

LETTER OPINION
95-L-74

March 21, 1995

Mr. Wayne O. Solberg
Assistant City Attorney
PO Box 1897
Fargo, ND 58107-1897

Dear Mr. Solberg:

Thank you for your February 10, 1995 letter inquiring how long the Fargo Police Department (Department) must retain criminal history record information and when it should be expunged. You advise that the Department receives numerous requests for information by the subjects of the criminal history information and fewer requests by prospective employers.

There is no legal requirement that criminal history record information be kept for any specified length of time. In the absence of any legislative directive, the city or Department may establish the length of time the criminal history record information must be retained.

North Dakota Century Code (N.D.C.C.) ch. 12-60 and N.D. Admin. Code art. 10-13 govern the reporting, collecting, maintaining, and disseminating of criminal history record information. The Bureau of Criminal Investigation (BCI) is the state central repository for the collection, maintenance, and dissemination of criminal history information. N.D.C.C. ? 12-60-07(3).

BCI and other criminal justice agencies are required to disclose criminal history record information to (1) a criminal justice agency, (2) a court, (3) pursuant to a subpoena, or (4) as required by law. N.D.C.C. ? 12-60-16.5. Only BCI may disclose criminal history record information to parties not described in N.D.C.C. ? 12-60-16.5 including a record subject.

N.D.C.C. ? 12-60-16.6. A "[c]riminal justice agency" means any government law enforcement agency or entity authorized by law to provide information regarding, or to exercise the powers of, arrest, detention, prosecution, correctional supervision, rehabilitation, or release of persons suspected in, charged with, or convicted of a crime." N.D.C.C. ? 12-60-16.1. The Fargo Police Department is a "criminal

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justice agency." N.D.C.C. ? 12-60-16.1(4); Letter from Robert P. Bennett, Assistant Attorney General, to David Kingsbury (Nov. 25, 1992).

N.D.C.C. ? 12-60-16.3 requires that BCI rules regarding criminal history record information must include security of the information, inspection and challenging of such information by a record subject, auditing, use and exchange of the information, and criteria under which records are purged or sealed.

N.D. Admin. Code ? 10-13-03-02 provides that local criminal justice agencies may compile and maintain criminal history records, but no time limit is prescribed by the rules for maintaining records. N.D.C.C. ch. 12-60 does not specify that criminal history record information must be maintained for any length of time. Furthermore, neither federal law nor regulations governing federally funded criminal history record information systems address the length of time records must be maintained. See 42 U.S.C.A. ? 3789g; 28 C.F.R. ?? 20.20, 20.21.

BCI has established a retention schedule with the Records Management Division of the Office of Management and Budget to retain files until a subject is age 70, after which the information is shredded. This is consistent with N.D.C.C. ? 54-46-08 which requires the records administrator in the Office of Management and Budget to establish a specific retention period for a record where a statute requiring retention does not either provide a specific retention period or specifically provide that the record be permanently retained.

Because N.D.C.C. ch. 12-60 and N.D. Admin. Code art. 10-13 do not address how long criminal history record information must be maintained, it is my opinion a local criminal justice agency may adopt policies establishing the retention period.

The Records Management Division of the Office of Management and Budget has published the North Dakota City Records Management Manual (OMB 1989) to assist cities in establishing a records management system. I am enclosing a portion of the

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manual concerning record retention schedules for police records which may provide guidance in setting record retention schedules for criminal history record information.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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Enclosure