and files cannot be absolutely guaranteed.

Shapers of Patron Data Flows



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Additional Library Privacy Resources

- [Data Privacy Project](#)
- [American Library Association Privacy Resources](#)
- [Electronic Frontier Foundation](#)

- [Protecting Patron Privacy in Public Libraries](#), Tech Soup webinar, March 16, 2017
- [Practical Privacy Practices](#), ALA OIF webinar, April 14, 2017

- [Long Before Snowden, Librarians Were Anti-Surveillance Heroes](#), *Slate*, June 3, 2015
- [The Fifty State Library Laws Survey](#)