

N.D.A.G. Letter to Tracy (Sep. 10, 1992)

September 10, 1992

Ms. Helen Tracy  
Executive Director  
Workers Compensation Bureau  
Russell Building  
Highway 83 North  
4007 State Street  
Bismarck, ND 58501-0600

Dear Ms. Tracy:

Thank you for your July 17, 1992, letter requesting an opinion on whether raw data that exists only in an uncompiled and electronically stored form constitutes a public record and whether N.D.C.C. § 65-05-32 requires that information on individual claims be released in aggregate form. These questions result from a request you received to provide information under N.D.C.C. § 65-05-32(5) concerning individuals who filed claims during the years 1980 through 1991. You indicate the Bureau has taken the position that N.D.C.C. § 65-05-32(5) was not intended to compel the release of information in aggregate form for unspecified purposes.

N.D.C.C. § 65-05-32 provides as follows:

**65-05-32. Privacy of records and hearings.** Information contained in the claim files and records of injured employees is confidential and is not open to public inspection, other than to bureau employees or agents in the performance of their official duties. Providing further that:

1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant.
2. Employers or their duly authorized representatives may review and have access to any files of their own injured workers.
3. Physicians or health care providers treating or examining workers claiming benefits under this title, or physicians giving medical advice to the bureau regarding any claim may, at the discretion of the bureau, inspect the claim files and records of injured workers.

4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the bureau at any stage of the proceedings on any matter pertaining to the administration of this title.
5. The claimant's name; social security number; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public.
6. At the request of a claimant, the bureau may close the medical portion of a hearing to the public.

(Emphasis supplied.) N.D.C.C. § 65-05-32 provides for confidentiality of information contained in the claim files and records of injured employees as well as limited exceptions to that confidentiality. Specifically, N.D.C.C. § 65-05-32(5) provides that the claimant's name; social security number; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied or pending; and whether the claim is in active or inactive pay status are available to the public.

The legislative history of N.D.C.C. § 65-05-32-05 indicates its purpose is to make the specified information open to the public. A proponent of 1989 Senate Bill 2237 which adopted this provision indicated that "the amendment provides that certain information such as name, type of injury, employer, claim status, etc. be open to the public." Hearing on S. 2237 Before the Senate Comm. on Industry, Business & Labor, 51st Leg. (January 10, 1989) (Written Testimony of Dean J. Haas).

The provisions of N.D.C.C. § 65-05-32(5) are unambiguous in requiring that the type of information specified ". . . will be available to the public." The form in which the information is stored does not limit or restrict the availability of the specified information to the public. The provisions of N.D.C.C. § 65-05-32(5) also do not require that the purpose for which the information is being requested be specified.

Your first question is whether raw data that exists only in uncompiled and electronically stored form constitutes a public record. The North Dakota Supreme Court has reviewed the open-records law, N.D.C.C. § 44-04-18 and article XI, section 6, N.D. Const. on a number of occasions. In interpreting the open-records law the court has consistently held that the legislature intended to give a broad and expansive meaning to the term "record". See Forum Publishing Company v. City of Fargo, 391 N.W.2d 169 (N.D. 1986); City of Grand Forks v. Grand Forks Herald, 307 N.W.2d 572 (N.D. 1981). In an opinion I issued regarding charges agencies may make for the costs of reproducing records subject to the open records laws I explicitly determined that the same rules applied to records and information stored in computers. The opinion further concluded that an agency may not charge a fee for access to those records unless provided by statute. Letter from Attorney General Nicholas J. Spaeth to Charlie Whitman (October 8, 1991). If electronically stored information in computer records was not considered a public record, government agencies

could circumvent open-records laws by storing records on computer systems. Therefore, it is my opinion that raw data which exists in uncompiled and electronically stored form constitutes a public record to the extent that it consists of the specified information required to be made available to the public under N.D.C.C. § 65-05-32(5).

Your second question is whether N.D.C.C. § 65-05-32 requires that information on individual claims be released in aggregate form. As mentioned previously, N.D.C.C. § 65-05-32(5) requires that the information specified therein be available to the public. The number of cases for which the specified information is to be made available is not restricted or limited by the statute. Further, a request for information pursuant to N.D.C.C. § 65-05-32(5) does not need to specify a particular claim or claimant about which information is sought. Whether you make the specified information available on all cases requested on an individual case basis or whether you compile a list of the cases requested containing the specified information is an administrative decision. However, at a minimum you must provide the specified information for all cases on which that information is requested.

Sincerely,

Nicholas J. Spaeth

mwj/vkk