



# ETHICS AND CENSORSHIP IN MISSISSIPPI PUBLIC LIBRARIES

Tracy Carr  
Library Services Director  
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# Libraries in the Mississippi Code

## Sections 39-3-1 through 39-3-23 of the Code tell us:

- **What a public library is**  
*(Most notably, that a public library provides **customary services free of charge** and is supported by **public funds**)*
- **How cities and counties can establish and fund public libraries**
- **That a library is ultimately controlled by a board of trustees (and depending on if it's a city, county, city-county, or regional system, what that board of trustees looks like, number-wise)**
- **What the library director's duties are**



## Fun Fact About Libraries and the Code #1:

If the Code does not authorize a library director or board to do something, the library director or board *cannot do that thing.*

# Fun Fact About Libraries and the Code #2:

Because the Code establishes that the management and control of a public library system is handled by the board of trustees, Mississippi public library systems are considered **separate political subdivisions**.

**People who work in public libraries (hey, that's you!) are public library employees.**

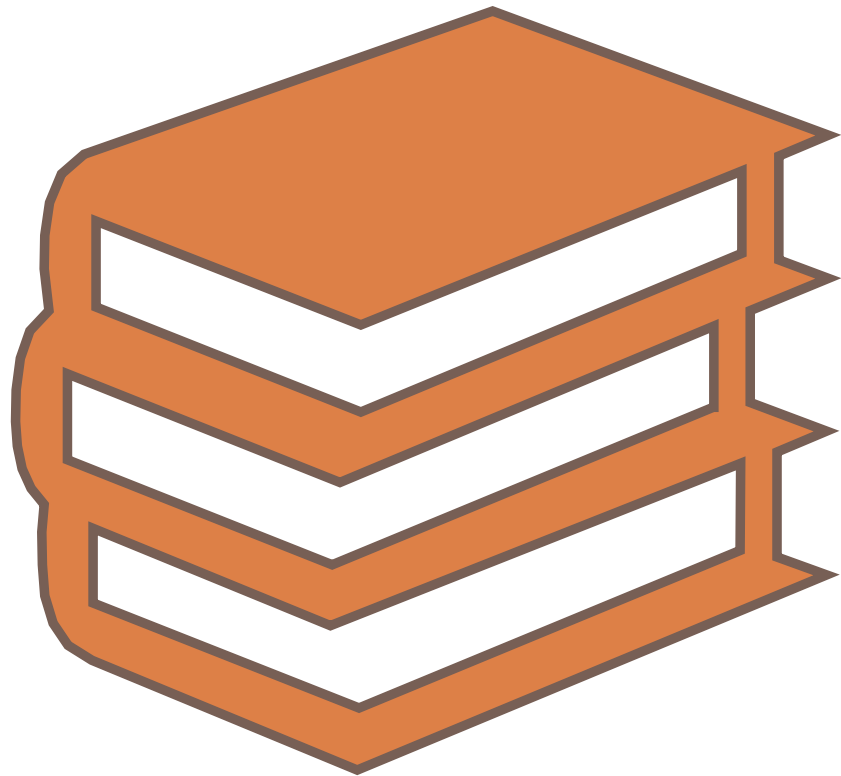
**They're not:**

- City employees
- County employees
- State employees
- Non-profit employees

(Libraries don't **make** a profit, but that doesn't mean that they're "non-profit")



PRIVACY AND CONFIDENTIALITY



# Privacy and Confidentiality

In libraries, the right to privacy is the right to open inquiry without scrutiny by others.

Confidentiality exists when a library is in possession of personally identifiable information about users and keeps that information private on their behalf.

Mississippi  
Code  
§39-3-365

*Confidentiality  
of library  
user records*

“Records maintained by any library funded in whole or in part by public funds, which contain information relating to the identity of a library user, relative to the user’s use of books or other materials at the library, shall be confidential. Such records may only be released with the express written permission of the respective library user or as the result of a court order.”

## *Translation:*

Mississippi law maintains that **records** containing a patron's:

- identity
- borrowing information
- use of library materials  
*(which could be interpreted to mean/include internet use)*

are **confidential**.



# Privacy and Confidentiality Exceptions

Because of the use of the word "record," an observation a librarian makes about the materials a patron is using is not protected.

Circulation receipts with patron name and materials borrowed are issued to the patron, not a third party, so they are not a violation.

Records can be released with the express written consent of the patron.

Library administration/staff in daily operations of the library.

For matters related to a criminal or civil investigation.

