

N.D.A.G. Letter to Rudnick (June 16, 1992)

June 16, 1992

Donald J. Rudnick, Chairman
North Dakota Private
Investigative and Security Board
P.O. Box 7026
Bismarck, ND 58502-7026

Dear Mr. Rudnick:

Thank you for your May 26, 1992, letter in which you have asked for clarification of the status of release of law enforcement records under North Dakota Century Code (N.D.C.C.) § 44-04-18, the North Dakota open records law.

Unless specifically exempted by law, records maintained by a public agency are within the open records law and subject to inspection by members of the public. Hovet v. Hebron Public School District, 419 N.W.2d 189 (N.D. 1988).

Records maintained by a law enforcement agency of a political subdivision, such as a county or city, are generally public records open for inspection under N.D.C.C. § 44-04-18. However, the North Dakota legislature has imposed several specific exceptions to the open records law which would maintain confidentiality and nondisclosure of certain records and information.

N.D.C.C. § 44-04-18.3 exempts from the open records law any records or other information that would reveal the identity or endanger the life or physical well-being of an undercover law enforcement officer.

N.D.C.C. § 44-04-18.7 declares that active criminal intelligence information and active criminal investigative information are also exempt from the provisions of N.D.C.C. § 44-04-18. Records or information concerning active criminal intelligence or investigative information is not subject to public disclosure. The North Dakota legislature has, however, in N.D.C.C. § 44-04-18.7(5), specifically provided that certain information is not included within the term "criminal intelligence and investigative information." That information includes a description of an arrested person, facts concerning the arrest, conviction information, disposition of warrants, and other information concerning a criminal offense. Since the information listed in this section of law would not be confidential, the specific information listed would be subject to disclosure under the open records law. I have enclosed a copy of N.D.C.C. § 44-04-18.7 with this letter for your information.

The North Dakota legislature has also mandated that criminal history record information may be subject to specific limitations on disclosure. N.D.C.C. ch. 12-60 provides

specific limitations on disclosure of certain criminal history information to noncriminal justice agencies and sets forth procedures for dissemination of that information. These laws were adopted to provide some uniformity in the maintenance of criminal history record information and to provide greater assurances that the information contained in a person's criminal record will be accurate and complete. It is possible that local criminal history records may be incomplete since information required to be reported to the North Dakota Bureau of Criminal Investigation may not also be provided to local law enforcement agencies.

Although N.D.C.C. § 12-60-16.1 defines "criminal history record information" as information concerning identifiable descriptions and notations of arrests, detentions, and other reportable event information on an individual, this office has not construed that definition to include all possible law enforcement records concerning an individual. Rather, "criminal history record information" has been construed by officials of this office administering these statutory provisions to include only the compilation of a person's criminal history which consists of various reportable events from one or more jurisdictions consisting of arrests, charges, dispositions of the charges, probation or parole status, and release from custody or supervision. The information which would commonly be known as a "criminal record check" is subject to restrictions on dissemination.

Basic information concerning a reportable event of an arrest contained in a police log or other information at a local law enforcement agency ordinarily would not be subject to the nondisclosure exceptions under the open records law. As previously noted, N.D.C.C. § 44-04-18.7(5) excludes information such as an arrestee description, facts concerning an arrest, and conviction information from the definition of criminal intelligence and investigative information. Although this information could also be found in a criminal records check, the legislature has indicated that this specific information may be subject to public disclosure. However, any requests for information which would seek a compilation or listing of arrest, charging, or dispositional information concerning a specific individual would be subject to the restricted dissemination provisions of the criminal history records laws found in N.D.C.C. ch. 12-60. Criminal history record information of this type which may be found within local law enforcement records may properly not be disclosed to the public. The local law enforcement agency may be required to inform a person making an inquiry concerning another person's criminal record to make that request for information to the North Dakota Bureau of Criminal Investigation in accordance with the policies and procedures established by the Bureau.

I have been advised by officials of the North Dakota Bureau of Criminal Investigation that persons licensed by your board have been made aware of the procedures to be followed in obtaining a criminal history records check. If an effort is made to obtain a criminal history record from a local law enforcement agency so as to avoid payment of any fee or to obtain information which would not otherwise be available to a noncriminal justice agency, requests for such information will be properly denied.

In addition to these exceptions to the open records law, other exceptions should be noted. N.D.C.C. § 27-20-52 declares that all files and records of a law enforcement agency concerning a juvenile are not subject to public disclosure. Disclosure may be made only subject to the specific requirements of that section.

In addition to law enforcement records concerning juveniles, the North Dakota legislature has specifically exempted other information from the open records law which includes, but is not limited to, driving record abstract information (N.D.C.C. § 39-16-03.1), accident reports (N.D.C.C. §§ 39-08-13, 14), and child abuse and neglect reports (N.D.C.C. § 50-25.1-11, 14).

In summary, not all records held by a law enforcement agency are exempted from the open records law. Compilations or listings of a persons' criminal history, commonly known as a criminal record, are subject to the reporting and dissemination requirements of N.D.C.C. ch. 12-60. Other applicable North Dakota statutory provisions may also restrict public access to law enforcement records. It is possible that reports or other law enforcement information may have to be examined on a case-by-case basis upon a request for their disclosure to determine whether the records or reports contain information which would not be subject to disclosure under provisions of North Dakota law.

I hope that I have responded to your inquiry.

Sincerely,

Nicholas J. Spaeth

rpb/krb
Enclosure