

N.D.A.G. Letter to Olson (Sep. 9, 1992)

September 9, 1992

Mr. Lonnie W. Olson
Ramsey County State's Attorney
Courthouse
524 4th Avenue #16
Devils Lake, ND 58301

Dear Mr. Olson:

Thank you for your July 21, 1992, letter in which you inquire as to whether a video tape of an adult who was arrested for driving under the influence constitutes an item which is accessible under the North Dakota open records law and whether it may be copied for public use.

You have stated that there is no longer a DUI charge pending against the individual since that person has entered a plea of guilty. You are correct in your conclusion that the video tape therefore would not fall within the active criminal investigative information exception to the open records law set forth in N.D.C.C. § 44-04-18.7.

The North Dakota Legislature has not defined the term "records" of public or governmental bodies subject to the right of public inspection pursuant to the North Dakota open records law, N.D.C.C. § 44-04-18. However, our supreme court has concluded that "the term 'records' [in the open records law] is unambiguous. The legislative history surrounding the enactment of § 44-04-18 reveals that the Legislature intended to give the term an expansive meaning." City of Grand Forks v. Grand Forks Herald, Inc., 307 N.W.2d 572, 577 (N.D. 1981) Accord Forum Publishing Co. v. City of Fargo, 391 N.W.2d 169, 171 (N.D. 1986).

In City of Grand Forks v. Grand Forks Herald, Inc., the court held that public records are not limited to those records which are required by law to be kept and maintained, but may include any documents of some official import retained by a public officer or employee in the course of his official duties. 307 N.W.2d at 578.

A written summary of events occurring on the video tape or a written transcription of conversations on that tape would be subject to disclosure under N.D.C.C. § 44-04-18. Since the term "records" must be given an expansive meaning, it is my opinion that a video tape in the possession of a public agency or official that no longer falls within the exception of N.D.C.C. § 44-04-18.7, is accessible to the public under the North Dakota open records law.

Both I and my predecessors have construed the open records law to infer an obligation to provide copies of any public records in the possession or control of the public agency or

official. See 89 N.D. Att'y Gen. Op. 26. The agency or official however, may assess a charge for copying costs when providing a copy of the record. Thus, it is my further opinion that the public law enforcement agency may assess a charge for the actual copying costs to a person requesting a copy of the video tape.

I trust that I have adequately responded to your inquiry.

Sincerely,

Nicholas J. Spaeth

rpb/vkk