

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 897 (Delegates Rosenberg and Grosfeld)
Ways and Means

Privacy of Bookseller and Public Library Records

This bill generally prohibits a government agent from searching for or seizing documentary material containing personally identifiable information about a patron from a bookseller or public library. The bill provides for exceptions relating to consent searches, exigent circumstances, and court ordered searches upon a showing of a compelling need or interest. The bill also enumerates specified circumstances in which a patron's personally identifiable information may be disclosed under a court order in a civil proceeding. It specifies when a court order issued in a civil or criminal matter may be quashed, and provides for damages that may be awarded in a civil action by a person aggrieved by any violation of the bill's provisions.

Fiscal Summary

State Effect: This bill is procedural in nature and is not expected to have a direct impact on governmental finances.

Local Effect: None -- see above.

Small Business Effect: Minimal.

Analysis

Bill Summary: This bill generally prohibits a federal, State, or local government officer or employee from searching for or seizing documentary material containing personally identifiable information about a patron from a bookseller or public library. Such material may be searched for and seized in any of the following circumstances:

- with the prior written consent of the patron;
- when there is probable cause to believe that the person possessing documentary material has committed or is committing a crime, unless the crime consists of the receipt, possession, communication, or withholding of the material or information contained in it;
- when there is reason to believe that immediate seizure is necessary to prevent death or serious bodily injury to another;
- when there is reason to believe that giving notice under a subpoena would result in destruction, alteration, or concealment of the material; or
- pursuant to a subpoena, after all appellate remedies have been exhausted, issued by a court upon clear and convincing evidence that: (a) the patron is reasonably suspected of criminal activity; (b) the government has a compelling interest in or need for the information; (c) there is a sufficient connection between the information sought and the investigation; and (d) the purpose of the investigation cannot be achieved by alternative means.

In a civil proceeding, the personally identifiable information of a patron may be disclosed under a court order only upon a showing of compelling need for the information that cannot be accommodated by any other means. The person seeking disclosure must give notice to both the patron and the bookseller or public library of the court proceeding relating to issuance of the court order at least ten days prior to the proceeding. The patron and bookseller or public library must be afforded the opportunity to appear and contest the claim of the person seeking disclosure.

For any court order issued in either a civil or criminal matter, the court must impose appropriate safeguards against unauthorized disclosure. In addition, the court may quash or modify the order on a motion made promptly by the bookseller or public library if it finds that: (1) the information or records requested are unreasonably voluminous; or (2) compliance with the order would otherwise cause an unreasonable burden on the bookseller or public library.

Any person aggrieved by a violation of these provisions may bring a civil action in which the court may award: (1) actual damages or liquidated damages in the amount of \$10,000, whichever is greater; (2) punitive damages; (3) reasonable attorneys' fees; (4) reasonable litigation costs; and (5) other preliminary and equitable relief that the court deems appropriate. The statute of limitations on such a civil action is three years from the date the act complained of occurred or was discovered.

Personally identifiable information obtained by any means other than pursuant to this bill's provisions may not be received in evidence in a proceeding before any court, regulatory body, legislative committee, or other authority of government.

Current Law: Under Maryland law, a free association, school, college, or university library generally must prohibit inspection, use, or disclosure of any circulation record or other item, collection, or grouping of information about an individual that: (1) is maintained by a library; (2) contains an individual's name or the identifying number, symbol, or other identifying particular assigned to the individual; and (3) identifies the use a patron makes of that library's materials, services, or facilities. There is no specified penalty for a violation of this statute. There is no statutory provision making bookseller records containing identifying information confidential or otherwise limiting access to such records.

The Fourth Amendment to the U.S. Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and guarantees that "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." Article 26 of the Maryland Declaration of Rights has the same protective purpose. The Fifth Amendment to the U.S. Constitution and Article 40 of the Maryland Declaration of Rights guarantee an individual's right to freedom of speech and expression.

Background: Associations such as the American Library Association and the American Booksellers Foundation for Free Expression claim that a natural extension of the rights to freedom of speech and expression is the protection of information identifying the material that an individual chooses to access at libraries or bookstores.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State's Attorneys' Association, Department of Legislative Services

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