

Questions and Answers: Protecting Customer Privacy in Bookstores

Under what circumstances might I have to release information about a customer's purchases?

Only the police or persons acting pursuant to a court order can force you to turn over personal information about your customers. Such a request could come in the course of a criminal investigation or a civil proceeding like a divorce or a bankruptcy. In March 1998, Kramerbooks and afterwords, a Washington, D.C., bookstore, received a subpoena from Independent Counsel Kenneth Starr seeking information about purchases by Monica Lewinsky, a former White House intern. The subpoena sought all records relating to Lewinsky's purchases over a 30-month period. It is also possible that that you will be handed a search warrant. This happened in 2000 to Joyce Meskis, the owner of the Tattered Cover Book Store in Denver.

Sometimes the police act with the specific purpose of suppressing a controversial work. In 1997, in response to pressure from a local censorship group, Oklahoma City police entered a video store and demanded to see a list of the people who had rented a video of the film, *The Tin Drum*. The censorship group claimed the film contained child pornography.

What should I do when the police arrive?

Don't panic. First, ask the police if they have a subpoena for the information they are seeking. In the Oklahoma City case, the manager of the video store was intimidated into releasing rental records despite the fact that the police did not have a subpoena and their request therefore violated a federal law protecting the privacy of video store records. If there is no subpoena, tell them you will only turn over information in compliance with a court order. If they do have a subpoena, it will contain a "return date," a deadline for turning over the information. This should give you time to contact a lawyer to determine whether you have to obey the subpoena.

Not all subpoenas must be obeyed. They must meet certain requirements to be considered in "good form." Even if the subpoena has been properly drawn, there is a possibility that it violates your First Amendment rights as well as those of your customer. In the Kramerbooks case, the bookstore and ABFFE argued that the Starr

subpoena should be quashed, and the chief judge of the U.S. District Court for the District of Columbia ruled that there was indeed a danger that the subpoena could have “a chilling effect” on First Amendment rights. The judge ruled that the prosecutor must show both “a compelling interest....or a compelling need in the information sought” and a “sufficient connection between the information sought and the grand jury investigation.”

What do I do if the police have a search warrant?

If the police hand you a search warrant, you may have to turn over the information they are seeking immediately. Unlike a subpoena, a search warrant does not normally allow an appeal to the courts. However, if you can persuade the police to delay the execution of the warrant, you may be able to get it quashed. In the Tattered Cover case, Joyce Meskis and her attorney were able to persuade the police to postpone their search and then obtained a temporary restraining order barring the search until a judge could hear objections to the warrant.

If you are served with a warrant, ask for permission to consult your attorney, who can join you in trying to delay the search. The police are not required to permit this. If they say “no,” tell them why you object to the search: that the courts have ruled that customer records are protected by the First Amendment and that executing the warrant without a hearing could violate the First Amendment. Promise that you will preserve the records they are seeking while the courts are considering the case.

If the police insist on searching immediately, stand aside! Obstructing the execution of a search warrant is a crime. In fact, you should assist the police in finding the information they are seeking if by doing so you can help protect the confidentiality of customers whose records may be examined inadvertently.

Once the police have left, contact your attorney and ABFE to see if there are other legal steps that can be taken.

Why is a bookstore customer's privacy important?

Our society places the highest value on the ability to speak freely on any subject. But freedom of speech depends on the freedom to explore ideas privately. Customers in a bookstore must feel free to purchase books about health, religion, politics, the law or any other subject without fear that their choices may be made public. If they are afraid that people will be critical of them because of the books they read or that there may be any sort of punishment for reading them, they will not feel free to buy the books they need to form and express opinions. Therefore, protecting the customer's privacy is one of a bookseller's primary responsibilities.

Why should I adopt a customer privacy statement?

The American Booksellers for Free Expression, which was created to defend the First Amendment rights of booksellers and their customers, has recommended that bookstores consider adopting the following statement:

“The owners and staff of this bookstore consider it our responsibility to you, and to the First Amendment, to respect the privacy of your choice of books, magazines and other material. We will not sell information identifying your purchases to a third party without your permission or otherwise disclose it to anyone, including the government, on our own initiative.”

By posting this statement or something similar, you make it clear that you place a great deal of importance on protecting the customer’s privacy. The statement underlines the seriousness of the issue by identifying its implications for free speech. Endorsing a privacy statement is also one more way to demonstrate to your customers that you are interested in meeting their needs and not just in profiting from their purchases. At a time of increasing public concern over privacy, companies that guard the confidentiality of their customers’ information may well have an advantage over competitors who don’t.

Can I choose NOT to keep customer information?

Bookstores are legally required to collect and keep some types of customer information, including credit card records, register receipts and tapes, sales information and resale tax information. Some leases provide that a store’s records be made available for inspection on demand. For our own protection, we may save mailing records, security camera tapes, special orders and house accounts information. If we need to send an account to collection, we often have to provide invoices listing books as documentation. While we are required to keep this information, we still have a responsibility to ensure that it is used only for these "required legal uses."

