

For Your Information About the Freedom of Information Act

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What would you do if you received a written Freedom of Information Act (FOIA) request for the names and contact information of the people who utilize your library? How would you handle it? Would you contact your library's legal counsel? Would you send the information? Would you ask the requesting party to explain why they need the information? Would you refuse to respond? What if the FOIA request contained terminology that intimated possible legal action for non-compliance? It is a disturbing scenario, to be sure, and as some public libraries in Michigan already know, the question is not purely hypothetical.

As one of the state's first "sunshine" laws, Michigan's Freedom of Information Act, Public Act 442 of 1976, was adopted to enable the citizens of Michigan to have access to certain public records kept by public bodies. Under FOIA, a public record is defined as "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created." Michigan's public libraries are considered public bodies under FOIA. If a public library in Michigan receives a FOIA request in writing for a copy of specifically described public record(s), the library must respond within five business days.

So does this mean the library is legally obligated to send the copies requested under FOIA? The answer is that it depends. Generally, most records are not granted any protection from disclosure. However, there are no absolutes, and certain types of records have been granted exempt status under FOIA. Some examples of exempt records were given in a Trustee's Corner article in the January 2003 issue of *Access* on the [Freedom of Information Act Amendment](#). The examples listed in this article provide guidance in the situation where a FOIA

request has been received for public records containing information regarding building design, etc., whose disclosure could potentially pose a security hazard.

But what about the situation where someone has sent the library a written FOIA request for library user information? A legal answer for this scenario can be found within the act as well. Section 13 of FOIA (MCL 15.243 et seq.) not only provides protection to certain records regarding building designs and the like, but also to records and information specifically described and exempted from disclosure by statute.

Under Michigan's Library Privacy Act (the Privacy Act), Public Act 455 of 1982, section 2, a library record is defined as "a document, record, or other method of storing information retained by a library that contains information that personally identifies a library patron, including the patron's name, address, or telephone number, or that identifies a person as having requested or obtained specific materials from a library." Clearly the patron information requested in our example falls squarely within the definition of "library record" under the Privacy Act. Moreover, library records are specifically exempted from the disclosure requirements of FOIA under section 3 of the Privacy Act. The answer to the question of disclosure in this scenario is that it would be a violation of both FOIA and the Privacy Act to disclose the requested information.

Whenever librarians are faced with a situation where they are unsure of the correct course of action under the law, they should not hesitate to contact their legal counsel. Even though some veiled legal threat may accompany a request, a library can protect itself by complying with the statutes. It is important to keep in mind that when a library is refuses a request, it still must respond within five business days of receiving the request. The response must be issued in compliance with the requirements set forth in FOIA and must either grant, deny, grant in part or request an extension. The FOIA coordinator will most likely

receive the request and will also be responsible for replying. Finally, it is not appropriate to ask why the information is being requested.

The above discussion is focused on one of the many different facets of FOIA. It is crucial that your library's FOIA coordinator is familiar with all of the implications of FOIA. Library employees should also have a general working knowledge of FOIA. As always, if you have any questions, please feel free to contact Lance M. Werner, the library law specialist at the Library of Michigan, by phone at (517) 373-1299 or by e-mail at wernerl@michigan.gov.