

## **N.D.A.G. Letter to Renner (Jan. 20, 2000)**

January 20, 2000

Mr. Jerry Renner  
Kidder County State's Attorney  
PO Box 229  
Steele, ND 58482-0229

Dear Mr. Renner:

Thank you for your letter regarding the obligation of clerks of district court to respond to requests for court records regarding criminal convictions.

As you note in your letter, this office recently issued an opinion to Senator Wayne Stenehjem in which I concluded that clerks of court are not precluded from releasing information regarding criminal convictions. 1999 N.D. Op. Att'y Gen. L-71. This opinion was based on the fact that the clerks are adjuncts of the court rather than "criminal justice agencies," so the information maintained by the clerks does not qualify as "criminal history record information" under N.D.C.C. ch. 12-60. The opinion also made a distinction between a request for "criminal history record information" as a compilation of conviction information and a request for source documents regarding specific convictions which may be maintained by the clerks of court or by local law enforcement agencies.

The answers to the questions you ask in your letter are not addressed in any state statute. "Management of judicial records . . . is an inherent power of a court." 1994 N.D. Op. Att'y Gen. 76, 77. Although judicial records regarding criminal convictions are generally open to the public, the courts are not subject to N.D.C.C. § 44-04-18, the state open records law. State v. O'Connell, 151 N.W.2d 758 (N.D. 1967). See also N.D.C.C. § 44-04-17.1(15) ("record" does not include court records). Therefore, the provisions of the open records law and the interpretive opinions of this office regarding that statute are not helpful in responding to your questions.

The right to access to judicial records regarding criminal convictions is not unlimited and can be subject to "reasonable rules and regulations as to who may inspect the records and where and how such inspection may be made." O'Connell, 151 N.W.2d at 763. It is not a right to unlimited and unsupervised inspection. Id. Access to court records is currently governed by N.D. Sup. Ct. Admin. R. 41. This rule appears to answer some of your questions. I find no provision in either the rule or in state law which would require the clerks of court to provide information over the telephone. If you need further advice on the interpretation or application of this rule, I recommend you contact the North Dakota Supreme Court.

I regret that I am unable to respond more directly to your questions, but hope this information is helpful.

Sincerely,

Heidi Heitkamp  
Attorney General

jcf/vkk

cc: Keith Nelson, State Court Administrator