

**ALA Intellectual Freedom Committee
Report to Council
2020 ALA Virtual Event
Tuesday, June 23, 2020**

The ALA Intellectual Freedom Committee (IFC) is pleased to present this update of its activities.

INFORMATION

Standing Committee Recommendation for Forward Together Proposal

Members of the Committee on Professional Ethics, Intellectual Freedom Committee, and Intellectual Freedom Round Table have expressed concern about the lack of a standing committee to address issues and topics of importance involving professional ethics, intellectual freedom, and privacy in the Forward Together recommendations. On May 28, COPE Chair Andrew Harant and IFC Chair Julia Warga sent a letter to ALA leadership that respectfully proposes the addition of a seventh standing committee to the Forward Together recommendations: Professional Values. The Professional Values Standing Committee would be the arm of the new ALA leadership structure that would focus on intellectual freedom, professional ethics, and privacy. It would combine the work of the Intellectual Freedom Committee, Committee on Professional Ethics, and IFC Privacy Subcommittee, and it would align with ALA's Office for Intellectual Freedom.

The letter, which outlines these concerns and the need for a Professional Values Standing Committee, is included in this report as an information item. It was approved by both COPE and IFC.

Guidelines for Reopening Libraries During the COVID 19 Pandemic

Can public libraries require staff or patrons to wear masks if they wish to enter the building? Can public libraries require temperature or health status checks? As public libraries make plans to reopen, they must consider how best to balance the safety of staff and patrons with the mission of providing the community with access to the resources traditionally offered by the library. The IFC has approved a set of guidelines that offer next steps, guidance, and answers to frequently asked questions. "Guidelines for Reopening Libraries During the COVID 19 Pandemic" is included in this report as an information item.

Merritt Fund

The LeRoy C. Merritt Humanitarian Fund was established in 1970 as a special trust in memory of Dr. LeRoy C. Merritt. It is devoted to the support, maintenance, medical care, and welfare of librarians who, in the trustees' opinion, are denied employment rights or discriminated against on the basis of gender, sexual orientation, race, color, creed, religion, age, disability, or place of national origin, or denied employment rights because of defense of intellectual freedom.

2020 marks the 50th anniversary of the founding of the Merritt Fund. Due to ALA's decision to make Annual a virtual event, the Merritt Fund trustees and the IFRT Merritt Fund support committee have decided to celebrate this milestone at ALA's Indianapolis Midwinter event.

IFC Privacy Subcommittee

The IFC Privacy Subcommittee continues to raise concerns, answer questions, and create resources addressing privacy in the pandemic, as well as continues its efforts in developing privacy guidelines for vendors.

On May 8, the Privacy Subcommittee hosted the webinar "Protecting Privacy in a Pandemic: A Town Hall for Library and Information Workers." Privacy Subcommittee Chair Erin Berman, member Bill Marden, and Michelle Gibeault (Chair of Instruction and Librarian for Humanities at Tulane University and co-convenor of the Digital Library Federation's Privacy and Ethics in Technology (PET) working group) highlighted best practices regarding video platforms, data collection, and vendor relations. The webinar welcomed more than 800 registrants and 500 attendees, with a lively Q&A. The webinar recording is available on the [OIF YouTube channel](#). Resources from the webinar as well as additional tools were compiled in a [resource guide](#) published on ChoosePrivacyEveryDay.org.

The Choose Privacy Every Day blog has been a resource for library workers and educators, and has published posts on [calling](#) and [medical screening](#) during a pandemic, [virtual programming](#), [contact tracing](#) and [Zoom privacy](#). The Privacy Subcommittee is also recruiting its first team of bloggers to offer library workers current perspectives and advice about privacy issues.

The subcommittee continues to work on several resources and projects. The Intellectual Freedom Committee and its Privacy Subcommittee have reached out to vendors to join the Working Group to Align Vendor Privacy Policies with ALA Policies and Ethics, which was approved in a resolution at the 2020 ALA Midwinter Meeting. Subcommittee members are also crafting checklists about vendors and assistive technology that will complement the guidelines published on the ALA website. The subcommittee anticipates to update ALA on its findings and progress during the 2021 Midwinter Meeting.

The subcommittee also created "Guidelines on Contact Tracing, Health Checks, and Library Users' Privacy" to assist libraries in maintaining user privacy as they face new challenges in upholding library workers' commitment to not monitor, track, or profile an individual's library use

beyond libraries' operational needs. The IFC voted to approve the guidelines, and they are included in this report as an information item.

CENSORSHIP AND RECENT CHALLENGES

The Office for Intellectual Freedom monitors censorship, state and federal legislation, and privacy concerns. OIF also provides confidential support during challenges to library materials and services. Censorship doesn't stop during a pandemic, as illustrated by the Matanuska-Susitna Borough School District (AK) School Board's vote to remove five titles from the English curriculum, which was later rescinded. From January 1 - May 29, 2020, OIF has tracked 61 unique cases to 105 books, including to [Lily and Dunkin \(FL\)](#) and [10,000 Dresses \(WI\)](#).

