

## **U.S. AND OREGON CONSTITUTIONAL PROVISIONS AND COURT DECISIONS CONCERNING INTELLECTUAL FREEDOM AND PRIVACY OF IMPORTANCE TO LIBRARIES**

### **First Amendment (1791)**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Notes:

- \* Initially the First Amendment applied only to the federal government: (Congress shall make no law). The 14<sup>th</sup> extended its coverage to states and publicly funded libraries are creatures of the state.
- \* The courts have ruled that the First Amendment also applies to the distribution & receipt of literature and information (*Schneider v. State* (308 U.S. 147 (1939)). <https://supreme.justia.com/cases/federal/us/308/147/case.html>)
- \* Speech on the Internet is "entitled to the highest level of First Amendment protection, similar to the protection the Court gives to books and newspapers.

*ALA v. Dept. of Justice and Reno v. ACLU* (U.S. 117 S.Ct. 2329 (1997)).

<https://www.law.cornell.edu/supct/html/96-511.ZO.html>

### **Fourth Amendment (1791)**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Note:

Privacy is not mentioned in the U.S. Constitution. However, this amendment has been interpreted to protect privacy "secure in papers and effects against unreasonable searches and seizures". (When the Constitution was written all private papers were kept in the home; it now applies to records kept by governmental agencies and other third parties. Privacy should not be violated without probable cause to be determined by an officer of the court).

### **Fifth Amendment (1791)**

no person ... (shall) be deprived of life, **liberty** or property **without** due process of law -- (liberty includes First and Fourth Amendment Rights)

### **Ninth Amendment (1791)**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

### **Tenth Amendment (1791)**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

Note: the 9<sup>th</sup> & 10<sup>th</sup> amendments mean that individual states can provide rights not available in other states either by legislation or citizen initiatives.

### **Fourteenth Amendment (1868)**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Note: Liberty as used in this amendment includes First Amendment rights

## OREGON

### CONSTITUTION OF THE STATE OF OREGON

#### Article I

#### BILL OF RIGHTS (1859)

##### **& 8. Freedom of speech and press**

No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever, but every person shall be responsible for the abuse of this right.

##### **& 9. Unreasonable searches or seizures.**

No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

##### **& 20. Equality of privileges and immunities of citizens.**

No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.

## OREGON LAWS

**Confidentiality of library records in Oregon:** ORS 192.502 Other public records exempt from disclosure. <https://www.oregonlaws.org/ors/192.355>

The following public records are exempt from disclosure under ORS 192.410 to 192.505:

(22) The records of a library, including circulation records, showing use of specific library material by a named person or consisting of the name of a library patron together with the address or telephone number of the patron; and the electronic mail address of the patron.

### **From ORS Annotations to 192.502**

Five-part test for determining whether information supplied to agency in confidence is exempt from disclosure is whether: 1) information was submitted voluntarily; 2) agency can show that nature of information is such that information should be kept confidential; 3) agency has undertaken good faith obligation to maintain confidentiality; 4) disclosure might harm public interest; and 5) information was actually submitted in confidence.

Gray v. Salem-Keizer School District, 139 Or App 556, 912 P2d 938 (1996), OR Sup Ct review denied

### **Oregon Attorney General's Interpretation:**

The Attorney General's *Public Records and Meetings Manual* states that the Oregon Public Records Law is primarily a disclosure law, not a confidentiality law. [http://www.doj.state.or.us/pdf/public\\_records\\_and\\_meetings\\_manual.pdf](http://www.doj.state.or.us/pdf/public_records_and_meetings_manual.pdf) ; see particularly pp. 23 – 25.

In a letter of advice to the State Library in 1995 the Attorney General recommended that libraries adopt their own policies if they want to prohibit the disclosure of patron information.

Note: this applies also to school districts.

### **Court Decisions Cited in the *Public Records and Meetings Manual*:**

*Portland Adventist Medical Center v. Sheffield*, 303 Or 197, 199 n 2, 735 P2d 371 (1987)  
“An exemption from the Public Records Act means that the custodian of the information is not *obliged* to disclose it. Exemption from disclosure does not necessarily mean that the custodian is required *not* to disclose it.”

*Guard Publishing Co.*, 310 Or at 37–38 (1989): “If the public body is satisfied that a claimed exemption from disclosure is justified, it may, *but is not required to*, withhold disclosure of the information.”

Libraries in private organizations or private schools are not required to release records.

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