What are my options for handling customer information?

Once booksellers fulfill their legal obligations, they must make some decisions about whether they want to use customer information for other purposes and, if so, how they will protect its confidentiality. Bookstore staffs have always used anecdotal information about our patrons’ reading habits in order to effectively hand-sell books. We also see our customers' book selections when we ring them up at the register. But computer inventory systems and “frequent buyers” programs enable bookstores to collect and store much more information about customers’ book purchases than ever before.

There are different approaches to customer privacy. Some bookstores may wish to implement a "relationship marketing" program to let customers know about new books. Relationship or data-based marketing is a powerful tool that uses information about people's book choices to market to them, one on one. Simply stated, if a customer's records indicate that Sue Grafton is a favorite author, then a bookstore will inform the customer when the new Grafton mystery arrives.

On the other hand, bookstores may want to consider establishing a "no commercial use" policy for their customers. Customers may resent "their" bookstore wanting to use them or make money by subjecting them to unwanted junk mail, marketing schemes, political pitches, or charity solicitation. A store may want to market itself by creating a policy that safeguards their customers from all marketing efforts, either in store or by outside firms. A bookstore can say loud and clear that a customer's privacy in reading choices is a very important part of the store's relationship with its customers and will not be violated for any commercial purposes.

There are also ways to combine these approaches. A bookseller who employs a relationship marketing program, for example, could permit a customer to belong to the frequent buyers club without requiring him or her to receive store mailings. The important point is that all bookstores allow their customers to control the use of information about them.

What should I tell my customers?

A bookstore should always fully inform customers about the information that is being collected about them and get their written permission before sending them newsletters or engaging in relationship marketing. Customers should also have the opportunity to bar the use of information about them by anyone outside the store, whether it be a charity that wants to borrow your mailing list or a company that has purchased it.

The usual place to get this permission is when customers sign-up for frequent buyer programs or mailing lists. Take the time to fully inform customers of their options in deciding how their information will be used and ensure that there is a place on the sign-up form where the customer specifically authorizes the use of their information by checking or initialing a description of their option.

What should I say if someone asks what books a particular customer has purchased?

You can say, "This store has a policy that it does not volunteer information about its customer's purchases. It is a privacy matter." You can also give the person a copy of your privacy policy.

What should I tell my staff?

Staff training is the key to good customer service, and part of it should underscore the importance of customer privacy. It should be made clear that protecting privacy applies not only to outsiders but to staff members who do not have a specific, business-related reason for knowing what a customer purchases. In other words, it is not okay to surf the store's computer system to check out who is reading what. And it is certainly unacceptable to talk outside of the store about such privileged information. As part of the training, a store may want to ask its employees to sign a statement promising to respect the confidentiality of customer information.

Your training might stress the following principles:

DON'T HIT THE PANIC BUTTON. Police and other law enforcement officers can be very intimidating and their requests for information can prompt an untrained staff member to improperly release information. The staff should be trained to never respond voluntarily to police demands and to summon you or your manager immediately.

BUTTON YOUR LIP! It should be made exceptionally clear to the staff that even casual conversation about a customer among themselves might be overheard and could be considered an infringement upon privacy. Many stores have famous people as customers, and it is not unusual for customers or reporters to ask about their reading habits. They should be told to ask the celebrity directly. For the bookstore to tell would violate its privacy policy.

CONTROL CLUTTER. Care should be taken to manage personal information on the sales floor or wherever else outsiders may be. Special order slips left lying about and note paper by the telephone can accidentally disclose a customer's purchases.

GUARD THE COMPUTER. The staff should be aware that customers can look over their shoulder at the computer screen as they search for information, potentially seeing information about other customer purchases. To the greatest extent possible, personal information in bookstore computers should be protected by password.

Who will help me decide whether to comply with a subpoena?

The obvious response to receiving a subpoena is to call a lawyer to help determine its possible First Amendment implications. But not all lawyers are experienced in First Amendment law. Therefore, while you should certainly notify

your personal attorney that you have received a subpoena, the next call you make should be to ABFE, which is in contact with the country's top First Amendment lawyers. ABFE may also provide assistance if you decide to challenge the subpoena. In the case of the Starr subpoena, it helped pay Kramerbooks' legal costs and also filed an amicus brief supporting the bookstore's First Amendment arguments. The brief was joined by the American Booksellers Association, the Association of American Publishers, the American Library Association, the Freedom to Read Foundation, the National Association of College Stores, the Publishers Marketing Association, the Periodical and Book Association of America, the International Periodical Distributors Association, the Recording Industry Association of America and the National Association of Recording Merchandisers.

Who do I call if I have other questions?

This discussion of customer privacy has dealt with only some of the most common problems that booksellers face. Other issues are unaddressed, including what to say to parents who want to know what their children are reading. If this or any other problem arises in your store, please contact ABFE for more specific advice. Chris Finan, ABFE director, can be reached at (914) 406-7576, or chris@bookweb.org. ABFE's address is 333 Westchester Avenue, Suite S202, White Plains, NY 10604.