

N.D.A.G. Letter to Marion (Feb. 12, 1986)

February 12, 1986

Mr. James L. Marion
Clerk, North Dakota Parole and Probation
P. O. Box 5521
Bismarck, ND 58502

Dear Mr. Marion:

Thank you for your letter of January 28, 1986, inquiring as to whether the Notice of Application for Parole and its responses are confidential.

With respect to parole records, N.D.C.C. §12-59-04 provides that presentence reports, pre-parole reports and supervision histories, which are obtained by any employee or member of the board in the discharge of an official duty, shall be privileged information and shall not be disclosed directly or indirectly to anyone other than the board, a judge, committees of the Legislative Assembly, or others entitled by law to receive such information. This statute continues by stating the board or a court may, in its discretion, permit the inspection of the report or parts thereof by the defendant or prisoner or his attorney or any other person having a proper interest in such information. Such a discretionary disclosure may occur only whenever the best interest or welfare of a particular defendant or prisoner makes such disclosure desirable or helpful.

The Notice of Application for Parole, as found in N.D.C.C. §12-59-10, and the responses which are generated appear to be a pre-parole report as that term is used within N.D.C.C. §12-59-04. Therefore, this particular records and responses thereto, may not be disclosed directly or indirectly to anyone other than those eligible persons listed within the statute to receive such information. The board or a court may, in its discretion, allow the inspection of such documents by the defendant or prisoner or his attorney whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful. The decision to disclose or not disclose these particular document is to be made by the board or a court.

As this is a matter of discretion, I am not able to definitely respond one way or another as to whether this particular document should be released to a prisoner. Instead, this decision must be made by the board on a case by case review of the facts and circumstances involved in each particular case.

Sincerely,

Nicholas J. Spaeth

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