INITIATIVES

Top 10 Most Challenged Books and Banned Books Week

On April 20 during National Library Week, the Office for Intellectual Freedom published the Top 10 Most Challenged Books of 2019. Listed below, the list indicates that 8 of the 10 titles were challenged because of LGBTQIA+ content:

1. *George* by Alex Gino

Reasons: challenged, banned, restricted, and hidden to avoid controversy; for LGBTQIA+ content and a transgender character; because schools and libraries should not "put books in a child's hand that require discussion"; for sexual references; and for conflicting with a religious viewpoint and "traditional family structure"

2. *Beyond Magenta: Transgender Teens Speak Out* by Susan Kuklin

Reasons: challenged for LGBTQIA+ content, for "its effect on any young people who would read it," and for concerns that it was sexually explicit and biased

3. *A Day in the Life of Marlon Bundo* by Jill Twiss, illustrated by EG Keller

Reasons: Challenged and vandalized for LGBTQIA+ content and political viewpoints, for concerns that it is "designed to pollute the morals of its readers," and for not including a content warning

4. *Sex is a Funny Word* by Cory Silverberg, illustrated by Fiona Smyth

Reasons: Challenged, banned, and relocated for LGBTQIA+ content; for discussing gender identity and sex education; and for concerns that the title and illustrations were "inappropriate"

5. *Prince & Knight* by Daniel Haack, illustrated by Stevie Lewis

Reasons: Challenged and restricted for featuring a gay marriage and LGBTQIA+ content; for being "a deliberate attempt to indoctrinate young children" with the potential to cause confusion, curiosity, and gender dysphoria; and for conflicting with a religious viewpoint

6. *I Am Jazz* by Jessica Herthel and Jazz Jennings, illustrated by Shelagh McNicholas

Reasons: Challenged and relocated for LGBTQIA+ content, for a transgender character, and for confronting a topic that is “sensitive, controversial, and politically charged”

7. *The Handmaid’s Tale* by Margaret Atwood

Reasons: Banned and challenged for profanity and for “vulgarity and sexual overtones”

8. *Drama written and illustrated by Raina Telgemeier*

Reasons: Challenged for LGBTQIA+ content and for concerns that it goes against “family values/morals”

9. *Harry Potter series* by J. K. Rowling

Reasons: Banned and forbidden from discussion for referring to magic and witchcraft, for containing actual curses and spells, and for characters that use “nefarious means” to attain goals

10. *And Tango Makes Three* by Peter Parnell and Justin Richardson illustrated by Henry Cole

Reason: Challenged and relocated for LGBTQIA+ content

OIF coordinated with the Banned Books Week Coalition to release the theme of Banned Books Week 2020: “Censorship is a Dead End. Find Your Freedom to Read.” The IFC provided helpful feedback on designs and taglines during the production of the theme. Posters, bookmarks, and bracelets are available on the ALA Store. T-shirts are also available on the ALA Gift Shop.

IFC RESOLUTION, GUIDELINES, AND WORKING GROUPS

“Resolution Condemning Police Violence Against BIPOC, Protesters, and Journalists”

We are deeply saddened by the deaths of George Floyd, Breonna Taylor, Tony McDade, Ahmaud Arbery, and far too many other People of Color who have been killed as a result of police brutality and systemic racism. We recognize “that institutionalized inequities based on race are embedded into our society and are reinforced through social institutions” (ALA Policy B.3.2 Combating Racism) and we condemn the systemic racism and violence that Black people, Indigenous people, and People of Color experience on a daily basis in our inequitable society. We condemn the violence that protesters and journalists across the country are facing while exercising their First Amendment rights.

“Resolution Condemning Police Violence Against BIPOC, Protesters, and Journalists,” written and voted on by the IFC, calls upon ALA members to support initiatives to end police violence against Black people, to combat the systemic racism that infects our society, and to speak out against all attempts to restrict First Amendment rights; calls upon federal, state, and local governments to uphold, preserve, and respect the constitutional rights of protestors, of journalists, and of all people who want to make their voices heard and to share their words and ideas with the rest of the world and future generations; and directs ALA staff to expeditiously publish and distribute this resolution to all ALA members through appropriate channels of communication.

“Resolution Condemning Police Violence Against BIPOC, Protesters, and Journalists” is included in this report as an action item.

Video Surveillance in Libraries Guidelines

As ALA does not have specific guidelines, interpretations, or policies addressing best practices in the use of video surveillance in libraries, an IFC working group was charged with investigating and addressing concerns about general surveillance in libraries, including the use of video to record users and their activities in the library. The working group developed guidelines for reviewing policies addressing different forms of video surveillance. The guidelines are divided into sections, such as security cameras, public records, users filming in the library, and training for library workers. The committee voted to approve “Video Surveillance in the Library Guidelines,” and the resource is included in this report as an information item.

