

Superseded by N.D.C.C. § 39-08-13

**LETTER OPINION
2013-L-01**

January 23, 2013

Mr. Grant Levi
Interim Director
North Dakota Department of Transportation
608 E Boulevard Ave
Bismarck, ND 58505-0700

Dear Mr. Levi:

Thank you for your October 19, 2012, letter requesting an opinion as to whether the personal information contained in a motor vehicle accident report, prepared pursuant to N.D.C.C. § 39-08-10, is protected from being disclosed to a requester under the open records law. It is my opinion that the personal information contained in a motor vehicle accident report is not protected information and is subject to disclosure by the Department of Transportation ("Department").

ANALYSIS

You indicate a law firm requested motor vehicle accident records with the intention of using the information to send individuals involved a general brochure about the law firm. Your concern is that if the motor vehicle accident records are released, the citizens of North Dakota may fall victim to identity theft and unwanted solicitations or marketing efforts.

"Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours."¹ For an exception to the open records law to apply, it must be specific, and the Legislature must directly address the status of the record in question.²

The motor vehicle accident records in question are generated pursuant to statute, which require a law enforcement officer to complete a report of an accident in the form

¹ N.D.C.C. § 44-04-18(1).

² Hovet v. Hebron Pub. Sch. Dist., 419 N.W.2d 189 (N.D. 1988).

dictated by the director.³ The first page of the report contains identifying information, including personal information as defined by N.D.C.C. § 39-33-01(8), for the operators and owners of the vehicles involved in the accident. The second page of the report includes an area for the law enforcement officer to draw a diagram of the accident and provide a narrative. This narrative may include the law enforcement officer's opinion as to fault or responsibility for the accident.

The Legislature specifically provided that "reports required to be forwarded by law enforcement officials and the information contained therein shall not be privileged or held confidential."⁴ Only the portion of the report that provides the law enforcement officer's opinion is confidential and not subject to disclosure by the law enforcement agency or by the Department.⁵ The director of the law enforcement agency may furnish the requester a copy of the portion of the accident report which does not disclose the opinion of the officer for a fee of \$2.⁶

However, you are concerned that release of the requested records is contrary to the Driver and Motor Vehicle Record Privacy law contained in N.D.C.C. ch. 39-33 (privacy law). The privacy law states that "the department may not knowingly disclose personal information . . . obtained by the department in connection with a motor vehicle record."⁷ You ask whether an accident report is considered a "motor vehicle record."

"Motor vehicle record" is defined in the privacy law as "any record that pertains to a motor vehicle operator's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by the department, or other state or local agency authorized to issue any of such forms of credentials."⁸ Although, if read broadly, this definition arguably could include the motor vehicle accident report, at least one court has ruled that an accident report is not a "motor vehicle record" under the privacy law.⁹

The intent of the Legislature to exclude an accident report from the privacy law is illustrated in the definition of "[p]ersonal information" which is defined as "information that identifies a person, including . . . name, address, [and] telephone number The

³ N.D.C.C. § 39-08-10.

⁴ N.D.C.C. § 39-08-13(4).

⁵ *Id.*

⁶ N.D.C.C. § 39-08-13(6).

⁷ N.D.C.C. § 39-33-02.

⁸ N.D.C.C. § 39-33-01(6).

⁹ Mattivi v. Russell, 2002 WL 31949898 (D. Colo.) ("I also conclude that the plain language of exception in section 2725(e) makes clear that Congress did not intend 'information on vehicular accidents' to be included within the Act's prohibition of disclosure of 'personal information'").

term does not include . . . information on vehicular accidents”¹⁰ This specific exclusion is consistent with the directive in N.D.C.C. § 39-08-13(4) that personal information contained in the accident reports shall not be privileged or confidential.

It is therefore my opinion that the privacy law found in N.D.C.C. ch. 39-33 does not protect personal information included in a report of a motor vehicle accident made by a law enforcement officer.¹¹ Thus, it is further my opinion that a motor vehicle accident record is an open record and must be provided upon request and payment of the statutorily allowed fee.

Sincerely,

Wayne Stenehjem
Attorney General

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This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹²

¹⁰ N.D.C.C. § 39-33-01(8).

¹¹ But see, N.D.C.C. § 44-04-28. (Social security numbers are confidential).

¹² See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).