CONFIDENTIALITY AND PUBLIC RECORDS POLICY

Adopted January 12, 2010

The Osceola Public Library adheres strictly to all sections of Wisconsin Statute 43.30 regarding the protection of the confidentiality of its users. This policy reflects our understanding of those requirements at the time of adoption, but may not be assumed to do so in perpetuity.

As specified in *Wisconsin Statutes 43.30,* "records of any library which is in whole or in part supported by public funds, including the records of a public library system, indicating the identity of any individual who borrows or uses the library's documents or other materials, resources or services may not be disclosed except by court order or to persons acting within the scope of their duties in the administration of the library or library system, to persons authorized by the individual to inspect such records, or to libraries authorized under subs. (2) and (3)." Act 207, which became law effective April 23, 2004, amends Wisconsin Statutes Section 43.30 to require that a library that is in whole or part supported by public funds must disclose to a custodial parent or guardian of a child under the age of 16 any records relating to that child's use of the library's documents, or other materials, resources or services.

Frequently Asked Questions About Libraries and Wisconsin's Public Records Law
(the answers to these questions are informal interpretations of Wisconsin's public records law—libraries may wish to seek an attorney's opinion when applying the law to particular circumstances

Wisconsin's public records law provides that almost all records of state and local government (which includes public libraries) are available to the public. The policy of Wisconsin's public records law is summarized by the following statutory declaration of policy: "In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. To that end, s. 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied." (Wis. Stat. s.19.31)

Must we respond to all public records requests? And, how quickly do we have to respond? You must respond to all requests to view or copy public records made by any person (except most requests from individuals who are committed or incarcerated). The requester need not be a resident of the state and generally cannot be required to give their name or the purpose of the request. Acceptable identification may be required only when necessary for security reasons or when required by federal law or regulation. Public records requests must be responded to "as soon as practicable and without delay". Any denial of a written request for records must include a written statement of the reasons for denying the request, and must inform the requester that the determination is subject to review by mandamus (a writ from a court ordering performance of an act) or upon application to the attorney general or district attorney.

What records must be made available for viewing or copying? Except as otherwise provided by law, any requester has the right to inspect or receive a copy of any public record. This applies to records in any format. An important exception to the public records law for libraries is the statutory prohibition on release of records that identify an individual who uses a publicly funded library (Wis. Stats. s. 43.30). Therefore, any record produced in response to a public records request must be edited to remove any information which could identify an individual as a library patron, such as a patron's name or address. This information can only be released with the consent of the individual, by court order, or (under certain circumstances) to other libraries for interlibrary loan purposes. Common law (judge-made law) allows the denial of certain requests for access to public records if the balance of interests favors non-disclosure. Some of the cases in which the courts have upheld non-disclosure involve certain personnel records of public employees; however, the Wisconsin Supreme Court has also held that personnel records are not automatically excluded from disclosure. A 1999 Wisconsin Supreme Court decision held that a public employee whose personal interests are implicated in the potential release of records must be given the opportunity for judicial review before the records are released.

Who determines which records are subject to disclosure under the public records law?

Every organization subject to the public records law must designate in writing one or more legal custodians to respond to public records requests. In the absence of such a designation, the authorities' highest ranking officer and the chief administrative officer, (most likely the board president and the director, in the case of a public library). The mayor, village president or town chair of your community has the option of appointing the legal custodian for library records. The custodian(s) shall also designate one or more deputies to act in his or her absence. If you have concerns about the release of certain records, it may be advisable to consult with the municipal attorney. Every organization subject to the public records law must also adopt and prominently display a notice identifying the legal custodian and establishing the time, place and method for

requesting records, and indicating any copying costs. Generally, records must be available for inspection during all regular office hours.

Can we charge for copying and other costs?

You may charge a fee not to exceed "the actual, necessary and direct cost" of reproduction and mailing. A locating fee may be charged only if the "the actual, necessary and direct cost" of locating the records exceeds $50.

How long do we need to retain public records?

Municipal and county governing bodies can adopt ordinances that provide for the destruction of obsolete public records. However, the period of time for retention provided by these ordinances may not be less than 7 years for most records. Library system official records need to be retained at least 10 years, as required by the Wisconsin Administrative Code. Tape recordings of meetings may be destroyed 90 days after the minutes have been approved and published if the purpose of the recording was to make written minutes of the meeting. Prior to destroying public records, you must give the State Historical Society at least 60 days written notice. The Historical Society may, upon application, waive this notice requirement. The Historical Society will preserve any records it determines to be of historical interest.

Can we be penalized if we violate the public records law?

Yes! An organization or legal custodian that improperly denies or delays a request may be ordered to pay the requester's attorney fees, damages of not less than $100, and other actual costs. In addition, an organization or legal custodian that arbitrarily and capriciously denies or delays response to a request, or charges excessive fees may be required to forfeit not more than $1000 in punitive damages.