Upcoming Webinars

The Intellectual Freedom Committee and United for Libraries have partnered to host the webinar “Vendor Negotiation That Supports Patron Privacy and Intellectual Freedom” on June 18. Moderated by IFC member Holly Eberle, the speakers are Privacy Subcommittee Chair Erin Berman, Privacy Subcommittee member Bill Marden, and Privacy Subcommittee member and United for Libraries board member Amandeep Kochar.

Continuing Working Groups

IFC continues to respond to threats to intellectual freedom, and update and revise resources to offer guidance to library workers.

The IFC Facial Recognition Working Group is currently reviewing and coding responses from a survey that was distributed to the library community about facial recognition. The working group is planning to develop a resolution and/or other resources for libraries that identify areas of concern related to facial recognition software. Another IFC working group is updating the Q&A “Access to Digital Information, Services and Networks,” last revised in 2010. The committee is also reviewing “Libraries and the Internet Toolkit.”

THANK YOU TO OUTGOING MEMBERS AND WELCOME TO NEW MEMBERS

The IFC would like to thank outgoing IFC members Helen Adams, Shenise McGhee, Cecelia Parks, Kim Patton, John Spears, and Geoff Dickinson for their diligent work and advocacy. The committee would also like to thank IFC Chair Julia Warga for her leadership, thoughtfulness and energy that has driven the committee's work, including interpretations, guidelines, program proposals, and resolutions.

The committee is looking forward to working with incoming members Glen J. Benedict, Peter Coyl, Lesliediana Jones, and Sophia Sotilleo, and incoming and returning chair Martin Garnar.

ACTION ITEMS

The Intellectual Freedom Committee moves the adoption of the following action item:

CD # 19.9 “Resolution Condemning Police Violence Against BIPOC, Protesters, and Journalists”

In closing, the Intellectual Freedom Committee thanks the division and chapter intellectual freedom committees, the Intellectual Freedom Round Table, the unit liaisons, and the OIF staff for their commitment, assistance, and hard work.

Respectfully Submitted,
ALA Intellectual Freedom Committee

Julia Warga, IFC chair
Helen Ruth Adams
Jim DelRosso
M. Teresa Doherty
Holly Melissa Eberle
Steven Greechie
Dana Hettich
Shenise L. McGhee
Cecelia L. Parks
Kimberly Anne Patton
John Spears
Geoff Dickinson, Committee Associate
Lisa Mandina, Committee Associate

Committee on Professional Ethics and Intellectual Freedom Committee's Letter Addressing Forward Together Recommendations

May 14, 2020

ALA Committee on Organization
Chair, James G. Neal

Dear Chairperson Neal and members of ALA's Committee on Organization:

We are writing to express concern about the lack of a standing committee to address issues and topics of importance involving professional ethics, intellectual freedom, and privacy in the Forward Together recommendations. As we understand it, the Forward Together proposal is now being reviewed by the Committee on Organization (COO), as the Steering Committee on Organizational Effectiveness (SCOE) has finished its work with its final report.

At the outset of this tremendous and complex task, SCOE was charged, in part, to "embrace the Association's core values." In the proposed new leadership structure for ALA, there is not a clear and discernible path to ensure that core professional library values, such as Intellectual Freedom, Professional Ethics, and Privacy, have a consistent voice and seat at the table in order to inform the association's mission and practice. Many members of the Committee on Professional Ethics, Intellectual Freedom Committee and its Privacy Subcommittee, and Intellectual Freedom Round Table have expressed concerns that such a decision suggests that professional values are no longer viewed as a core value or core function of the Association or the library profession.

We respectfully propose the addition of a seventh standing committee to the Forward Together recommendations—Professional Values. The Professional Values Standing Committee would be the arm of the new ALA leadership structure that would focus on Intellectual Freedom, Professional Ethics, and Privacy. It would combine the work of the Intellectual Freedom Committee, Committee on Professional Ethics, and IFC Privacy Subcommittee and align with ALA's Office for Intellectual Freedom.

The work these committees do is important. They monitor and respond to ongoing intellectual freedom and privacy developments in libraries, including technology, politics, legislation, and social trends. They also ensure that the association's statements concerning intellectual freedom, privacy, and ethics remain current and responsive to the needs of the profession. For example, within the past year, the Library Bill of Rights, one of our profession's most important statements of our core values, was amended to include a new article that codifies Privacy as a core right. ALA's Code of Ethics was also re-evaluated, a regular practice that ensures our values remain grounded in the experiences of libraries and library workers. The Forward Together leadership structure gives no clear direction of how this work would get done or who will be charged with the responsibility for these foundational documents, along with their various interpretations and accompanying documents, that guide the practices of library workers.

