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February 28, 1990

The Honorable John J. Bishop
308 House Office Building
Annapolis, Maryland 21401

Dear Delegate Bishop:

This is in response to your request for advice of counsel on whether FBI agents may inspect certain library records which are confidential under State law. Unless such agents are acting pursuant to a lawfully issued search warrant or subpoena, it is my view that they could not inspect such records. Moreover, under a proposed amendment to the confidentiality law, such agents could not be orally informed about the contents of such records.

Section 23-107 of the Education Article provides that a free association, school, college or university library shall deny inspection of certain personal identifying information in circulation or other records. In response to advice from this office, House Bill 986 amends Sec. 23-107 to also prohibit the oral disclosure of such information. As amended by the House Committee on Constitutional Law, "use or disclosure" would be substituted for "oral disclosure" and an exception would allow inspection or disclosure in connection with regular library business. The committee also amended the library records exclusion of the Public Information Act to expressly prohibit not only "inspection," as under existing law, but also "use or disclosure." The amendment would also allow inspection, use or disclosure for regular library business. In the course of considering this bill and these amendments, the question has arisen whether agents of the Federal Bureau of Investigation could inspect or be told of personal identifying information in library records which are confidential under State law.

Under the Supremacy Clause of the Federal Constitution, the Constitution, laws and treaties of the United States prevail over the Constitution and laws of the states. Fed. Const., Art. VI, Sec. 2. Therefore, if Congress enacted legislation authorizing agents of the Federal Bureau of Investigation to inspect such library records, such federal legislation would prevail over any confidentiality rule enacted by a state. The only limitation on such federal legislation would be the Federal Constitution. However, Congress has not, in fact, enacted such legislation. Moreover, I have been advised by officials at the Federal Bureau of Investigation in Washington that no regulations have been issued which purport to give FBI agents the authority to inspect otherwise confidential library records. Of course, if the agents were acting pursuant to a lawfully issued search warrant or subpoena, see 18 U.S.C., Secs. 3052 and 3107, they could have access to otherwise confidential library records. However, except in these circumstances, the existing State law denies to agents of the Federal Bureau of Investigation the right to inspect personal identifying library records. Moreover, under the law as amended, agents could not be told of such information.

Very truly yours,



Richard E. Israel
Assistant Attorney General

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