## REMEMBER §39-3-365:

“...Such records may only be released with the express written permission of the respective library user or *as a result of a court order.*”

### COURT ORDER

a direction or a command issued by a court

### SUBPOENA

a written court order commanding a person to appear before a court subject to a penalty for noncompliance; HOWEVER, a subpoena is not a “court order” *unless it is issued by the court*; attorneys and law enforcement officers can also issue subpoenas, but they may not have been reviewed by a judge


### SUBPOENA DUCES TECUM

a subpoena ordering a witness to appear and to bring specified documents or records

### WARRANT

a form of a court order that authorizes someone to do something, such as directing a law enforcement officer to make an arrest, conduct a search, or perform a seizure (such as of certain library records)

# *“What do I do if law enforcement comes into the library with a subpoena?”*



Consult the library director, who is the official custodian of the library's records.

The library director should inform the requester that it cannot comply without consulting an attorney.

Unlike a search warrant, a subpoena for records does not need immediate compliance.

In many cases, after consulting with the library's attorney, the library director can challenge the subpoena in court.

**EVEN IF** the library director wants to comply, consultation with an attorney and a possible challenge in court may be advisable.

*“What do I do if law enforcement comes into the library with a search warrant?”*



SEARCH WARRANT



CONSULT THE  
LIBRARY DIRECTOR



COMPLY

# Tips for Ensuring Privacy and Confidentiality for Library Patrons



Avoid creating unnecessary records.



Limit the degree to which personally identifiable information is monitored, collected, disclosed, and distributed.



Avoid retaining records that are not needed for operation efficiency.



Avoid library practices and procedures that place any personally identifiable information on public view.

# Other Types of Library Privacy

Besides being aware of state and federal laws officially protecting the privacy of patron records, librarians should also put themselves in their patrons' shoes when they ask for sensitive or embarrassing material.

Patrons should expect that their requests for materials or information will be kept confidential, even if no records are kept of the transactions.

Patrons should feel comfortable enough to ask for information without fear that the topic of information sought will be discussed outside of the library environment.



# **CENSORSHIP AND INTELLECTUAL FREEDOM**

# What is Censorship?

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Censorship is the suppression of information and ideas that certain persons—individuals, groups or government officials—find objectionable or dangerous.

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“Don’t let anyone read this book because I object to it!”

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Censors try to use the power of the state to impose their view of what is truthful and appropriate, or offensive and objectionable, on everyone else.

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The censor wants to prejudge materials for *everyone*.



# How Does Censorship Happen?

Censorship occurs when expressive materials, like books, magazines, films and videos, or works of art are removed or kept from public access.

Individuals and pressure groups identify materials to which they object.

Censorship also occurs when materials are restricted to particular audiences based on age or other characteristics.

# What is Intellectual Freedom?

Intellectual freedom is the right of every individual to both seek and receive information from all points of view without restriction.

It provides for free access to all expressions of ideas through which any and all sides of a cause, question, or movement may be explored.

# *“What’s the relationship between censorship and intellectual freedom?”*

In expressing their opinions and concerns, would-be censors are exercising the same rights librarians seek to protect when they confront censorship.

In making their criticisms known, people who object to certain ideas are exercising the same rights as those who created and distributed the material to which they object.

# LEGAL CENSORSHIP

The U.S. Supreme Court has ruled that certain categories of speech are NOT protected by the First Amendment:

**Obscenity.** Whether something is obscene can be determined by the Miller test (based on 1973's *Miller v. California*):

- a) Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest.
- b) Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law.
- c) Whether the work, taken as whole, lacks serious literary, artistic, political, or scientific value.

**Child pornography.**

**Defamation.**

**"Fighting words,"** or speech that incites immediate and imminent lawless action.

*“What about protecting children from inappropriate materials, whether or not they’re legally obscene?”*

The primary responsibility for rearing children rests with parents. Government institutions cannot be expected to usurp or interfere with parental obligations and responsibilities when it comes to deciding what a child may read or view.

If a child borrows something from a library that that child’s parent believes is inappropriate, the parents are encouraged to return the item and make use of the expertise of the librarian to locate materials they prefer, among the thousands of choices most public libraries make available.

*“Don’t librarians censor everything they choose not to buy for the library?”*

No library can make everything available, and selection decisions must be made. **Selection is an inclusive process**, where the library affirmatively seeks out materials that will serve its mission of providing a broad diversity of points of view and subject matter.

By contrast, **censorship is an exclusive process**, by which individuals or institutions seek to deny access to or otherwise suppress ideas and information because they find those ideas offensive and do not want others to have access to them.

*“If materials are on a library shelf, doesn’t that mean the library approves of them?”*

The presence of any particular material in a library collection **does not** imply endorsement of the ideas expressed in those materials.

The library is simply doing its job as a neutral provider of information from all points of view; if the library endorses anything, it is the patron’s right to have access to a broad selection of materials.

# Time for a Small Group Chat!



You and your breakout group will be assigned an ethical dilemma to talk about.



Discuss and be prepared to report back to the main group what you decided to do.





# Questions?

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**Tracy Carr**

**Library Services Director**

Mississippi Library Commission

601.432.4450

*or*

[tcarr@mlc.lib.ms.us](mailto:tcarr@mlc.lib.ms.us)