Hot-button issues for libraries that generate media attention and social media debates seem more often than not to involve intellectual freedom issues. Recent examples include anti-transgender rights groups using public library meeting rooms, controversies involving drag queen storytimes, facial recognition technology being implemented in schools, and legislation designed to impair library workers' ability to develop diverse collections and allow the censorship of library collections and programs. For ALA leadership to best be prepared to mobilize and respond to such issues effectively, there should be a standing committee to ensure expertise in intellectual freedom issues within the ALA leadership structure.

We recognize the need for change in ALA governance structure and appreciate the amount of time, energy, and thought that SCOE has put into its recommendations and that COO is currently undertaking. Aligning ALA structures and reducing the financial footprint will allow leaders to implement a vision for a reimagined association as outlined in the Code of Ethics of the American Library Association to "strive for excellence in the profession by maintaining and enhancing our own knowledge and skills, by encouraging the professional development of co-workers, and by fostering the aspirations of potential members of the profession." As we move forward together through this process, we must also endeavor to "treat co-workers and other colleagues with respect, fairness, and good faith." It is within this spirit that we make this proposal to ensure that intellectual freedom, privacy, and ethics remain a vital part of ALA and our profession.

Thank you for all of your hard work and efforts, and for considering our proposal.

Sincerely,

Andrew Harant
Chair, Committee on Professional Ethics

Julia Warga
Chair, Intellectual Freedom Committee

Cc: Wanda Brown, ALA President
Julius Jefferson, ALA President-Elect Patty Wong, incoming ALA President-Elect Tracie Hall,
ALA Executive Director
ALA Executive Board
ALA Committee on Professional Ethics ALA Intellectual Freedom Committee

Guidelines for Reopening Libraries During the COVID-19 Pandemic

by [Theresa Chmara, J.D.](#)

As public libraries make plans to phase in reopening during the Covid-19 pandemic, they must consider how best to balance the safety of staff and patrons with the mission of providing the community with access to the resources traditionally offered by the library. In drafting plans to phase in reopening and policies to govern use of the library during these unprecedented times, public libraries should take the following steps:

- Consult with legal counsel regarding both reopening plans and policies to govern staff and patron access to and use of the facility.
- Review federal, state and local laws that may impact plans and policies, including but not limited to relevant Executive Orders, State Privacy and Confidentiality laws and local municipal directives regarding access to public buildings. Check for frequent updates as policies may need to be adjusted in response to new information about Covid-19 and its spread.
- Review agency guidelines, including but not limited to local health offices, Centers for Disease Control (CDC) guidance on maintaining sanitary conditions and safe spaces, Equal Employment Opportunity Commission (EEOC) guidance on employment issues and the Occupational Safety and Health Administration (OSHA) guidance on protecting employees in workplaces. Check for frequent updates as policies may need to be adjusted in response to new information about Covid-19 and its spread.
- Consult the American Library Association Bill of Rights and Policy Guidelines for specific guidance on how to balance the interests of safety for staff and patrons with the need to maintain the privacy rights of employees and community members utilizing the library and its resources.
- Be certain that all policies are reasonable and necessary for the safety of staff and members of the community.
- Document why certain policies are deemed reasonable and necessary.
- Draft policies that can be applied objectively by staff and provide staff training on how to enforce the policies.
- Enforce policies consistently.
- To the extent that policies deny access to the facility or library resources, provide an appeal procedure for review of the denial.

Frequently Asked Questions

1. Can policies concerning patron access be based on protecting staff health and wellness?

As an employer, a public library has an obligation to protect the health and safety of its staff. OSHA provides [general guidance and recommendations](#) on how to protect workers during the Covid-19 crisis. Courts have held that patrons have a First Amendment right to access the library because the right to receive information is a corollary to the right to speak. However, the library also has the right to establish reasonable rules governing library use. Maintaining a safe environment for staff and patrons would be considered reasonable and necessary. For example, one court upheld the right of a public library to require that patrons wear shoes because the library could document through incident reports that the floors sometimes contained glass and other dangerous materials that could pose a health and safety risk. See *Neinast v. Board of Trustees*, 190 F.2d 1040 (S.D. Ohio 2002), *aff'd*, 346 F.3d 585 (6th Cir. 2003). In drafting any policy that would restrict access to patrons, the public library must consider whether it can justify the rule as reasonable and necessary for that particular library. What will be considered reasonable and necessary in one library may not be considered reasonable or necessary for another library. Public libraries should also note that content neutral and reasonable time, place and manner restrictions may be imposed for the purpose of maintaining a safe environment. Thus, for example, a public library could impose a requirement that only a limited number of patrons can access the library at any one time and that patrons can only be in the library for a set period of time to maintain safety. As always, those rules must be enforced consistently. Look to guidance from local health officials and the CDC to determine how to set reasonable time, place and manner restrictions.

