

# NY CLS CPLR § 4509

Current through 2025 released Chapters 1-207

*New York*

*Consolidated Laws Service* >  
*Civil Practice Law And Rules (Arts. 1 — 100)* >  
*Article 45 Evidence (§§ 4501 — 4551)*

## § 4509. Library records

---

Library records, which contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems of this state, including but not limited to records related to the circulation of library materials, computer database searches, interlibrary loan transactions, reference queries, requests for photocopies of library materials, title reserve requests, or the use of audio-visual materials, films or records, shall be confidential and shall not be disclosed except that such records may be disclosed to the extent necessary for the proper operation of such library and shall be disclosed upon request or consent of the user or pursuant to subpoena, court order or where otherwise required by statute.

## History

---

Add, L 1982, ch 14, § 1; amd, L 1988, ch 112, § 1, eff June 13, 1988.

Annotations

## Notes

---

### 1988 Recommendations of the Law Revision Commission:

#### I. Introduction .

Under CPLR 4509, records related to the circulation of library materials which identify library patrons are confidential, and consequently may not be disclosed except under statutorily specified circumstances.<sup>1</sup> The text of CPLR 4509 is set forth as follows: § 4509 **Library circulation records.** Records related to the circulation of library materials which contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems of this state shall be confidential and shall not be disclosed except that such records may be disclosed to the extent necessary for the proper operation of such library and shall be disclosed upon request or consent of the user or pursuant to subpoena, court order or where otherwise required by statute. The statute was enacted to protect library users' inquiring minds from "self-appointed guardians of public and private morality and governmental officials"<sup>2</sup>. New York State Assembly. Memorandum in Support of Legislation. A.5953-B (enacted in 1982). (See Appendix A, attached.) alike. However, questions have recently arisen calling into question the statute's ability to fulfill its stated purpose.<sup>3</sup> This issue, concerning the statute's scope, was first presented to the Commission in a letter dated June 5, 1987, addressed to Kenneth Joyce, the Executive Director of the Law Revision Commission, from Marcia Zubrow, Head Reference Librarian of the Charles B. Sears Law Library, Buffalo Law School, SUNY at Buffalo, New York. A subsequent correspondence raising the same issue, dated June 23, 1987 was received from Marilyn Kramer, Chairperson of the Faculty Executive Committee. SUNY at Buffalo, New York. (See Appendix B. attached.).

CPLR 4509's present scope, limited to ". . . records related to the circulation of records library materials . . .," makes questionable the statute's applicability to library records which do not involve circulation of tangible library materials, but which nevertheless identify the library patron. There are two categories of such records. The first might be labeled the "requested, but not currently available" category. This covers situations where a library patron requests a book or other library material that is not currently available, either because it has been loaned to someone else, must be acquired through the interlibrary loan system, or is not available for some other reason. Examples include title reserve requests, interlibrary loan requests, requests for photocopies, and reference queries.<sup>4</sup> Reference queries" refers to any and all questions

library patrons pose to library personnel, though usually related to the availability or existence of library materials or sources of information. In such cases, library materials are involved, yet because the materials are not currently available, corresponding library records are best characterized as relating to requests for library materials, rather than circulation of library materials. As such, their confidentiality under the current statute is suspect.

The second category might be labeled the library intangible“ category and is primarily concerned with computer database searches. Libraries typically make records of database searches along with information identifying the library patron who requested or conducted the search. Yet it would be difficult to argue that a database search constitutes circulation of a tangible library material. Consequently, the confidentiality of such records is also questionable under present law 5. The distinction between circulation records” and other library records which contain information identifying the library user is not an idle one. It has been reported, for example, that during the 1986 Fall semester at SUNY at Buffalo, the FBI requested information regarding the subject of a foreign student’s computer database search (see Appendix C. attached). It should be noted that in this particular instance the scope of CPLR § 4509 was not put in issue since the FBI had obtained a subpoena for such records. Absent such a subpoena or court order, however, or where the validity of such subpoena or court order is challenged, the scope of CPLR § 4509 could be directly raised.

