

Southern Peaks Public Library  
423 Fourth Street  
Alamosa, CO 81101

### Confidentiality of Records

Privacy with respect to information sought or received and materials consulted or borrowed is a fundamental right for library users. The Library recognizes that these patron records and other information that identifies a person as having used the Library are confidential and are not subject to disclosure. Such records shall not be made available except pursuant to a valid process, order or warrant.

#### **I. As outlined by Colorado Revised Statutes 24-90-119 (Privacy of User Records)**

1. Except as set forth in subsection (2) of this section, a publicly supported library shall not disclose any record or other information that identifies a person as having requested or obtained specific materials or service or as otherwise having used the library.
2. Records may be disclosed in the following instances:
  - a. When necessary for the reasonable operation of the library;
  - b. Upon written consent of the user;
  - c. Pursuant to subpoena, upon court order, or where otherwise required by law;
  - d. To a custodial parent or legal guardian who has access to a minor's library card or its authorization number for the purpose of accessing by electronic means library records of the minor.
3. Any library official, employee, or volunteer who discloses information in violation of this section commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars (\$300).

This policy shall not prevent the Library from pursuing the return of, or payment of, overdue library materials. The Library staff is to use their best judgment in determining whether disclosing information about usage or records is necessary for the reasonable operation of the Library.

## **II. Inquiries from Law Enforcement Officials**

### **During a visit:**

1. All library staff should understand that it is lawful to refer the agent or officer to an administrator in charge of the library, and that they do not need to respond immediately to any request.
2. If anyone approaches a staff member alleging to be a law enforcement official requesting information, **DO NOT DISCLOSE ANY INFORMATION.**
3. Ask for identification and then immediately refer the agent or officer to the Library Director or Head Librarian. Photocopy identification or take business card.

### **Inquiry from Law Enforcement Officer or Agent without a Court Order:**

Without a court order, the agent or officer does not have the authority to compel cooperation with an investigation.

- Direct the law enforcement officer or agent to the Director or Head Librarian.
- The Director/Head Librarian will explain the library's confidentiality policy and the state's confidentiality law.

### **Law Enforcement Officer or Agent Presents a Subpoena:**

- Direct the law enforcement officer or agent to the Director or Head Librarian.
- The Director/Head Librarian will ask the City Attorney to examine the subpoena for any legal defect, including the manner in which it was served on the library, the breadth of the request, its form, or an insufficient showing of good cause made to a court.
- Library staff will follow the subpoena strictly so that only information that is specifically requested is provided.

### **Law Enforcement Officer or Agent Presents a Search Warrant:**

- Direct the law enforcement officer or agent to the Director or Head Librarian.
- The search warrant is "executable immediately" which means the agent or officer may begin a search of library records as soon as the Director or Head Librarian is served with the court's order.
- The Director or Head Librarian will ask to have the City Attorney present before the search begins to allow the counsel to examine the search warrant and to assure that the search conforms to the terms of the search warrant.
- The law enforcement officer does not have to agree to the presence of the Library's counsel.
- Library staff will cooperate with the search to ensure that only records identified in the warrant are produced and that no other users' records are viewed.

**Law Enforcement Officer or Agent Presents a Subpoena or a Search Warrant Issued Under the Foreign Intelligence Surveillance Act (FISA) (USA Patriot Act amendment):**

- Follow the same procedures listed under presentation of a regular subpoena or search warrant. However, subpoenas and search warrants issued by a FISA court also contain a "gag order". This means that no staff member or institution can disclose that the warrant was served or that records have been produced pursuant to the warrant. The library and its staff must comply with this order.
- If it is a FISA subpoena, then the FISA judge is supposed to fix a "time to respond", which may be a period of days or may be immediately.
- FISA warrants are executable immediately. No information can be disclosed to any other party including the patron whose records are the subject of the search.
- The gag order does not change a library's right to legal representation during the search. The library can still seek legal advice concerning the court order and request that the City Attorney be present during the actual search and execution of the court order.

**If the order is a National Security Letter (NSL) issued under Section 505 of the USA Patriot Act:**

- The recommendations for a regular subpoena still apply. However, like an FISA order, a NSL also contains a gag order. The gag order does not prevent consultation with legal counsel.
- The Library Director or Head Librarian can still request that the City Attorney be present during the search.

Approved by Library Board of Trustees  
February 24, 2009