

**OPEN RECORDS AND MEETINGS OPINION
2004-O-06**

DATE ISSUED: March 19, 2004

ISSUED TO: Job Service North Dakota

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Mr. Brad Peterson with Legal Services of North Dakota, asking whether Job Service North Dakota violated N.D.C.C. §44-04-18 by failing to provide Legal Services of North Dakota with copies of certain records.

FACTS PRESENTED

On January 6, 2004, Legal Services of North Dakota, on behalf of a client, submitted a request for the client's records to Job Service North Dakota ("Job Service") for use as evidence in the client's appeal with the Federal Social Security Administration for supplemental security income. An "Authorization for Release of Information" form signed by the client was enclosed with the letter. The records requested are the type that are gathered by Job Service in its administration of the North Dakota Unemployment Compensation Law. By letter of January 8, 2004, Job Service advised Ms. Paula Messmer, a paralegal at Legal Services of North Dakota, that the records maintained by Job Service are confidential and may not be disclosed except to a person filing a claim in a proceeding under the North Dakota Unemployment Compensation Law. Subsequently, Mr. Brad Peterson, an attorney for Legal Services of North Dakota, made a timely request for an open records opinion regarding the refusal of Job Service to disclose these records.

ISSUE

Whether Job Service violated N.D.C.C. § 44-04-18 by not providing a copy of an individual's records to an attorney representing that individual for use as evidence in an appeal with the Federal Social Security Administration for supplement security income.

ANALYSIS

The open records law applies to Job Service because it is a "public entity," an "agenc[y] of the state," carrying out a governmental function. N.D.C.C. §§ 44-04-17.1(12)(a), 44-04-18(1), 52-02-01.

The open records law states "[e]xcept as otherwise specifically provided by law, all records of a public entity are public records" N.D.C.C. § 44-04-18(1) (emphasis added).

North Dakota state law provides:

Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual must be held confidential and may not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or claimant's legal representative must be supplied with information from the records of the unemployment insurance division, to the extent necessary for the proper presentation of the claimant's claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to the claim.

N.D.C.C. § 52-01-03(1) (emphasis added).¹

The plain meaning of N.D.C.C. § 52-01-03(1) is that records maintained by Job Service for the administration of the unemployment compensation law are confidential and may be disclosed to a claimant only "to the extent necessary for the proper presentation of the claimant's claim" in a proceeding before Job Service. The North Dakota Supreme Court has stated "[t]he purpose of the statute protecting the confidentiality of unemployment

¹ N.D.C.C. § 52-01-03 also permits disclosure of information: (1) to "any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law"; (2) to "workforce safety and insurance, the labor commissioner, the department of commerce, the state tax commissioner, and the North Dakota occupational information coordinating committee" if the information is used "only for the purpose of administering the duties of [these agencies]; and, (3) "as required of . . . [Job Service] under federal law . . . [to] any specified governmental agencies . . . [but] only for the purpose of administering the duties of such governmental agencies." N.D.C.C. § 52-01-03(2), (3), and (6). The disclosure of information to government agencies, is not relevant to this open records request.

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compensation information (i.e., N.D.C.C. §52-01-03(1)) is to encourage full, free and honest reporting.” Stutsman County v. Westereng, 628 N.W.2d 305, 312 (2001).

Unlike the laws of other states, N.D.C.C. § 52-01-03(1) does not permit disclosure of these types of records in proceedings before other entities. Compare Alaska Stat. § 23.20.110(k); Mich. Comp. Laws § 421.11(b)(4); N.C. Gen. Stat. § 96-4(t)(2); and, Wash. Rev. Code § 50.13.100.

Therefore, it is my opinion that because records under N.D.C.C. § 52-01-03(1) are confidential records that may be disclosed to a claimant only in connection with a claim in a proceeding under the North Dakota Unemployment Compensation Law, Job Service did not violate the open records law by failing to disclose these records.

CONCLUSION

Job Service did not violate N.D.C.C. § 44-04-18 because the records that were requested are "confidential records" under N.D.C.C. §52-01-03(1) that may be disclosed to an individual only for the purpose of filing a claim in a proceeding under the North Dakota Unemployment Compensation Law.

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