2. Can public libraries require temperature or health status checks before staff or patrons enter the building?

Although temperature and other health status checks generally would be considered medical tests and thus be impermissible in an employment situation, the EEOC has [issued guidance](#) that allows such tests during the Covid-19 pandemic. As most libraries will not be considered covered entities under the Health Insurance Portability and Accountability Act (HIPAA), libraries should also consult the [AMA Privacy Principles](#) if they are required to do temperature checks or otherwise determine that such a requirement is necessary. Although the EEOC guidance does permit employers to retain temperature check and other medical information in files that are separate from employee personnel files, libraries should consider whether there is a legal requirement in their jurisdiction to retain such information or there is a need for such information to be retained before implementing a policy of retention. As a best practice, libraries should only retain documents with personally identifiable information when required by law or otherwise necessary to allow the library to manage the use of library services and resources. If libraries retain such information, it is critical that any medical information from temperature or other health status checks must be kept *confidential*. In order to comply with employment laws, public libraries should conduct any temperature and other health status checks on staff in a private manner. There is no clear guidance at this time regarding health status checks of patrons. In considering whether to require such checks, the library should consult federal, state and local laws, as well as local health official and CDC guidance on whether to institute such procedures. There may be a law in place that permits such checks. Guidance from the CDC or local health officials might encourage such practices for all public buildings. In that case, a library might be able to justify such an imposition on access as reasonable and necessary to maintain the safety of staff and patrons. Before instituting procedures to check temperatures or otherwise collect medical information, libraries should consider the use of medical personnel to conduct such procedures and should determine whether any state or local law requires use of medical personnel for such procedures.

3. Can public libraries require staff or patrons to wear masks if they wish to enter the building?

In each particular setting and physical space, the public library must consider whether a mask requirement is reasonable and necessary to maintain safety. The CDC [recommends](#) the use of facial masks where other procedures, such as social distancing or partitioning of spaces is not feasible. In considering whether to require staff and patrons to wear masks, the library should consult federal, state and local laws, as well as guidance from local health officials and the CDC on whether to institute such a requirement. There may be a state or local law in place that requires masks. Guidance from local health officials or the CDC might encourage use of masks for all public buildings once a community has moved to a reopening phase. In that case, a library might be able to justify a mask requirement as reasonable and necessary to maintain the safety of staff and patrons. In some jurisdictions, employers who require masks must supply the masks for their employees. If there is an executive order or other legal requirement that staff and patrons wear masks in a particular state or local community, review the order carefully to determine if there is an exception for those who have a medical condition that precludes wearing a mask and consider alternatives to address safety concerns.

4. Can public libraries require patrons to leave the building because they are exhibiting Covid-19 symptoms?

Asking a patron to leave based on a suspicion that the patron has Covid-19 may be difficult. Courts have held that patrons have a First Amendment right to access the library because the right to receive information is a corollary to the right to speak. Courts have also held that the library has the right to establish reasonable rules governing library use. Maintaining a safe environment for staff and patrons would be considered reasonable and necessary. Therefore, it would appear to be reasonable and necessary to have policies in place that allow staff to ask a patron to leave if that patron poses a risk to the health and safety of staff and other patrons. The difficulty will lie in enforcement of such a policy. Although the CDC has set forth some typical symptoms for Covid-19, many of those symptoms could just as easily be attributable to other conditions. For example, a person that is coughing or sneezing could have allergies. In considering whether to have a policy that permits staff to ask a patron to leave based on the patron having possible symptoms of Covid-19, the library should consult federal, state and local laws, as well as CDC guidance on whether to permit such a practice. If such a policy exists, the library should have an appeal process that allows the patron to appeal the decision of a staff member. If such a policy exists, libraries must conduct extensive training for staff to assure that the policy is carried out consistently. If the policy allows a staff member to ask a patron to leave because the patron exhibits certain symptoms, then any patron exhibiting such symptoms must be asked to leave. There can be no exceptions. Given the difficulty in enforcing requests to leave based on symptoms, public libraries might consider alternative methods of limiting exposure of staff and other patrons to patrons with possible symptoms. For example, a public library could impose time, place and manner restrictions that apply to all patrons and limit access to the library for a set amount of time, thus allowing staff to ask a patron to leave based on objective time limits, rather than the subjective judgment of symptoms. This would limit the amount of time that any one patron is in the library and potentially spreading the virus. If a policy exists that allows staff to ask members to leave and a patron refuses, the staff should follow established policies and procedures for how to respond as they would for violations of any patron behavior policy.

5. Can public libraries be required to use sign-in logs for access to the library that collect personally identifiable information of patrons for release to other agencies for contact tracing?

