Policy Title/Subject: Release of Private Patron Information

Definitions:

According to the American Library Association (ALA), privacy is “the right to go about one’s business without having one’s activities observed or examined by others.” The ALA defines confidentiality as a condition wherein “a person who needs to be in possession of information about others keeps that information private on their behalf.”

Personally identifiable patron information refers to any information stored by the Health Sciences Library and Informatics Center (HSLIC) that identifies, or when combined with other available information identifies, a person as a HSLIC patron, or that indicates use or request of materials from HSLIC, or the nature of the use of those materials.

A subpoena is a legal order requiring a person to be present at a legal proceeding in order to offer testimony or produce specific documentation. A subpoena allows a person a specific period of time to prepare for the scheduled proceeding and gather required materials.

A search warrant empowers law enforcement officers to immediately search a particular location for specific items related to a specific investigation. The officers are not required to grant a delay before proceeding.

An authorization to monitor computer activity as part of a subpoena, search warrant or HSC authorization requires HSLIC to cooperate. The purpose and conditions of such monitoring will vary on a case-by-case basis.

Public Law: 107-56 (the USA PATRIOT Act) was passed by Congress in October 2001, and was subsequently amended in 2001, 2006, and 2015. The USA PATRIOT Act grants broad powers to Federal law enforcement agencies to investigate suspected terrorist activities. According to the USA PATRIOT Act, the following may not be disclosed, under penalty of law: the existence of a warrant, or subpoena, or the fact that records were produced as a result of a warrant or subpoena. A patron cannot be told that his or her records were given to law enforcement representatives or that he or she is the subject of a law enforcement investigation. HSLIC employees may not discuss the search with anyone other than the employee’s supervisor or upper management, attorney members of the Office of University Counsel, or those persons necessary to produce the tangible things under the USA PATRIOT Act.

Governing Principles:

Given that the University of New Mexico is dependent upon free speech in accordance with its mission, HSLIC supports the principle of anonymous access to information for patrons using its
resources. The inspiration for this policy rests on the New Mexico Library Privacy Act, the New Mexico Constitution, and the Constitution of the United States, while, at the same time, acknowledging that HSLIC must comply with all applicable laws, including the USA PATRIOT Act.

Policy:

HSLIC releases personally identifiable patron information in accordance with this policy.

Conditions for Release of Personally Identifiable Patron Information

Under the New Mexico Library Privacy Act, personally identifiable patron information shall not be disclosed or released to any person who is not a member of HSLIC staff in the performance of his or her duties, except upon valid written consent of the patron identified in the requested information. The prohibition on release of patron records does not apply to overdue notices or to the release or disclosure by school libraries to the legal guardian of the patron records of unemancipated minors or legally incapacitated persons.

The only other exception is when a legally valid subpoena, search warrant, or order from a government organization compels release of personally identifiable patron information. Examples of such an organization could include, but are not limited to, a legislative body, the courts, the police, or federal law enforcement such as the Federal Bureau of Investigation. The most common orders to be presented are subpoenas, search warrants, or authorizations to monitor computer activity.

In addition to the above government organizations, the Chancellor for Health Sciences, or the Chancellor’s designee, may issue an authorization to monitor computer activity that could include information from which a patron’s status could be ascertained in accordance with the UNM Acceptable Computer Use Policy. HSLIC complies with orders as described above as well as enforcement of the UNM Acceptable Computer Use Policy.

Procedures for Release of Personally Identifiable Patron Information

(1) Release of Personally Identifiable Patron Information with Patron Consent

With the exception of items 2, 3, and 4, below, personally identifiable patron information will only be released with the express written consent of the patron identified in the information. Requests for personally identifiable patron information should be referred to the HSLIC Executive Director, or the Executive Director’s designee.

