N.D.A.G. Letter to Alexander (Nov. 14, 1985)

November 14, 1985

Mr. Robert E. Alexander
Beulah City Attorney
Hagen, Quast & Alexander
P.O. Box 249
Beulah, ND 58523

Dear Mr. Alexander:

Thank you for your letter of October 2, 1985, as to whether a particular document concerning possible criminal activity may be subject to public disclosure pursuant to North Dakota's open records law. According to your letter, your question involves the eligibility for public disclosure of a statement by a victim of alleged criminal activity where the state's attorney has reviewed the incident and declined to prosecute the case due to lack of evidence. Your letter makes no mention of a juvenile being involved. Thus, we assume that the statement refers to the observations of an adult.

Your letter mentions the opinion issued by this office on January 26, 1979, as to the effect upon police records by the North Dakota open records law. In the 1979 opinion, this office balanced the interests of the citizens, in knowing what their government officials were doing, with the public policy favoring the state's efficient operation of law enforcement agencies which is necessary and vital for the protection of the health and welfare of all citizens. In balancing these public policies, this office concluded that records of law enforcement agencies as to the detection and investigation of current criminal activities should not be subject to the open records law. Specifically, police records as to alleged confessions, officer speculations of a suspect's guilt, officers views as to the credibility of witnesses, informants statements, ballistic reports, and other test results were held to be vital to law enforcement officials in the prosecution and should not be made public during the pendency of the criminal charges. However, police reports such as offense reports, police blotters, arrest general information, and show-up sheets or logs as to criminal activity in general do not involve vital information needed by the prosecution in carrying out their public responsibilities.

In summary, the opinion of January 26, 1979, may be said to direct the disclosure to the public of law enforcement records indicating general police activity. However, investigatory files, records, and other criminal history information as to current and pending criminal charges or proceedings may not be released to the public.

In the situation described in your letter, it appears that the balancing of two public policies described previously is not required. As a criminal proceeding has not been instituted and is not contemplated, it is difficult to argue that the statement in question is needed for the effective operation of law enforcement agencies. As there appears to be no other statute specifically exempting records of closed criminal files from the open records law, the inescapable conclusion is that such records are indeed subject to the open records law and may be inspected by the public at large.

The conclusion that the statement of a victim of an alleged rape may be disclosed to the public at large is, personally, a difficult one to draw. I am very concerned over the ramifications of the disclosure of written statements of victims of sex offenses where, for one reason or another, a criminal proceeding is not instituted. I am deeply troubled over the prospect that the statements of victims of sexual offenses may see those statements used against them in one form or another at a later date. Where such fears are realized, the result may be the inability to pursue criminal prosecutions for sexual offenses due to the reluctance of victims to tell their stories.

As Attorney General, I do not have the authority to ignore the statutes as to open records. However, I am convinced that a change in the law is needed with respect to statements of victims of sexual offenses. Therefore, I will bring this issue before the next session of the legislature to seek the appropriate legislative correction.

Sincerely,

Nicholas J. Spaeth

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