If a public library is required to use a sign-in log or otherwise concludes that such a log is necessary in the context of their particular library, the library must be cautious in how it collects such information and how that information will be retained, used or shared. Public libraries collect personally identifiable information from patrons in many instances. A public library may have an Internet sign-up list, a meeting room request form or other logs that collect the personally identifiable information of patrons. In fact, collecting such information in the form of a sign-in log for library access during the phased in reopening might be reasonable and necessary if, for example, the library has a policy during reopening that only allows a limited number of patrons into the library for a limited amount of time. Tracking who has entered the library and whether they have departed according to the time limitation policy might be necessary to ensure that other patrons have access to library resources in a fair and reasonable manner, and that the greatest number of members in the community can access library resources. Alternatively, the library could avoid using a sign-on log for this purpose if it utilized a procedure where a set number of patrons entered the library at a certain time and for a set amount of time and all had to exit the library at the same time. This type of time, place and manner procedure would eliminate the need to track who has entered the library. The library would only need to track the number of people in the library during a specific time period. As a best practice, libraries should limit the collection of personally identifiable information in all circumstances unless required by law or otherwise necessary to permit the library to carry out the functions of managing library services. If a library has a sign-in requirement, it must include procedures to maintain the privacy and confidentiality of that information. For example, the information should be gathered in a confidential manner and the sign-in log should not be displayed publicly in a manner that would allow other patrons, members of the public or other government agents to see the information. The information from sign-in logs should be retained only for as long as required by law or necessary for the library to manage access to library services. If the library is required to retain such information, the information must be secured in a confidential manner. If a request is made for such information by another government agency or member of the public, the library should consult legal counsel immediately. State privacy and confidentiality laws often prohibit libraries from providing personally identifiable patron information to third parties, including to other government agencies, without a subpoena or court order. Public libraries who receive a request for such patron information should consult with legal counsel before disseminating any patron information to third parties, including other government agencies.

6. Can a public library terminate an employee that refuses to return to work in the physical space of the library?

The EEOC [provides guidance](#) on whether an employer can terminate an employee for refusing to return to work. This EEOC guidance also provides important information about other employment related issues surrounding Covid-19, including guidance for employers that might be required to make reasonable accommodations for staff in high risk categories who are unable to return to the physical workplace.

These materials are not a legal opinion nor should they be regarded as legal advice. Readers should consult their own legal counsel for legal advice regarding their particular situation.

These guidelines were authored by Theresa Chmara and approved by the Intellectual Freedom Committee on June 8, 2020.

Theresa Chmara is an attorney in Washington, DC. She also is the General Counsel of the Freedom to Read Foundation. She is the author of [Privacy and Confidentiality Issues: A Guide for Libraries and their Lawyers](#) (ALA 2009). She has been a First Amendment lawyer for over twenty-five years and is a frequent speaker on intellectual freedom issues in libraries. She is a contributing author for the [Intellectual Freedom Manual](#) published by the Office of Intellectual Freedom of the American Library Association.

Guidelines on Contact Tracing, Health Checks, and Library Users' Privacy

All people, regardless of origin, age, background, or views, possess a right to privacy and confidentiality in their library use. Libraries should advocate for, educate about, and protect people's privacy, safeguarding all library use data, including personally identifiable information.

- Article VII *Library Bill of Rights*

The right to privacy is one of the foundations upon which our libraries are built. Privacy is one of the key reasons libraries are such a trusted part of every community. In a world that thrives on surveillance and data mining, libraries provide a safe place for users of all ages to seek out information free from unreasonable intrusion into or surveillance of their use. As libraries across the world have shut their doors due to the COVID-19 pandemic, we face the challenge of upholding our commitment to not monitor, track, or profile an individual's library use beyond our operational needs.

Confronted with a global health emergency and civil unrest, now more than ever we must ensure that our libraries continue to provide uninterrupted, safe, and confidential access to our services, in accordance with our core values and the laws that protect the confidentiality of library users' information.

As libraries begin to reopen, many are faced with the possibility that they will be required to conduct health screenings and contact tracing that may potentially impact library users' privacy and right to access library services. Libraries that are required to perform health screenings prior to allowing entrance should avoid collecting and storing any medical data and do such screenings in private. The Choose Privacy Every Day website has [guidance for libraries on how to do health screenings](#) while maintaining user privacy and confidentiality.

We believe [contact tracing](#) has serious implications for libraries. Civil liberties organizations have strong concerns about the potential threat to individual rights posed by the collection of sensitive data that discloses information about individuals' movements and their social, sexual, religious, and political associations. There is also concern about the potential abuse of any collected data for commercial gain, discrimination, and stigmatization of marginalized groups. A public health surveillance program implemented in the current situation could become permanent, resulting in an irrevocable loss of privacy and civil liberties.

This moment is an opportunity for libraries to step up and reinforce their communities' faith in them as information safe havens. Instilling the right to privacy into library services is an act of empathy and kindness that we can provide to all of our users. Libraries seeking more guidance can visit the Choose Privacy Every Day website's [Protecting Privacy in a Pandemic Resource Guide](#) and sign up to receive regular updates on privacy-related topics.

