

The Legality of E-mailing Library Patrons

This information was requested by Gretchen Beatty, Director, Nederland Community Library, who posted the following inquiry to Libnet on April 26, 2005:

“One of my library board members wants to email library patrons with information about our upcoming library building project/fund raiser and about de-Brucing our library district. Is this legal? We do ask for patron's email addresses on our library card application and I have used email to notify patrons about overdue materials.

Does anyone have experience using email for this sort of library information?”

Comments	Respondent
<p>You might want to take a look at this information from ALA. The ALA IFC's privacy subcommittee just wrote a Q&A on using patron information for purposes outside of regular library operations and (in summary) thinks it's a bad idea. The entire Q&A is reproduced below (after my rambling personal thoughts).</p> <p>As for legality, my (non-binding) opinion is that it's a stretch to consider fundraising and/or deBrucing as "reasonable operation of the library," which is one of the four reasons you can disclose personal information under our state's library confidentiality law (CRS 24-90-119). An example of "reasonable library operations" requiring the release of information from library records would be using a third-party collection agency to pursue delinquent materials & fines. If a patron were to be annoyed by receiving a fundraising e-mail and learned that you used their patron record to get an e-mail address, it's conceivable that the library could be held liable for violating the law, which is a Class 2 petty offense and carries a fine of up to \$300.</p> <p>You say that the request is coming from a board member. Since the board member is part of the library's administration, it's possible to portray this act as within "reasonable operations", though any campaigning on ballot measures (such as DeBrucing) could be very problematic. If this request from a board member is on behalf of a Friends group (or if the board member is the de facto Friends group and would be operating in that capacity), you're back to the third party question and are definitely courting trouble.</p> <p>Legality aside, I'd say it's an invasion of privacy to send mass e-mails without getting their explicit permission to receive such e-</p>	<p>Martin Garnar, Reference Librarian Dayton Memorial Library, Regis University</p>

mails at a prior date. If you ask patrons if they'd like to receive library related e-mails (such as for events and fundraisers) when they sign up for a library card (i.e., they "opt in") AND have a mechanism for asking existing patrons the same question, then you should be able to proceed with future e-mails with a clear conscience.

That's my humble opinion - hope it helps. Please consult with your library's legal counsel before proceeding.

The opinions expressed above are mine alone and are not those of ALA, CAL, my employer, or anyone else with a lick of sense in their brains.

From ALA's Q&A on Privacy:

Can circulation or registration information be used for other library purposes, such as to generate mailing lists for fund-raising by the library or its Friends group?

The Fair Information Practice Principles of "Notice and Openness" and "Choice and Consent" should be reflected in library privacy policies. See "How to Draft a Library Privacy Policy." Some states impose restrictions on the use of personally identifiable information (PII) for any purposes other than circulation or administration. In other states it is illegal to provide library user PII to any third party except under court order. (See "State Privacy Laws Regarding Library Records"). In all states, regardless of the status of the law, library policies regarding the collection, use and dissemination of PII should be carefully formulated and administered to ensure that they do not conflict with the ALA Code of Ethics that states "we protect each user's right to privacy and confidentiality." Libraries choosing to use PII for any library-related purpose other than for which the PII was gathered should consider the following standard "opt-in" practices:

*Notice should be provided to all users of any library use of PII.

*Any use of PII beyond circulation or administration should be authorized only on an opt-in basis. At the time of registration, users should be asked to opt-in to additional and specifically enumerated uses of their PII (e.g., for fund-raising appeals). The PII of those who decline to 'opt-in' should not be made available for any additional uses.

*Any time a library decides to extend use of PII in ways not

<p>already authorized, it must seek user opt-in. Libraries should presume that all non-responders wish to opt out of the new use.</p>	
<p>I have a fundraiser that wants to send library patrons pleas for \$\$\$ I was unsure if it was kosher.</p> <p>Last week Nicolle Steffen sent out a statement by ALA on privacy last week and following is part of it.</p> <p>Can circulation or registration information be used for other library purposes, such as to generate mailing lists for fund-raising by the library or its Friends group?</p> <p>The Fair Information Practice Principles of "Notice and Openness" and "Choice and Consent" should be reflected in library privacy policies. See "How to Draft a Library Privacy Policy." Some states impose restrictions on the use of personally identifiable information (PII) for any purposes other than circulation or administration. In other states it is illegal to provide library user PII to any third party except under court order. (See "State Privacy Laws Regarding Library Records"). In all states, regardless of the status of the law, library policies regarding the collection, use and dissemination of PII should be carefully formulated and administered to ensure that they do not conflict with the ALA Code of Ethics that states "we protect each user's right to privacy and confidentiality." Libraries choosing to use PII for any library-related purpose other than for which the PII was gathered should consider the following standard "opt-in" practices:</p> <p>Notice should be provided to all users of any library use of PII. Any use of PII beyond circulation or administration should be authorized only on an opt-in basis. At the time of registration, users should be asked to opt-in to additional and specifically enumerated uses of their PII (e.g., for fund-raising appeals). The PII of those who decline to 'opt-in' should not made available for any additional uses.</p> <p>Any time a library decides to extend use of PII in ways not already authorized, it must seek user opt-in. Libraries should presume that all non-responders wish to opt out of the new use.</p> <p>So I guess if you've given them notice when they signed up it's OK. Unfortunately for us, we have never done that.</p>	<p>Joanie Howland, Cortez Public Library</p>
<p>Be VERY careful about this.... The last thing you want is a cry of "campaign law violation" to deal with.</p> <ol style="list-style-type: none"> 1. Get a copy of the current Campaign Reform Act. 2. Make sure you and your board read it! 	<p>James LaRue, Director, Douglas County Public Libraries</p>