## **II. Legislative Intent Analysis .**

It is unlikely that by enacting CPLR 4509 the New York Legislature purposefully discriminated between circulation records (“records related to the circulation of library materials”) and all other library records which identify the library user so that only the former are confidential. Two reasons support this conclusion. First, there is no evidence of such a legislative intent in either the sponsoring legislators’ “memorandum in support” in support of the law’s original enactment, nor in any of the other materials comprising the “legislative jacket.”<sup>6</sup> CPLR 4509’s legislative jacket consists of two “memorandum in support,” one related to the original draft of the bill (never enacted) and the other related to an amended draft, and numerous general letters in

support of the bill's enactment from such varied sources as the New York Public Library, the State Education Department, the New York Library Association, the New York Civil Liberties Union and others. These materials stress the "right to privacy," the "right to receive information," and the "chilling effect" on library use which would result in the absence of such privacy. Nowhere is there any suggestion that only certain library records which identify the library patron are deserving of confidentiality, while others are not. Although more than half of the letters comprising the legislative jacket specifically refer to "circulation records" or to the individual's interest in "reading books," such language does not appear to be evidence of a purposeful limitation on the statute's scope. Rather, it is probable this language results only from the fact that lending books (thus resulting in "circulation records") is the classical library function and therefore the most obvious example of what the statute should cover.<sup>7</sup> The body of a typical letter in support of enactment of what is now CPLR 4509 is set out below. Note that the reference to "reading books" does not seem designed to discriminate between records related to the circulation of books and other library records that identify the library patron. Rather, it appears to be a casual reference to the easiest example of what the statute will protect. The letter, addressed to The Honorable John G. McGoldrick, then Counsel to the Governor, was from Richard A. Givens of the New York County Lawyers' Association. The body reads as follows: I am pleased to recommend approval of the above bill to protect confidentiality of public library records. This is important so that citizens in reading books will not be concerned that someone else would place an unfavorable construction on their seeking information from writings on any particular subject. Without such privacy, there would be a chilling effect on the citizen's right to seek information freely, contrary to the objectives of the First Amendment.

Secondly, the policy underlying section 4509, as repeatedly expressed in the materials comprising the legislative jacket, is to ensure library use free from fear that details of such use might become known to others, some of whom might wish to exploit such knowledge as a means of harassment or intimidation.<sup>8</sup> New York State Assembly, Memorandum in Support of Legislation. A.5953-B (enacted in 1982). (See Appendix A, attached.) For example, the New York Civil Liberties Union supported enactment of the bill stating:

The NYCLU views this bill as a significant contribution to First Amendment rights in New York. The right to receive information is fundamental to the First Amendment. See. e.g., *Stanley v. Georgia*, 394 U.S. 557 (1969). It is a right that extends to information and ideas of all kinds — the unpopular and unfamiliar as well as the popular and known. This bill would enhance that right by guaranteeing privacy to library borrowers. No reader would have reason to fear that he might later be held accountable for having selected a work that someone else thought improper or even blasphemous.<sup>9</sup> From a letter, dated March 9, 1982 addressed to The Honorable John G. McGoldrick, Counsel to the Governor, from the New York Civil Liberties Union.

