Legislation Amending Library Privacy Act Introduced in Senate

November 7, 2019

On October 29, State Senators Peter MacGregor (R-Rockford), Adam Hollier (D-Detroit) and Ruth Johnson (R-Holly) introduced Senate Bill 611. This bipartisan bill amends the Michigan Library Privacy Act, 1982 PA 455, enabling libraries, if they choose, to work with law enforcement when the library is a victim of a crime, or a crime occurs at the library. Currently, libraries cannot release library records to law enforcement without a court order. The bill has been referred to the Committee on Judiciary and Public Safety.

While MLA has not taken a formal stance on this bill to date, we will notify the membership once a decision is made. We want to make sure that all libraries who are impacted have had their voices heard. We are still gathering feedback on Senate Bill 611 from deans and directors from libraries across Michigan, but we want to make sure that the full membership and the entire library community also have the following information available to them. MLA's research continues and we have reached out to ALA to look at Library Privacy Acts across the country that achieve high standards. To the best of our ability, we want to fully understand the implications and not diminish privacy protections. We also want to make sure that any updates to the Library Privacy Act are fully vetted by those of you who are affected on a daily basis.

Before the bill was introduced, the MLA Legislative Committee reviewed a draft of the bill's proposed amendments and sent it to the MLA Board for consideration at the board meeting scheduled for Friday, December 13th. MLA has invited Lance Werner, Executive Director at Kent District Library and Anne Seurynck, Attorney with Foster Swift Collins & Smith PC, to join us to discuss how the changes proposed in this bill will affect libraries across Michigan.

The Legislative Committee requested that we offer information on the support and the concerns for these important updates. Lance Werner and Julia Eisenstein, both members of our Legislative Committee offered the following viewpoints:

From Lance Werner, Executive Director, Kent District Library:

The amendment to the Library Privacy Act 1982 PA 455, MCL 397.601 et seq., enables libraries to pursue justice more quickly in cases of onsite criminal activity. In situations that involve child pornography, cybercrime, violent crime, and many other types of criminal activity, the speed of engaging law enforcement in an investigation can make or break any resolution, protecting or putting others at risk. Unlike other organizations, libraries must request that law enforcement obtain a court order, such as a search warrant, before sharing any identifying information about individuals. The process of obtaining a warrant delays the investigation by days or weeks. At times, law enforcement may choose to not seek a search warrant because they consider the instance to not be a priority, which means there will be no investigation. Justice is delayed or halted by onerous procedures that are required of libraries, but not by other organizations. Other instances where libraries have provided identifying information to law enforcement, in violation of the Library Privacy law would become legal with this amendment. This bill affords libraries the same rights and options to seek justice and protect others. The amendment will enable libraries the discretion to determine how they want to engage with law enforcement when a crime has occurred at the library or the library is a victim of a crime. The amendment does not impact the original intent of the act, nor does it alter the portions of the act that pertain to computer usage.

From Julia Eisenstein, Associate Librarian, University of Detroit Mercy and MLA President-elect:

The proposed changes to Library Privacy Act 1982 PA 455, will affect every library described in Section 2 (h), from public to academic to school and in some cases private libraries. Every library has a unique relationship with their police departments. While I have not made up my mind about the proposed amendments, I have heard from some of you already. Please consider with me the following as you review the proposed amendments. Will the proposed changes benefit libraries while working with law enforcement or will it hamper them? Will libraries actually lose their protection under the law? As it stands now, a subpoena, a warrant, or some court order (or consent of the patron) is required to turn over library records to law enforcement. The revision will give library officials a choice about releasing library records without a court order, which could cause conflict between library officials and law enforcement. If law enforcement knows libraries can turn over library records without a court order, they may expect it and that puts library personnel in a difficult position. The revision does not take away the library's right to refuse, but may make it harder. The proposed legislation does not distinguish between different kinds of crime, from ticketed offenses to felonies. Law enforcement and libraries may differ on what constitutes a serious enough crime to compromise patron privacy. ALA already provides guidance and advocacy in the handling of criminal activity: http://www.ala.org/advocacy/privacy/lawenforcement. As it stands, if a crime is committed and time is of the essence, libraries may preserve evidence until law enforcement officers can obtain the necessary court order.

This revision moves away from ALA's core value to protect privacy. The revision indicates a crime need only be "alleged," making it possible to turn over library records for a patron who may not be involved in a crime at all. The ALA's Rights to Privacy states, "Libraries should never enact policies or practices that abridge users' right to privacy regardless of their age, ability, housing status, immigration status, involvement with the criminal justice system, religious affiliation, ethnicity, sexual orientation, gender identity, or other forms of identity or status unless explicitly required by law. Even then, libraries should consult with legal counsel before abridging any user's right to privacy."
http://www.ala.org/advocacy/intfreedom/librarybill/interpretations/privacy

No one can predict the effects these changes will have if enacted. The best we can do is consider our current situations as they relate to law enforcement and consider our core values. Is this a road we want to go down? Is this a road we have to go down? In a time where privacy seems to be a rare commodity, what do we stand for and what stand do we take? If these proposed revisions become law, we can't turn back.

MLA is interested in hearing from you about how this change to the Michigan Library Privacy Act may impact you and your library. Please feel free to contact Deborah E. Mikula, MLA Executive Director at dmikula@milibraries.org to voice your support or concerns. We have heard from many already, but hope to hear from more of you by December 12th so your comments can be shared at the MLA Board meeting.