<p>3. So far, people have settled on just three things that are ok:</p> <p>a. a balanced, pro/con page describing what the vote is for, and arguments for and against.</p> <p>b. a summary of any VOTE the board takes to support putting the ballot on the measure.</p> <p>c. The TABOR notice itself.</p> <p>Even then, using email might be seen -- if you don't routinely use your email for communications with your patrons -- as using patron lists for politics. A no-no.</p>	
<p>Good reply, Martin. In the spirit of privacy of user records, which are kept for library operations, it's probably wisest not to use them as a source for fundraising or election lists. Not every library card holder will support giving the library more money -- either voluntarily or by taxation -- and using their library card info is just asking for PR trouble. I think it might weaken the reputation of commitment to privacy that libraries enjoy.</p> <p>I'd welcome a counter-argument for fundraising via this information. But electioneering seems beyond the pale.</p>	<p>Jeffrey Donlan, Salida Regional Library</p>
<p>If you didn't ask patrons when they signed up for cards whether they'd like to receive emails for the purpose of communicating information about library programs and issues, you probably couldn't be sued by even the most contentious patron for asking them that question in an email, especially if you made it clear that you would never send them another if they didn't respond positively to that one. Anyone disagree with that?</p>	<p>Anonymous</p>
<p>If you're just asking if they want to receive e-mails from the library (and I mean the library, not any associated group), I agree it's not grounds for a lawsuit. If the content of subsequent e-mails is truly limited to library programs ("This Week's Storytime" or "The Bookmobile is Coming to your Street") or normal library operations (i.e., you have an overdue book, your hold is ready, etc.), then it's a replacement of informational notices previously printed and mailed. However, if you get into murkier territory ("Love your library? Then vote YES on 23A!"), then you get into the other issues previously raised by Messrs. LaRue & Donlan.</p> <p>If you want to ask patrons if they'd like to receive e-mails from the Library Friends group (or some other third party) about library fundraising and other issues, then we're back to the confidentiality law. While the law allows disclosure of records "upon written consent of the user," I'm just thinking about the paperwork</p>	<p>Martin Garnar</p>

<p>nightmare this could create. By "written" do they mean actual paper, or would an e-mail suffice? Once you have permission, do you have to retain the document granting permission until the end of time? (or, if it's on acid-laden paper, until it fails the doublefold test?)</p> <p>Leaving those issues aside, I still opine that it's bad PR for the library to use patron e-mails in this way - spam is just such an annoyance that it has damaged e-mail as a useful communication device. There are other methods for getting people to sign up for information, such as:</p> <ul style="list-style-type: none"> * a bookmark campaign that gives instructions on how to sign up for the library (or library friends) e-mail list, with explicit descriptions of what they'll receive * a lobby display from your friends group that includes information on how to sign up for E-Updates on the library * messages on printed overdue notices that tell patrons how they can sign up for electronic notification * hiring a skywriter to broadcast your message in puffy white letters <p>OK, I should leave the PR things to the experts and stick to answering reference questions.</p> <p>Disclaimer #2 (collect all three & win fabulous prizes!):</p> <p>Why anyone else would want to claim these opinions is beyond me. Clearly, this e-mail could not be the product of an attorney, a reputable university, a professional association, nor anyone other than a librarian who favors earth tones, can't stop talking about the Shins, and smells suspiciously of too many cafe-au-laits.</p>	
<p>One way to do this simply and inexpensively (free except for your time) is to go to Yahoogroups.com and set up the XYZPublicLibrary group. Then publicize how to join it by email or web via bookmarks or signs or whatever.</p> <p>Although most yahoogroups are for discussion, like a listserv or similar program, it is also possible for them to be "one way only," that is just used for things that YOU send out. That makes it spam free (if you set it up right, which you will) and strictly opt-in.</p> <p>Some groups have both an announcement list/group on yahoo, and also one for discussion. That is what we do with our local Corvette club and our local SCCA chapter.</p>	<p>Dan Lester, Data Wrangler</p>