

January 31, 1983

Brian D. Neugebauer
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Dear Brian:

Thank you for your letter of January 14, 1983, concerning the disclosure of juvenile law enforcement records.

Before I answer your specific questions, allow me to respond to some of the general points in your letter.

First of all, information contained in police reports are not automatically exempt from public inspection. North Dakota's open records law states that all records of state agencies are open for public inspection unless otherwise specifically provide by law. In an opinion issued in 1979, then Attorney General Olson concluded that law enforcement records dealing with the prosecution or investigation of current criminal activities are to be held confidential. However, as part of that opinion it was held that all other law enforcement records would be open to public inspection. A copy of the 1979 opinion is enclosed for your information.

The bill discussed in your letter concerning confidential law enforcement records is House Bill 1144. It was defeated in the House of Representatives by a vote of 31 to 75.

I believe Section 27-20-52 of the North Dakota Century Code answers all of your questions. That sanction provides that law enforcement records and files concerning a child must be kept separate from other records and files concerning the arrests of adults. The major impact of this section states that law enforcement records and files concerning a child are confidential and shall not be open to public inspection. The exceptions to this rule are as follows:

1. A charge of delinquency is transferred for criminal prosecution under Section 27-20-34, N.D.C.C.
2. The interests of national security require the inspection of such records.
3. The court otherwise orders in the interest of the child such inspection.
4. Entities or person having the specific need for such information (detailed further in the five subsections of the statute).

Here are my specific answers to your questions.

1. Does Section 27-20-51, N.D.C.C. or any other statutes preclude the police from disclosing the police report, or the names contained in the police report to a school or any other entity?

Section 27-20-52, N.D.C.C., does prohibit the police from disclosing information contained in law enforcement records concerning a child unless one of these specific exemptions provided in that statute apply (e.g., the charge of delinquency is transferrable for criminal prosecution, counsel for a part to the proceeding involving the child, etc.). There is no statute which allows for the confidentiality of such information simply because it is contained in a police report.

2. Does your answer to question no. 1 in any way depend on whether or not the juveniles are referred to Juvenile Court?

Section 17-20-52(1), N.D.C.C., provides that the Juvenile Court having the child before it in any proceeding may inspect such law enforcement records and files. However, no other individuals are allowed to inspect such records simply because the child in question has been referred to Juvenile Court.

3. Does your answer to question no. 1 depend at all over whether or not a police report was prepared and on whether or not any individual at that party was charged with a crime or referred to Juvenile Court?

As stated earlier, there is no statute which says that information contained in a police report is absolutely confidential. You should refer to the opinion of the Attorney General issued in 1979 as to what law enforcement records are confidential and which ones may be made available for public inspection. The fact that other individuals at the party were charged with a crime has no bearing as to whether or not law enforcement records concerning a child may be made available for public inspection. The fact that other individuals at the party were referred to Juvenile Court only affects the confidentiality of those particular individuals' law enforcement records. It does not affect the confidentiality of the juvenile records of those who were not referred to juvenile court.

4. Does Section 27-20-52, N.D.C.C., or any other statutes preclude a police officer from disclosing the names to a school or any other entity?

As stated earlier, the statute contains specific exemptions from the general rule that law enforcement records concerning a child are confidential. You must review the specific language to see if any of the exemptions would apply to your actual situation. As you will note, there is no exemption provided for when a school administrator requests such information.

Finally, I would urge you to review Section 27-20-51(5), (6), N.D.C.C. These two subsections provide for the inspection of law enforcement records involving a child upon leave of court upon the showing of certain circumstances and facts. Indeed, subsection 6 specifically provides for court permission to a principal of public or private schools of such records when needed to enforce the rules and regulations of the North Dakota High School Activities Association. You may find that the only way in which the West Fargo school athletic director may review the information contained in these reports is to petition a court, through the principal of the school, for permission to review the records under subsection 6.

Sincerely,

Calvin N. Rolfson
Deputy Attorney General