

**LETTER OPINION
2005-L-37**

October 21, 2005

The Honorable Lois Delmore
House of Representatives District 43
714 S 32nd St
Grand Forks, ND 58201-4138

Dear Representative Delmore:

Thank you for your letter asking whether the reporting requirements of the homeless management information system ("HMIS"), established under the McKinney-Vento Homeless Assistance Act¹ conflict with N.D.C.C. § 14-07.1-18, which requires North Dakota domestic violence shelter organizations to maintain the confidentiality of certain client information. I infer from the context of your question that you are also asking whether, under North Dakota law, a domestic violence shelter organization is permitted to submit encrypted client information to a state database.

It is my opinion that a domestic violence organization may not disclose the name, address, telephone number or other personally identifying information of any person receiving services from a domestic violence shelter. It is my further opinion that an organization providing services to victims of domestic violence would not violate N.D.C.C. § 14-07.1-18 if it discloses personally identifying information in a manner that maintains its confidentiality.

ANALYSIS

Congress, expressing a concern over the accuracy of estimates of the homeless population and the effectiveness of homeless shelter programs, directed the Department of Housing and Urban Development ("HUD") to collect data at the local level on the extent of homelessness.² Under this congressional directive, HUD requires

¹ 42 U.S.C. § 11,301, et seq.

² See Consolidated Appropriations Resolution of 2003, Pub. L. No. 108–7, 117 Stat. 11 (2003) and H.R. Rep. No. 108–10 (Conference Report), 42 U.S.C. §§ 11394(a)(2) (application for assistance must contain "a description of the number and characteristics of the eligible persons expected to occupy the safe haven"), 42 U.S.C. § 11403c(b)(2) (same) and H.R. Rep. No. 106-988 at 106 (2001) ("[t]he conferees agree that local jurisdictions should be collecting an array of data on homelessness in order to prevent duplicate counting of homeless persons . . . HUD is directed to take the lead in working with communities toward this end. . .").

domestic violence programs that receive HUD McKinney-Vento funds to participate in the local HMIS.³

An HMIS is a computerized system for collecting and storing information about people using homeless assistance services in a community. Continuums of Care ("CoC"),⁴ local bodies that plan for and coordinate homeless services, are responsible for storing HMIS data.⁵ An HMIS is intended to integrate data from all homeless service providers within the jurisdiction of a CoC and capture basic descriptive information on every person served.⁶ In general, HUD requires all grant recipients to collect and transmit to the HMIS a specified set of client-level information, "universal data elements," regarding homeless individuals.⁷ The "universal data elements" are: name, social security number, date of birth, ethnicity and race, gender, veteran status, disabling condition, residence prior to program entry, ZIP code of last permanent address, program entry date, program exit date, unique person identification number, program identification number, and household identification number.⁸ Homeless providers are required to report the client data to their CoC's central data storage facility at least once a year, so that the CoC can eliminate duplicate records and analyze the data for local planning purposes.⁹

Identified purposes of this data collection effort include improved understanding of the characteristics of homeless persons in that community, improved service delivery, and assessment and documentation of the community's progress in reducing homelessness.¹⁰ An HMIS is designed to aggregate client data to generate an unduplicated count of clients receiving homelessness services within a geographic area.¹¹

Recognizing the sensitivity about disclosing "protected [individually identifiable] personal information" of domestic violence victims, the HMIS reporting requirements provide that a domestic violence shelter organization is not required to report a client's personal information if state law applicable to the disclosure of this information conflicts with

³Final Homeless Management Information ("Final Notice") Systems (HMIS) Data and Technical Standards, 69 Fed. Reg. 45,888, 45,902 (July 30, 2004).

⁴ Id.

⁵ Id. at 45,905.

⁶ Id. at 45,888.

⁷ Id.

⁸ Id.

⁹ Id. at 45,901, 45,910, 45,934.

¹⁰ Id. at 45,888.

¹¹ Id.

federal HMIS requirements.¹² "Protected personal information" means "[a]ny information maintained by or for a covered homeless organization about a living homeless client or homeless individual that: (1) identifies, either directly or indirectly, a specific individual; (2) can be manipulated by a reasonably foreseeable method to identify a specific individual; or (3) can be linked with other available information to identify a specific individual."¹³

Your first question is whether a domestic violence shelter organization is permitted under North Dakota law to disclose protected (individually identifiable) personal information to an HMIS. Under N.D.C.C. § 14-07.1-18, all agents, employees, and volunteers participating in a domestic violence program are required to maintain the confidentiality of the "name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence or sexual assault program" unless:

- a. A client consents to the release of information that relates only to that client or the client's dependents;
- b. The agent, employee, or volunteer operating a domestic violence or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;
- c. A court of competent jurisdiction orders the disclosure after an in camera review and a written finding by the court that the information directly and specifically relates to a determination of child abuse and neglect under chapter 50-25.1 or termination of parental rights under sections 14-15-19, 27-20-44, 27-20-45, 27-20-46, 27-20-47, and 27-20-48; or
- d. An agent, employee, or volunteer working with a domestic violence or sexual assault program has knowledge or reasonable cause to

¹² Clarification and Additional Guidance on Special Provisions for Domestic Providers Shelter, 69 Fed. Red. 61,517, 61,518 (Oct. 19, 2004) ("Clarification") ("In the event that state laws conflict with the [final notice], as determined by an appropriate state government entity, state law will prevail.")

¹³ Final Notice at 45,928.

suspect a child has been abused or neglected as defined by section 50-25.1-02.¹⁴

In contrast to other laws making information confidential, the domestic violence statute does not contain an exception permitting disclosure of confidential information for research or statistical studies, or when permitted by other state or federal laws.¹⁵ Therefore, it is my opinion that N.D.C.C. § 14-07.1-18 does not permit disclosure of the information listed in subsection one of that section to an HMIS unless the client of a domestic violence shelter program has given his or her consent to disclose confidential information as permitted under N.D.C.C. § 14-07.1-18(2)(a). To the extent the universal data elements collected do not fall within the information listed in subsection one, domestic violence shelters must report that information to the HMIS.

You also ask whether a domestic violence organization is required by HUD's standards to submit client information to an HMIS, if the information can be submitted in a form or manner that does not reveal the "raw" data. As noted, domestic violence programs that receive McKinney-Vento funds must collect the universal data elements required for reporting. HUD did, however, in light of concerns regarding submitting client-identifying data from domestic violence programs, modify the reporting requirements. HUD does not require domestic violence providers to collect or report addresses of clients served by a domestic violence provider.¹⁶ HUD will not require shelters to submit personal identifiers (name and social security number (SSN)) to the CoC. Domestic violence programs can use a proxy, coded, encrypted, or hashed unique identifier -- in lieu of name and SSN -- that is appended to the full service record of each client served.¹⁷ The coded unique identifier must include characters and digits from a portion of a client's name, date of birth, and gender.¹⁸ This unique identifier can be generated either manually or through the use of an advanced technological encryption algorithm.¹⁹ Programs participating in HMIS are not required to share client data with any other organization besides the central coordinating entity identified by the CoC.²⁰

¹⁴ N.D.C.C. § 14-07.1-18(2).

¹⁵ See e.g. N.D.C.C. § 23-02.1-28(3) (permitting disclosure of confidential vital records data "for statistical purposes to federal, state, local, or other public or private agencies") and N.D.C.C. § 50-06-15(1)(c) (permitting disclosure of confidential Department of Human Services client information when "permitted or required by other law").

¹⁶ Clarification at 61,518.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

HUD's clarification also states that HUD fully supports alternative methods of participation by domestic violence providers.²¹ Thus, HUD requires domestic violence shelters to submit alternative client data if disclosing information in that form does not conflict with state law. HUD has charged domestic violence programs to meet with CoC representatives to identify administrative solutions, such as delaying entry of data into the HMIS until after the client has left the domestic violence program, or other technological or administrative solutions that adequately protect data and allow for an accurate unduplicated count of homeless persons.²² HUD will provide technical assistance to CoCs to help them develop solutions that meet the needs of domestic violence victims and the programs that serve this population. The final notice provides "[t]he key to participation hinges on the availability of sophisticated HMIS software that addresses data security issues and the development of protocols within programs for data security, confidentiality, and sharing that satisfy the concerns of domestic violence programs."²³ Section 14-07.1-18, N.D.C.C., requires domestic violence shelters to maintain the confidentiality of certain information. Given the flexibility in HUD's regulations and the further guidance provided in HUD's Clarification, I cannot conclude that N.D.C.C. § 14-07.1-18 conflicts with HUD's requirements. It is my opinion that an organization providing services to victims of domestic violence would not violate N.D.C.C. § 14-07.1-18 if it discloses personally identifying information in a manner or form that maintains the confidentiality of the information identified.²⁴

Sincerely,

Wayne Stenehjem
Attorney General

mjm/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).

²¹ Id.

²² Final Notice at 45,892, 45,902-03, Clarification at 61,518.

²³ Final notice at 45,902 (emphasis added).

²⁴ N.D.C.C. § 14-07.1-18(1).