Resolution Condemning Police Violence Against BIPOC, Protesters, and Journalists

Whereas the American Library Association (ALA) is deeply saddened by the deaths of George Floyd, Breonna Taylor, Tony McDade, Ahmaud Arbery, and far too many other People of Color who have been killed as a result of police brutality and systemic racism;

Whereas we are in solidarity with the statements of The Black Caucus of The American Library Association (BCALA) and Asian Pacific American Librarians Association (APALA), and affirm our earlier statement condemning violence and racism towards Black people, Indigenous people, and all People of Color¹;

Whereas we recognize “that institutionalized inequities based on race are embedded into our society and are reinforced through social institutions” (ALA Policy B.3.2 Combating Racism) and we condemn the systemic racism and violence that Black people, Indigenous people, and People of Color experience on a daily basis in our inequitable society;

Whereas the U.S. Press Freedom Tracker, produced by the Freedom of the Press Foundation, has tracked over 400 incidents of violence, arrest, and destruction of equipment against journalists covering protests²;

Whereas the First Amendment promises freedom of speech, freedom of the press, the right to assemble, and the right to petition the government, all of which are essential freedoms of our democracy and vital components of intellectual freedom;

Whereas we condemn the violence that protesters and journalists across the country are facing while exercising their First Amendment rights—the former raise their voices to demand justice, and the latter seek to document and share history as it is being made: both have been subject to gratuitous attacks from police;

Whereas ALA has pledged to “[s]upport anti-racism work within the broader society by monitoring, evaluating and advocating for human rights and equity legislation, regulations, policy and practice” (ALA Policy B.3.3 Combating Prejudice, Stereotyping, and Discrimination); and

Whereas the “The Universal Right to Free Expression: An Interpretation of the *Library Bill of Rights*” states that ALA “opposes any use of governmental prerogative that leads to intimidation of individuals that prevents them from exercising their rights to hold opinions without interference, and to seek, receive, and impart information and ideas. We urge libraries and

librarians everywhere to resist such abuse of governmental power, and to support those against whom such governmental power has been employed”; now, therefore, be it

Resolved, that the American Library Association (ALA), on behalf of its members:

1. calls upon its members to support initiatives to end police violence against Black people, to combat the systemic racism that infects our society, and to speak out against all attempts to restrict First Amendment rights.
2. calls upon federal, state, and local governments to uphold, preserve, and respect the constitutional rights of protestors, of journalists, and of all people who want to make their voices heard and to share their words and ideas with the rest of the world and future generations.
3. directs ALA staff to expeditiously publish and distribute this resolution to all ALA members through appropriate channels of communication.

¹ [“Statement Condemning Increased Violence and Racism Towards Black Americans and People of Color,”](#) The Black Caucus of The American Library Association, May 28, 2020; [“APALA stands with BCALA and Black Lives Matter,”](#) Asian Pacific American Librarians Association, June 1, 2020; [“ALA Executive Board stands with BCALA in condemning violence and racism towards Black people and all People of Color,”](#) American Library Association, June 1, 2020.

² [U.S. Press Freedom Tracker](#) (retrieved on June 11, 2020)

Video Surveillance in the Library Guidelines

Video surveillance in the library can take many forms. It can include institutional surveillance for security purposes, individuals using their own devices to film the library building or library users, or individuals filming library workers. Libraries should develop policies that clearly address all forms of video surveillance that may occur in their spaces, make those policies publicly available, and give notice to both staff and the public when those policies are adopted or amended. Because there is no one-size-fits-all policy for video surveillance in libraries, libraries should develop policies in consultation with legal counsel that address each library's unique circumstances.

Video surveillance is only one type of surveillance that may occur in libraries. For guidance on protecting users' privacy and defending against government and corporate surveillance, see ["Privacy: An Interpretation of the Library Bill of Rights,"](#) the ["Privacy and Confidentiality Q&A,"](#) library privacy [guidelines](#) and [checklists](#), and the ["Visits and Requests from Law Enforcement Concerning Library Records and User Information."](#)

Below are some guidelines for developing policies addressing different forms of video surveillance.

Security Cameras

The decision to conduct surveillance for security purposes, including the use of security cameras, should carefully weigh the safety and security benefits derived from surveillance with the library's duty to protect users' rights to privacy and confidentiality as outlined in applicable state laws and in Article VII of the *Library Bill of Rights*. Achieving a balance between user rights and the need for security is especially important as surveillance technology increases in sophistication and is capable of recording information about users' library use that has historically been carefully protected from disclosure. If libraries decide that video surveillance is necessary, they should develop policies that clearly define the scope and purpose of surveillance and which include strong protections of library users' privacy and confidentiality.

