

**LETTER OPINION
2000-L-4**

January 18, 2000

Mr. Timothy A. Priebe
Dickinson City Attorney
PO Box 1097
Dickinson, ND 58602-1097

Dear Mr. Priebe:

Thank you for your letter asking whether law enforcement records relating to the death of a juvenile inmate at a local correction center are confidential under N.D.C.C. § 27-20-52 or open to the public under N.D.C.C. § 44-04-18. I will assume for the purposes of your question that the records do not pertain to an active criminal investigation. See N.D.C.C. § 44-04-18.7.

You are correct that the 1989 letter from this office to Representative Rod Larson involved a nearly identical situation. See Letter from Attorney General Nicholas Spaeth to Rod Larson (June 23, 1989). In that letter, which is enclosed, former Attorney General Nicholas Spaeth concluded that a death report from a county sheriff's office concerning a juvenile is confidential under N.D.C.C. § 27-20-52. However, a subsequent amendment to N.D.C.C. § 27-20-52 significantly changes the application of that letter to the situation you describe.

Until 1997, there were two requirements for a record to be confidential under N.D.C.C. § 27-20-52: 1) it had to be a law enforcement record, and 2) the record had to concern a "child" as defined in N.D.C.C. § 27-20-02(4). However, the following amendment was enacted in 1997:

Law enforcement records and files ~~concerning~~ of a child alleged or found to be delinquent, unruly, or deprived must be kept separate from the records and arrest files of adults. . . .[T]hese records and files may not be open to public inspection

1997 N.D. Sess. Laws ch. 138, § 3 (new language underlined and deleted language overstruck). As amended, N.D.C.C. § 27-20-52 no longer applies to all law enforcement records regarding children. Rather, a third requirement was added for records to be confidential under that section: the record must pertain to a child who was alleged or found to be delinquent, unruly, or deprived. One witness testifying <PAGE NAME="p.L-5">regarding the 1997 amendments observed: "This bill

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spells out very clearly that when law enforcement officials are dealing with juveniles in non-juvenile justice situations, such as minor traffic offenses, the information is not confidential." Hearing on S. 2209 Before the House Judiciary Comm. 55th N.D. Leg. (March 17, 1997) (Testimony of Jack McDonald).

In the situation you describe, the records pertain to a deceased child. From a conversation you had with an attorney in this office, we understand that the requested records have no connection with any charge or finding that the inmate was "delinquent, unruly, or deprived" under N.D.C.C. ch. 27-20, except possibly for a reference to the reason why the child was an inmate at the correctional center. Instead, the records simply pertain to a child who died while in custody at a public corrections facility in North Dakota.

If there does not have to be a "juvenile justice" connection between the child and a particular record for N.D.C.C. § 27-20-52 to apply, then records of a child who was involved in a traffic accident or other incident involving the police would be confidential simply because the child previously had been alleged or found to be unruly, deprived, or delinquent. That is clearly not what the Legislature intended when it amended N.D.C.C. § 27-20-52.

Except for the portions of the law enforcement records regarding the child's death which have a "juvenile justice" connection under N.D.C.C. ch. 27-20 to the deceased child, it is my opinion that the remainder of the city's records regarding the child's death are not confidential under N.D.C.C. § 27-20-52.

Sincerely,

Heidi Heitkamp
Attorney General

jcf/pg
Enclosure