

Privacy and the Freedom to Read



If your choice of reading materials is not private, both your First Amendment and Fourth Amendment rights are abridged. Your freedom of speech and freedom of association, as protected by the First Amendment, are abridged if you lose the right to private study and discussion of controversial subjects. Your freedom from unreasonable search and seizure, as protected by the Fourth Amendment, is abridged if a law enforcement agency can obtain your bookstore purchasing records or library borrowing records without a subpoena or search warrant.

You may think that you have nothing to hide, but your purchasing records and library circulation records can reveal innocent, personal behavior, either purposefully or accidentally, that others may misinterpret. Everyone who searches “sexual behavior” is not a philanderer. Everyone who searches “explosives” is not a terrorist.

Do bookstores keep records of my purchases?

The wide use of computers and credit cards enables most book vendors – brick and mortar as well as online – to keep records of your purchases. Most, if not all, major online and chain vendors will not delete these records even if you ask them to do so. Individual independent bookstores make their own decisions. Some keep no records of prior sales at all.

Do these vendors release or sell your purchasing or browsing records?

Bookstores that adhere to the privacy policy of the American Booksellers Foundation for Free Expression will not release your records to anyone, including the government unless they are legally required to do so.

Most brick and mortar bookstores probably do not release or sell your purchasing information to private parties. They do not have a uniform policy with respect to requests from law enforcement. They may, or may not, require a search warrant or subpoena.

Online sellers, such as Amazon.com, usually have a privacy policy stating that the company does not sell

your information for commercial purposes, but it is difficult to determine whether or not they adhere to that policy. They may be less stringent about releasing information to law enforcement. For example, Amazon.com states that it will release account and other personal information when Amazon.com believes that release is “appropriate” to comply with the law. Amazon.com does not require a search warrant or subpoena. This means that Amazon.com, rather than a court, decides when it will give your personal information to government agents.

Are my library circulation records private?

All 50 states have laws or policies protecting the privacy of library records. The Oregon public records law specifically exempts libraries. These state laws generally include a provision permitting law enforcement to access library records with a valid search warrant.

The privacy policy of the American Library Association states that the constitution requires the confidentiality of library records. It recommends that libraries require a search warrant before releasing patron records to law enforcement agencies. It further recommends that all patron records be purged after they are no longer needed. Both the Multnomah County Library and the Eugene Public Library, among others, adhere to this policy.

Have the courts protected the privacy of library and bookstore purchasing records?

Several Federal and State courts have invalidated search warrants or subpoenas for bookstore purchasing records and library circulation records of specific customers. In at least one case the government withdrew a subpoena when it became clear that the library intended to fight it.

Courts have generally applied three criteria in deciding whether or not to uphold search warrants or subpoenas for bookstore or library records: (1) Does the release of records serve a compelling state interest? (2) Can the requested information be obtained by some other method that does not involve a First or Fourth amendment violation? (3) Is the information sought directly relevant to a particular suspect? For example, if the police are investigating a crime involving the manufacture of methamphetamine, they must show a reason for

demanding the records of a particular patron. They cannot demand the records of everyone who has purchased or borrowed a book about methamphetamine.

It is worth pointing out that the release of bookstore purchasing information can result in financial harm to an innocent bookseller. In several cases, customers have informed a bookstore that they would not continue to patronize that store if the store released their purchasing records.

How have national security concerns affected the law regarding the privacy of reading materials?

About two months after the 2001 terrorist attacks, Congress passed the USA-Patriot Act. This law greatly expanded the ability of the FBI and other federal intelligence agencies to issue National Security Letters requiring that the recipient turn over records and other data demanded. Such "third-party" records can include the purchasing data, records related to internet access, or even the names and other identifying information of people who have reserved hotel rooms.

The agent issuing the National Security letter has only to state that the information is needed for an investigation regarding national security. No specific evidence, search warrant or court approval is required. National Security Letters also contain a gag order prohibiting the recipient from disclosing to anyone that he or she had received such the NSL unless it is necessary to comply with the demand.

Did the Patriot Act impact libraries and bookstores?

The FBI has demanded client records from libraries and internet service providers (ISPs) using NSLs and other provisions of the Act. One large survey of libraries found that approximately 4% of the libraries had received requests from the FBI regarding specific patrons. The number is probably much larger because the libraries knew that they were forbidden to acknowledge receipt of such demands.

We have no data on the effect on bookstores.

Have national security gag orders survived court challenges?

Several recipients of National Security Letters have challenged the gag orders. These court cases have focused on the gag order rather than the request for information. ACLU strongly believes the gag orders clearly violate the First Amendment and prevent challenges to the requests for information. The results of these court challenges have been mixed. Sometimes the courts upheld the gag order. Sometimes courts decided that a gag order was unconstitutional. Sometimes the FBI withdrew the gag order before a court made a decision. When a court upheld a gag order, it did so because it was satisfied that, in a particular case, revoking the gag order might jeopardize national security.

For more information...

Visit www.aclu.org/free-speech/censorship for links to ACLU resources on censorship, internet expression and digital privacy;

www.ftfrf.org - the Freedom to Read Foundation, an affiliate of the American Library Association;

www.abffe.org - the American Booksellers for Free Expression.

Contact us

If you have questions or if you think that your rights have been violated, please contact us:

ACLU of Oregon

503-227-3186

888.527.2258

www.aclu-or.org

 facebook.com/ACLUofOregon

 [@ACLU_OR](https://twitter.com/ACLU_OR)

