

LETTER OPINION
99-L-30

April 5, 1999

Mr. Wade G. Enget
Mountrail County State's Attorney
PO Box 369
Stanley, ND 58784-0369

Dear Mr. Enget:

Thank you for your letter asking for clarification of my November 23, 1998, opinion to State Radio Communications Director Lyle Gallagher regarding information provided to a public service answering point.

My earlier opinion interpreted N.D.C.C. § 57-40.6-07, which provides:

Names, addresses, and telephone numbers provided to a 911 public service answering point under section 57-40.6-06 are private data and may be used only for verifying the location or identity, or both, for response purposes only, of a person calling a 911 answering point for emergency help. The information furnished may not be used or disclosed by the public service answering point or its agents or employees for any other purpose except under a court order.

N.D.C.C. § 57-40.6-06 refers to records provided to a 911 public service answering point by a telecommunications company. The opinion concluded by listing the circumstances under which disclosure of records that are confidential under N.D.C.C. § 57-40.6-07 is authorized by that section or by other state laws.

You ask whether an individual may obtain their own 911 address from a 911 answering point, and whether 911 addresses may be released in response to a request from a telephone company. The answer to both your questions is the same, and depends in part on the 911 answering point's source for obtaining the requested information.

The November 23, 1998, opinion to Mr. Gallagher was based on two assumptions that need further explanation in light of your questions. First, the opinion assumed that the records at issue were provided to a 911 answering point by a telephone company under N.D.C.C. § 57-40.6-06. Otherwise, N.D.C.C. § 57-40.6-07 would not apply to the records, and the records could not be treated as confidential under that section. Second, the opinion assumed that

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the confidentiality imposed under N.D.C.C. § 57-40.6-07 has not been waived by the party or parties who are intended to benefit from making the records confidential.

I understand that 911 answering points are agencies of local government. As a result, records of the 911 answering points are open to the public upon request unless otherwise specifically provided by law. N.D.C.C. § 44-04-18. The open records exception in N.D.C.C. § 57-40.6-07 only makes confidential the information provided to a 911 answering point by a telephone company pursuant to N.D.C.C. § 57-40.6-06. For example, if a 911 answering point has assigned 911 addresses to all physical locations in an area, and a person asks for the 911 address for a particular physical location, the requested record was obtained by the 911 answering point from a source of information other than a telecommunications company under N.D.C.C. § 57-40.6-06 and the address is therefore not confidential under N.D.C.C. § 57-40.6-07. In other words, if the 911 answering point obtained a person's 911 address from a source other than a telephone company under N.D.C.C. § 57-40.6-06, it is my opinion that the address is not confidential under N.D.C.C. § 57-40.6-07 and is very likely an open record under N.D.C.C. § 44-04-18. I am not aware of any other open records exception which would apply to information gathered by a 911 answering point.

Assuming the 911 answering point's only record of a 911 address for a particular physical location was information provided by a telecommunications company under N.D.C.C. § 57-40.6-06, the records may be disclosed as described in the November 23, 1998, letter to Lyle Gallagher. In addition, the confidentiality provisions in N.D.C.C. § 57-40.6-07 may be waived by the party or parties for whose benefit the statute was enacted. 1998 N.D. Op. Att'y Gen. 63, 69 at n.7; N.D.C.C. § 1-02-28. This office has reviewed the legislative history of N.D.C.C. § 57-40.6-07. See generally 1993 N.D. Sess. Laws ch. 571. It appears, from the context of N.D.C.C. §§ 57-40.6-06 and 57-40.6-07, and from the legislative committee testimony of a representative of a telecommunications company supporting the enactment of these two statutes, that protection of the company's customer list was a direct concern, and that protection of customers' privacy was an indirect concern. See Hearing on S. 2211 Before the House Committee on Political Subdivisions, 53rd N.D. Leg. (Feb. 25, 1993) (Testimony of Mel Kambeitz). This is consistent with the federal statute cited in N.D.C.C. § 57-40.6-06, which prohibits a telecommunications company from disclosing to the government any information about a subscriber or customer of the company unless the

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subscriber or customer consents or if other conditions are satisfied.
18 U.S.C. § 2703(c)(1)(B)(iii).¹

Accordingly, because the confidentiality provision in N.D.C.C. § 57-40.6-07 was intended to benefit both the telecommunications company providing the information and the customer whose address is being disclosed, it is my opinion that a 911 answering point may not disclose a person's 911 address (assuming the address was received from a telecommunications company under N.D.C.C. § 57-40.6-06), except as described in my November 23 opinion to Lyle Gallagher, unless the confidentiality provisions in N.D.C.C. § 57-40.6-07 have been waived by both the person whose address is being requested and the telecommunications company which provided the information.

Sincerely,

Heidi Heitkamp
Attorney General

jcf/vkk

¹ N.D.C.C. § 57-40.6-06 was enacted in 1993 and refers to subsection (c)(1)(b)(iv) of 18 U.S.C. § 2703. However, (iv) was renumbered in 1994 as (iii) to reflect the repeal of another part of that section. See Pub. L. No. 103-414, § 207(a)(1)(A), 108 Stat. 4292.