

**Questions and Answers: Protecting Customer Privacy in Bookstores**

**For store owners and managers**

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

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. In 2000, Joyce Meskis, the owner of the Tattered Cover Book Store in Denver, was handed a search warrant (seeking records of who purchased a book sent to a house with multiple occupants). Several years ago a California bookstore was asked by the police to provide a list of customers who had purchased a certain title. (A copy of the book had been found at the site of a nearby arson fire.)

Only persons acting pursuant to a court order can force you to turn over personal information about your customers. This may be the police serving you with a search warrant or subpoena, for example. (see below for how to handle those situations) In general, requests could come in the course of a criminal investigation or a civil proceeding like a divorce or a bankruptcy. You are not required to hand things over just because someone asks you too though, even if the someone is a police officer or a lawyer.

**What do I do if the police have a subpoena?**

When the police arrive, ask them if they have a subpoena for the information they are seeking. 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.

With a subpoena or warrant, you should also see the document to review the scope of the request. You don’t want to turn over information beyond what the order requires. Also, the breadth of the warrant/subpoena may be grounds for asking a court to narrow it even if the court won’t quash it.

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. Notify your attorney that you have received a subpoena and call the ABFE hotline (914) 406-7562, which is in contact with the country’s top First Amendment lawyers.

In the Kramerbooks case, the bookstore and ABFE ( then the American Booksellers Foundation for Free Expression) 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 are served with a warrant, ask for permission to consult an attorney, who can join you in trying to delay or narrow the scope of 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. In the Tattered Cover case, Joyce Meskis and her attorney were able to persuade the police to postpone their search, and Tattered Cover then obtained a temporary restraining order barring the search until a judge could hear objections to the warrant.

If the police insist on searching immediately, then you will have to let them. Obstructing the execution of a search warrant is a crime, and you should consider your physical and mental safety. In fact, in this situation 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 an attorney and ABFE to see if there are other legal steps that can be taken.

**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 attorney that you have received a subpoena, the next call you make should be to the ABFE hotline, 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, ABFE (then the American Booksellers Foundation for Free Expression), as part of the Media Coalition, helped pay Kramerbooks’ legal costs and also filed an amicus brief supporting the bookstore’s First Amendment arguments. The brief was joined by members of the Media Coalition at the time: 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.

**Why is a bookstore customer's privacy important?**

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.

**ABFE recommends the following privacy statement:**

We believe that it is our responsibility to respect the privacy of your choice of books, magazines and other material available in our store. 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 importance on protecting your customers’ privacy. Endorsing a privacy statement is also one more way to demonstrate to your customers that you are interested in meeting their needs.

**Can I choose NOT to keep customer information?**

Bookstores are legally required to collect and keep some types of customer information, like register receipts and tapes, sales information, and resale tax information. Some leases provide that a store’s sales records be shared with the landlord. For your own protection, you may choose to save security footage, order pick up documentation, and other information. While you are required to keep this information, you don’t have to provide it to others or use it for purposes other than "required legal uses."

**What are my options for handling customer information?**

Once you fulfill your legal obligations, you must make some decisions about whether you want to use customer information for other purposes and, if so, how you will protect customer confidentiality. Booksellers often use anecdotal information about customers’ reading choices in order to hand-sell books. You also see your customers' book selections when you ring them up at the register. But computer inventory systems and “frequent buyers” or loyalty programs may mean your store is collecting and storing all of your customers’ book purchase information. So it is important to consider your business practices as you set your privacy policy.

There are different approaches to customer privacy. Some bookstores may wish to implement an opt-in marketing program that uses information about customers’ prior book purchases to help make decisions about what new titles to recommend to them.

On the other hand, bookstores may want to consider establishing a "no commercial use" policy for their customers by implementing a policy not to use data related to a customer’s book purchases to inform any marketing efforts. A bookstore may convey 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. A bookstore might also simply state that they do not share a customer’s book purchase information or email address with outside companies.

**What should I tell my customers?**

No matter how the store handles these data collection and marketing decisions, the important point is that bookstores make clear what their store policy is and allow customers to control the use of information about them. 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/e-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, emails, 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.

Stores should also be aware of state-specific privacy laws as they pertain to customer information. These laws vary widely from state to state.

**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 provide information about its customer's purchases. We value the privacy of all of our customers” or “We honor our customers' privacy and don’t share that information.” You can also give the person a copy of your privacy policy.

**What should I tell my staff?**

It’s important to discuss your privacy policy with staff and to offer them training on how to respond to inquiries. Be sure and share your store’s policy with them in writing and answer any questions they may have. It’s important to remind staff that protecting privacy includes booksellers refraining from looking up, for non-business-related purposes, what a customer bought, and refraining from sharing customer purchase information with the public or press. 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. It is also crucial to note that if you have a privacy policy but disregard it, you could be sued for damages.

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 staff to improperly release information out of fear for their own safety. The staff should be trained to never respond voluntarily to police demands and to summon you or your manager immediately.

**Respect privacy.** 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.

**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 or personal information.

**Use best practices at 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 extent possible, personal information in bookstore computers should be protected by password and/or hidden from view.

**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 questions or problems arise in your store, please contact ABFE for more specific advice. You can reach ABFE Director Dave Grogan at (914) 406-7562 or abfe@bookweb.org.