

N.D.A.G. Letter to Sanstead (June 6, 1986)

June 6, 1986

Dr. Wayne G. Sanstead
Superintendent
Department of Public Instruction
State Capitol
Bismarck, ND 58505

Dear Dr. Sanstead:

Thank you for your letter of May 21, 1986, regarding the applicability of North Dakota Century Code § 40-38-12 to public school libraries in North Dakota. N.D.C.C. §40-38-12 is an exception to the open records law found in N.D.C.C. §44-04-18 and provides for the nondisclosure of certain library records.

North Dakota's open records law, as found in N.D.C.C. § 44-04-18, states as follows:

44-04-18. ACCESS TO PUBLIC RECORDS--PENALTY.--

Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commission or agencies of the state or any political subdivision of the state, or organizations of agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.

Violations of this section shall be punishable as an infraction.

This office has consistently stated that the "except as otherwise specifically provided by law" exemption includes both state and federal laws.

In 1985, the North Dakota Legislature enacted a statute which creates an exception to the open records law. This statute is codified at N.D.C.C. § 40-38-12, and provides as follows:

40-38-12. LIBRARY RECORDS--OPEN RECORDS EXCEPTION.

Any record maintained or received by a library receiving public funds, which provides a library patron's name or information sufficient to identify a patron together with the subject about which the patron requested information, is considered private and is excepted from the public records disclosure requirement of section 44-04-18. These records may be released when required pursuant to a court order or a subpoena.

The questions is posed in your letter is whether this exception to the open records law applies to public school libraries in North Dakota. To fall within the above exemption, the library must receive public funds. In North Dakota, public schools are supported not only by state funds but also by federal funds. If the school chooses to maintain a library, this library is supported by these public funds. Therefore, it is my opinion that public school libraries fall within the scope of N.D.C.C. § 40-38-12.

However, it must be remembered that not all records of the public school library fall within this exception. The only records which are exempted from disclosure are those records which "provide a library patron's name or information sufficient to identify a patron together with the subject about which the patron requested information." All other records maintained by the public school library are open pursuant to N.D.C.C. §44-04-18. See also N.D.C.C. § 15-29-10.

While it is my opinion that certain records maintained by public school library are exempted from the open records law in North Dakota pursuant to N.D.C.C. §40-38-12, these same public school library records may also be exempted pursuant to the Family Educational and Privacy Rights Act as enacted in 1974 which defines and provides for the confidentiality of student directory information. This particular statute is codified at 20 U.S.C. §1232g.

Sincerely,

Nicholas J. Spaeth

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