Such a laudable goal can be fully achieved only by protecting from disclosure all library records which identify the library user, rather than just circulation records. To the extent the statute in its present form does not prohibit disclosure of these “other” library records, it tends to thwart its own purpose.<sup>10</sup> At the present time, thirty-five states other than New York have statutes protecting the confidentiality of library records. Copies of these statutes are included as Appendix D. Twenty states’ statutes, like New York’s (CPLR 4509), are “narrow” in scope, in that they protect only circulation records. The states having “narrow statutes are: Alabama, Alaska, California, Connecticut, Illinois, Florida, Delaware, Louisiana, Maine, Maryland, Massachusetts, Michigan, Nevada, Oklahoma, Oregon, Pennsylvania, South Carolina, Virginia, Wisconsin, and Wyoming. Thirteen states’ statutes are “broad” in scope in that they protect all library records which contain information identifying the library user. The states having “broad” statutes are: Arizona, Colorado, Indiana, Kansas, Minnesota, New Jersey, North Carolina, North Dakota, Nebraska, South Dakota, Washington, Missouri, and Montana. States’ statutes falling in between the “narrow” and “broad” classifications are Iowa and Rhode Island. These two state’s statutes appear to provide protection for the “requested, but not currently available” category of records, but not the library intangible” category of records.

### **III. Conclusion and Recommendation .**

CPLR 4509’s scope should be broadened to protect all library records which identify library users, rather than just circulation records. This would make it clear that records of computer

database searches, interlibrary loan transactions, requests for photocopies of library materials, title reserve requests, reference queries and the like are confidential. The statute's purpose, to ensure library use free from fear that details of such use might become known to others, some of whom might wish to exploit such knowledge as a means of harassment or intimidation, recognizes no distinction between circulation records and other library records which identify the library user. Neither should the statutory language. All such records require protection from disclosure if the statutory purpose is to be achieved.

## **Notes to Decisions**

---

Petitioner was not entitled to pre-litigation disclosure under Freedom of Information Law of names of certain of its employees, whom it suspected of misappropriating computer resources through accessing electronic information service operated by respondent Southern Adirondack Library System (SALS), where SALS contended that requested information was confidential under CLS CPLR § 4509 and, although petitioner had internal security problem involving unauthorized use of its computers, no criminal complaint was before court, or had been made. *Quad/Graphics, Inc. v Southern Adirondack Library Sys.*, 174 Misc. 2d 291, 664 N.Y.S.2d 225, 1997 N.Y. Misc. LEXIS 493 (N.Y. Sup. Ct. 1997).

## **Opinion Notes**

---

### **Agency Opinions**

Records identifiable to users of libraries, such as those who hold library cards, are confidential pursuant to CLS CPLR § 4509 and CLS Pub O § 87(2)(a). Comm on Open Gov't FOIL-AO-8904.

Records identifiable to users of library could be withheld on ground either that (1) disclosure would constitute "an unwarranted invasion of personal privacy" under CLS Pub O § 87(2)(b), or (2) CLS CPLR § 4509, if such statute applies. Comm on Open Gov't FOIL-AO-13308.

## **Research References & Practice Aids**

---

### **Jurisprudences:**

75 NY Jur 2d Libraries § 39. .

### **Treatises**

#### **Matthew Bender's New York Civil Practice:**

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4509, Library Records.

#### **Matthew Bender's New York CPLR Manual:**

CPLR Manual § 16.09. Public documents; libraries; hospitals.

CPLR Manual § 20.02. Scope of disclosure.

#### **Matthew Bender's New York Practice Guides:**

LexisNexis Practice Guide New York e-Discovery and Evidence § 9.05. Objecting Based on Privilege.

#### **Matthew Bender's New York AnswerGuides:**

LexisNexis AnswerGuide New York Civil Litigation § 10.04. Protecting Privileged Communications.

#### **Matthew Bender's New York Evidence:**

1 Bender's New York Evidence § 101.09. Privileges.

#### **Matthew Bender's New York Checklists:**

Checklist for Protecting Privileged Communications LexisNexis AnswerGuide New York Civil Litigation § 10.02.

**Forms:**

Bender's Forms for the Civil Practice Form No. CPLR 4508:1 et seq.

**Texts:**

1 New York Trial Guide (Matthew Bender) §§ 7.23, 7.51; 3 New York Trial Guide (Matthew Bender) §§ 51.01, 51.21.

**Hierarchy Notes:**

NY CLS CPLR, Art. 45

New York Consolidated Laws Service

Copyright © 2025 All rights reserved.