

3-1-1987

EVIDENCE Library Records: Provide for Confidentiality and Non-Disclosure

J. McClellan

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

J. McClellan, *EVIDENCE Library Records: Provide for Confidentiality and Non-Disclosure*, 3 GA. ST. U. L. REV. (1987).
Available at: <https://readingroom.law.gsu.edu/gsulr/vol3/iss2/24>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

EVIDENCE

Library Records: Provide for Confidentiality and Non-Disclosure

CODE SECTION:	O.C.G.A. § 24-9-46 (new)
BILL NUMBER:	HB 297
ACT NUMBER:	605
SUMMARY:	The Act provides for the confidential nature of certain library circulation records and prohibits their disclosure except in certain limited cases. The records can be released only to library personnel with written consent of the user of the materials or upon a court order or subpoena.
EFFECTIVE DATE:	July 1, 1987

History

Librarians have experienced a growing problem in recent years from individuals and groups seeking information concerning the library borrowing records of their patrons.¹ Requests for the data have come from diverse groups, such as law enforcement agents, the Moral Majority, school principals, and religious organizations. Librarians feel that such requests often conflict with the principles of free speech and intellectual freedom.²

Georgia libraries have not been immune to this syndrome. There have been reports of increasing numbers of individuals contacting college and public libraries in Georgia seeking the names and addresses of persons who check out certain books or who request materials on certain subjects.³ This practice has created concern among both librarians and other citizens who feel that the privilege to select reading materials should be kept private.⁴

Thirty states, in response to the problem, have adopted laws protecting library borrower records from scrutiny by the public.⁵ The groups supporting such legislation have felt that, in many instances, the requests for

1. Silas, *An Open Book: Library Privacy Guarded*, 72 A.B.A. J., March 1986, at 21.

2. *Id.* Confidentiality of library records is part of the agenda of many library groups.

3. Telephone interview with Representative Eleanor Richardson, House District No. 52 (May 13, 1987) [hereinafter Richardson Interview].

4. *Id.*

5. Silas, *supra* note 1.

the information have not been made for legitimate purposes.⁶

North Carolina,⁷ in 1986, and New York,⁸ four years earlier in 1982, are among the states that have enacted statutes to establish confidentiality of these records. Both statutes prohibit libraries from disclosing records that identify the materials or information that a person has requested from the library.⁹ Exceptions are made when necessary for the library's internal operations, when the user gives written consent or when a subpoena or court order requires the release of such records.¹⁰

Prior to adoption of the Act, the library records of those libraries funded by state or local government in Georgia enjoyed no special protection from the Georgia Open Records Act, which requires all government records to be public unless otherwise provided for by order of court or by law.¹¹

HB 297

The Act, which passed the General Assembly as introduced and without amendment or opposition, addresses the lack of confidentiality of library circulation records in Georgia by adding a new section, O.C.G.A. § 24-9-2, to Georgia's law on privileges.¹² Under the Act, circulation records and other library records that identify the users of specific materials no longer will be public records. There are three exceptions under the new law which allow disclosure: (1) to library staff members in the ordinary course of business; (2) if the user of the materials or, in the case of a minor or ward, the parent or guardian of the user, gives written consent for such disclosure, and (3) in response to a subpoena or appropriate court order.¹³

The confidential nature of the record will be maintained, even upon release, for any purpose except for that which the authorized disclosure was made. No liability is incurred by any person who makes an authorized release.¹⁴

The Act is similar to those that have addressed this issue in other states.¹⁵ The provisions also are similar to those previously made for

6. *Id.* Moral Majority members, for example, have sought such information for what some librarians feel are censorship reasons. Other requests have come from school principals checking on the academic work of their students, law enforcement agencies seeking to link crimes to certain persons and religious groups wanting information for various reasons.

7. N.C. GEN. STAT. § 125-19 (1985).

8. N.Y. CIV. PRAC. L. & R. LAW § 4509 (McKinney 1987).

9. *See, e.g.*, N.C. GEN. STAT. § 125-19(a) (1986).

10. *See, e.g.*, N.C. GEN. STAT. § 125-19(b) (1986).

11. O.C.G.A. § 50-18-70 (1986).

12. Richardson Interview, *supra* note 3.

13. O.C.G.A. § 24-9-46(a) (Supp. 1987).

14. O.C.G.A. § 24-9-46(b) (Supp. 1987).

15. *See, e.g.*, N.Y. CIV. PRAC. L. & R. LAW § 4509 (McKinney 1987); N.C. GEN. STAT. §

1987]

LEGISLATIVE REVIEW

445

records of veterinarians¹⁶ and physicians¹⁷ under the privileges section of the Georgia law.

J. McClellan

125-19 (1986).

16. 1986 Ga. Laws 1090, § 1 (codified at O.C.G.A. § 24-9-29 (Supp. 1987)). This section protects from disclosure records concerning the veterinarian's care of animals.

17. 1986 Ga. Laws 1277, § 3 (codified at O.C.G.A. § 24-9-40 (Supp. 1987)). This law protects a patient's medical records from disclosure.