

**LETTER OPINION
2000-L-18**

February 14, 2000

Ms. Elaine Little
Director
Department of Corrections and Rehabilitation
PO Box 1898
Bismarck, ND 58502-1898

Dear Ms. Little:

Thank you for your letter asking whether the record of the protective custody placement of an inmate is exempt from the state open records law. Under the open records law, the record of the inmate's placement is open to the public "unless otherwise specifically provided by law." N.D.C.C. § 44-04-18.

Your letter specifically cites N.D.C.C. § 12-47-36, which provides in part that all "medical, psychological, treatment, or social records of the department of corrections and rehabilitation . . . relating to persons in the custody or under the supervision and management of the department of corrections and rehabilitation must be kept confidential" Your letter suggests that the record of the inmate's protective custody placement is a "social record" under this section. Although I believe it is questionable whether records showing the placement of prisoners would be covered by N.D.C.C. § 12-47-36, it is unnecessary to decide that question because the records of an inmate's protective custody placement are clearly confidential under N.D.C.C. § 12-59-04.

N.D.C.C. § 12-59-04 provides in part: "All department of corrections and rehabilitation records . . . obtained in the discharge of official duty by any . . . employee of a division or department of the department of corrections and rehabilitation, are confidential and may not be disclosed except in the manner provided under section 12-47-36." Although N.D.C.C. § 12-59-04 is located in the chapter of the North Dakota Century Code pertaining to the parole board, the plain language of this section applies to the records of the department of corrections and rehabilitation as well as the records of the parole board. Accordingly, it is my opinion that the records of an inmate's protective custody placement are confidential under N.D.C.C. § 12-59-04 and may be disclosed only in the manner described in N.D.C.C. § 12-47-36.

Sincerely,

Heidi Heitkamp

Attorney General

jcf/vkk