Frequently Asked Questions About Compliance With the New Parental Access to Library Records Law
(the answers to these questions are informal interpretations of Wisconsin law—libraries may wish to seek an attorney's opinion when applying the law to particular circumstances)

A bill regarding parental access to library records (AB 169) passed the legislature and was signed by the governor. The new law was officially published as Wisconsin 2003 Act 207 on April 22, 2004. (See http://www.legis.state.wi.us/2003/data/acts/03Act207.pdf for the text of Act 207.) Act 207 became law effective April 23, 2004. Generally, Wisconsin law prohibits the release of records that identify an individual who uses a publicly funded library (Wisconsin Statutes Section 43.30). Under current law, this information can be released only with the consent of the individual or by

court order or (under certain circumstances) to other libraries for interlibrary loan purposes. Act 207, which became law effective April 23, 2004, amends Wisconsin Statutes Section 43.30 to require that a library that is in whole or part supported by public funds must disclose to a custodial parent or guardian of a child under the age of 16 any records relating to that child's use of the library's documents, or other materials, resources or services.

Below are answers to questions we have received about this new law:

Which libraries must comply with this new law?

All libraries that receive public funds. At a minimum, this includes all public libraries, all public school libraries, and the libraries of all public colleges and universities.

What records must be supplied to a custodial parent or guardian of a child under age 16?

Any records relating to that child's use of the library's documents, or other materials, resources or services. This includes any library records of items currently checked out, due dates for those items, overdue items, and any fines owed. This also includes any records of the use of library computers, such as computer sign-up records. We believe that records indicating the address, phone number, age, etc. of the child are not records that fall within this definition. In addition, there is no reason a custodial parent or guardian should require these records. From a child safety perspective, it is advisable that these records not be routinely disclosed. Any record that contains information about any other library users, in addition to the information which must be disclosed, must first be edited to remove any information which could identify those other library patrons, such as a patron's name, address, or phone number.

How do we know the requester of records is the custodial parent or guardian of the child?

A "custodial parent" is defined in this law as any parent other than a parent who has been denied periods of physical placement with a child under s. 767.24 (4). In situations involving separation or divorce, the courts will generally order periods of physical placement to both parents. However, in some cases, the courts will issue an order denying periods of physical placement to one or both parents. The essential issues for the library to determine are: (1) whether the person requesting the records is who they say they are, (2) whether they are indeed a parent or guardian of the particular child, and (3) whether they have been denied periods of physical placement with the child under s. 767.24 (4). Libraries should have a written board-approved policy addressing what will be acceptable documentation for determining these issues. The fact that an individual has possession of a child's library card may be evidence supporting the conclusion that the individual is a custodial parent or guardian of the child. However, to protect against the possibility that the child's library

card was improperly obtained, it may be advisable to request additional identification and/or documentation. A photo ID showing that an individual currently lives at the same address as the child may also help support the conclusion that the individual is a custodial parent or guardian of the child. Of course, a parent who has joint custody of a child may or may not have the same address as the child. For proof of identity, alternative methods or documentation should be allowed. One method of identification may be linked to whether the adult already is registered at the library with his or her own library card. However, the process must provide alternatives for verifying identification even if the person is not a library cardholder. An acceptable example may be any government agency-issued photo ID. As to whether a person is indeed the custodial parent of the child whose library records are at issue, it is recommended that libraries strike a balance between having requirements that are so lax that they are easily sidestepped, perhaps creating child safety and/or liability issues, and those that may be so demanding that they defeat of the purposes of the new law. Many people will readily have access to such proof as a birth certificate. Others, including some immigrants, may not. A court order of divorce which names the children may assist in this determination, and the court papers should also indicate whether, (at least at the time of divorce) the parent was denied periods of physical custody. You may also be able to locate relevant court orders with the help of the Consolidated Court Automation Programs (CCAP) Case Management system (available at http://wcca.wicourts.gov/). A library policy may conclude with a type of "catchall" provision that provides that the library will accept "any other set of documents that demonstrates to the library's satisfaction that the requester is the custodial parent or guardian of the child whose records have been requested". It is also recommended that the policy allow for an appeal of library staff decisions to the director and board.

How quickly must we respond to parental requests to view their child's library records?

The law does not specify a definite period of time within which a library must respond to requests. We believe a good guideline is the standard for responses to requests for public records, which must be acted upon "as soon as practicable and without delay." The most common requests: requests to obtain records of the items currently checked out and/or overdue, should probably be responded to immediately, as long as the requester has demonstrated to the library's satisfaction that he or she is the custodial parent or guardian of the child whose records have been requested.

Are there any penalties for denying a request or taking too long to respond to a request?

The law does not specify penalties, but it is possible that a parent or guardian could bring a court action if a request had been improperly delayed or denied. A court would have the authority to compel disclosure and could fine and impose attorney fees on a library that unreasonably denied or unreasonably delayed responding to a request.

Our library has a policy that applicants for a library card who are under the age of 14 must include the signature of a parent or guardian. Does Act 207 require that we change this policy to require a signature of a parent or guardian for card applicants under the age of 16?

No. The decision to require parental sign-off on library card applications is a policy decision for the local library. Act 207 does not require that any particular policy be adopted for the library card application of a child.

End of Policy

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