The "Privacy and Confidentiality Q&A" states:

[Video surveillance] policies should state the cameras are to be used only for the narrow purpose of enhancing the physical security of the library, its property, staff, and users. Policies should include: protocols for posting signs and giving notice about the presence of surveillance equipment, storage of data and/or media in a secure location, and routine destruction of data as soon as permitted by law.¹

Policies should inform users whether or not security camera footage is being monitored in real time, and if that footage is retained by the library. The policy should also outline who has access to view live or recorded security camera footage. Access should be limited to the minimum necessary for security purposes. Video recordings should only be shared when necessary to protect the interests of the library and its staff and when permitted by the state library confidentiality statute. If the library's security cameras are part of a larger surveillance system (as is the case in many school libraries), policies should be developed in conjunction with the larger system to allow maximum autonomy for the library to protect users' privacy and confidentiality to the fullest extent possible. Policies should also be regularly reviewed as surveillance technology advances and the legal environment shifts, especially with regard to issues like facial recognition.

Users Filming in the Library

The activities of users filming in the library should be addressed by policies concerning behavior or media relations. These policies should carefully balance protection of users' privacy with users' First Amendment right to access the library, privacy concerns, safety concerns, disruptions, and potential harassment of users and staff. This balance will look different in each library; for example, some libraries housed in historic buildings may allow users to film the space but not anyone in it, while other libraries may choose not to allow filming in their space at all.

Regardless of the specifics of each situation, policies regarding filming in the library should be directly tied to the library's mission statement, be as specific as possible, and be consistently enforced. Any restrictions should be content-neutral; however, libraries can enforce time, place, and manner restrictions on filming.

If filming is allowed, behavior and other policies should be carefully crafted to protect users from intimidation and harassment, as well as to ensure that any evidence of individuals' library use is kept confidential, similar to the confidentiality of circulation records. Library users should not expect to be free from observation, except in those spaces within libraries where users have an expectation of privacy, such as bathrooms, study rooms, or offices, and those spaces should be clearly marked as private spaces.

Users Filming Library Workers

Policies concerning users filming in the library should also address the issue of users filming library workers. In their capacity as employees, library workers do not have the same privacy rights as library users, and courts have upheld the right to record public employees carrying out their duties in public spaces.² However, filming in the library should not monopolize library workers' time or interfere with the performance of their duties. Filming that interferes with or harasses workers should be addressed by the library's behavior policies. Additionally, private spaces reserved for use by the staff should be clearly identified by signage that identifies those places as private, staff-only spaces and that bars entry by the public.

Public libraries may be the targets of “First Amendment audits,” in which individuals claim a right as taxpayers to film in any space accessible to the public, and they test that right by going into public spaces and recording videos with the goal of documenting First Amendment violations that can later be used in legal claims against the target. Best practice for dealing with these “auditors” is to not engage with them and allow them to film as long as they comply with all library policies, including but not limited to those regarding behavior, media, and staff harassment.³

Library Worker Training

Library workers should be trained on all policies and procedures related to video surveillance in the library. They should feel confident in their knowledge and comfortable enforcing the policies to ensure that policies are enforced consistently. Library workers should also be trained on professional ethics and issues of equity, diversity, and inclusion to appropriately guide the development and enforcement of policies.

Public Records

Any documents or information, including video surveillance footage, created or filed by a government agency or entity may be considered a public record. By law, all public records should be made available upon request; however, under some state laws, records concerning an individual’s use of the library are confidential and exempt from public records law. Libraries have a responsibility to protect user privacy and should, therefore, develop policies with legal counsel that adhere to state and local law to ensure that individual privacy rights are upheld when recording and retaining library video surveillance footage. Because some state library confidentiality laws prohibit libraries from disclosing any information that identifies a person as having used a library or a library service, libraries should be cautious about releasing tapes of video surveillance without a court order or subpoena. Since video surveillance footage may identify library users and their usage of library resources and services, video recordings should be routinely purged or destroyed as soon as permitted by law.

Law Enforcement

Libraries should not share a library user’s records and information with law enforcement *except* with the permission of the user, in response to a subpoena or court order, or in accordance with state library confidentiality law. Records of video surveillance in the library are protected under the same considerations of privacy and confidentiality as all other library records, and the same rules and guidelines for access apply. Libraries should consult with legal counsel about applicable laws governing the retention and release of video surveillance records. For more information, see “[Visits and Requests from Law Enforcement Concerning Library Records and User Information](#).”⁴

¹ [“Privacy and Confidentiality Q&A,”](#) Intellectual Freedom Committee’s Privacy Subcommittee, last revised July 29, 2019.

² [“Recording Police Officers and Public Officials,”](#) Digital Media Law Project.

³ Deborah Caldwell-Stone, [“Auditing the First Amendment at Your Public Library,”](#) Intellectual Freedom Blog, October 2, 2019.

⁴ “Issue at a Glance: Visits and Requests from Law Enforcement Concerning Library Records and User Information,” in *Intellectual Freedom Manual*, 9th ed. (Chicago: ALA Editions, 2015).