(2) Response to a Subpoena

When an attorney or a representative of a government agency (the Representative) serves a subpoena on HSLIC for the release of personally identifiable patron information, HSLIC staff will adhere to the following procedures:
a) Ask the Representative to present proper identification.

b) Refer the Representative to the HSLIC Executive Director or, the Executive Director’s designee.

c) The HSLIC Executive Director or designee handling the subpoena will refer the Representative to the University Counsel’s office, who will arrange, if appropriate, to accept service of the subpoena.

d) Under the direction of the University Counsel’s office, HSLIC will assemble the information to be produced and consult with the University Counsel’s office to prevent the release of any information not specifically requested in the subpoena.

e) Consistent with the requirements of Regents Policy Manual (RPM) Policy 2.16 pertaining to the commencement of litigation, the University Counsel’s office may, if authorized to do so as provided in RPM Policy 2.16, petition the Court to issue a protective order for the purpose of maintaining the privacy of the disclosed information and limiting its use to the particular case in question.

f) HSLIC will work with University Counsel to determine whether HSLIC is legally permitted to inform patrons affected by the subpoena that personally identifiable patron information has been released.

g) After any legal questions are resolved in a satisfactory manner, HSLIC will respond to the subpoena through the Office of University Counsel.

(3) Response to a Search Warrant/Monitoring Order

If, as, and when a Representative serves HSLIC with a search warrant for the release of personally identifiable patron information, including orders to allow computer activity to be monitored, HSLIC staff will adhere to the following procedure:

a) Ask the Representative to present proper identification and to present a physical copy of a search warrant or monitoring order.

b) Inform the HSLIC Executive Director or, the Executive Director’s designee and the Office of University Counsel that a Representative is executing a search warrant or monitoring order on the premises.

The Executive Director or designee will immediately call the University Counsel’s office and request that an attorney be dispatched to HSLIC. The University Counsel’s office will be provided with a copy of the search warrant/monitoring order as soon as possible.

c) If the Representative fails to produce proper identification or a physical copy of a search warrant or monitoring order, the HSLIC official will explain HSLIC’s
privacy policy and inform the Representative that user records are not available except when the patron’s consent is given (Procedures, Section 1, above), or a proper search warrant, computer monitoring order, or subpoena is presented.

d) The HSLIC official will ask the Representative to delay execution of the search warrant or monitoring order until University Counsel can be present. The government is not required by law to respond to such a request.

e) If University Counsel is present during the search or monitoring, they will inspect the warrant or monitoring order to determine its validity. University Counsel will monitor implementation of the order to monitor the extent to which it conforms to the specifications in the original search warrant or monitoring order.

f) HSLIC will assemble the information to be produced and consult with the University Counsel’s office to prevent the release of any information not specifically requested in the subpoena.

g) The HSLIC official will be responsible for documenting items taken and any monetary costs incurred by the search – for example, damage to or loss of HSLIC property or information.

h) Once the search is complete, HSLIC will work with University Counsel to ensure that it meets any remaining obligations under the warrant/monitoring order.

(4) Response to Search Warrants/Monitoring Orders under the USA PATRIOT Act

When receiving an order processed under terms of the USA PATRIOT Act, HSLIC staff will follow the procedure in section 3, steps (a) through (h), above, for responses to such orders – with the following exceptions, due to the Act’s prohibition against disclosure of searches conducted under its auspices:

a) HSLIC employees immediately send to the University Counsel’s Office a copy of any such search warrant/monitoring order to ascertain whether such search warrant/monitoring order has been issued under Section 215 of the USA PATRIOT Act.

b) If the search warrant/monitoring order is determined to have been issued under Section 215 of the USA PATRIOT Act, HSLIC employees shall not disclose to or discuss with any person (other than to the employee’s supervisor or upper management, University Counsel, or those persons necessary to produce the tangible things under this section) the fact that HSLIC has been subject to a search warrant or computer monitoring order, or has released private information to the government Representative.

c) This restriction applies to patrons whose personally identifiable patron information has been subject to search or monitoring.
(5) **Response to Monitoring Orders Originating within the Health Sciences Center**

HSLIC will permit monitoring of computer activity in accordance with University Administrative Policy and Procedure Manual (UAPPM) Policy 2500, entitled Acceptable Computer Use. The HSLIC complies with these monitoring orders, regardless of whether or not an affected patron has given consent or has been informed of any release of personally identifiable patron information.

**References:**

- HSLIC Public Workstation Use Policy
- HSLIC Circulation Policy
- HSLIC Noise, Cell Phone and Disruptive Behavior
- U.S. Copyright Act of 1976,
- Constitution of the United States