

LETTER OPINION
96-L-119

June 5, 1996

Mr. J. Thomas Traynor, Jr.
Devils Lake City Attorney
509 5th St
PO Box 838
Devils Lake, ND 58301

Dear Mr. Traynor:

Thank you for your April 29, 1996, letter asking whether a local law enforcement agency may release a copy of the accident report required to be filed pursuant to N.D.C.C. § 39-08-10.

"The driver of a vehicle involved in an accident resulting in injury to or death of any person, or property damage to an apparent extent of at least one thousand dollars, shall immediately give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the state highway patrol." N.D.C.C. § 39-08-09. Every law enforcement officer who investigates a motor vehicle accident which must be reported is required to make and forward a written report of the accident to the director of the State Department of Transportation. N.D.C.C. § 39-08-10. These reports and the information contained in the reports are not generally privileged or held confidential; however, if the investigating officer expresses an opinion concerning fault or responsibility for the accident in the report, this opinion is confidential and not open to public inspection except as specifically provided by statute. N.D.C.C. § 39-08-13(4).

The release of a copy of the law enforcement officer's opinion in the report regarding fault or responsibility for a motor vehicle accident is governed by N.D.C.C. § 39-08-13(5), which provides:

Upon affirmation by a party to the accident, a party's legal representative, or the insurer of any party to the accident that the investigating officer's opinion is material to a determination of liability and upon payment of a fee of five dollars, the director may release a copy

Mr. J. Thomas Traynor, Jr.
June 5, 1996
Page 2

of the investigating officer's opinion to the entity requesting the information. The request must be made on an appropriate form approved by the director.

The director may furnish any person a copy of the investigating officer's accident report that does not disclose the opinion of the reporting officer if the report shows that the accident is one for which a report was required to be filed under N.D.C.C. § 39-08-09 upon payment of a \$2 fee. N.D.C.C. § 39-08-13(6). "Copies of [investigating officers'] accident reports are not admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle accident. "N.D.C.C. § 39-08-13(7).

Other persons, aside from law enforcement officers, are also required to file accident reports. Accident reports made by persons involved in accidents or by garages are confidential and may be used by the Department of Transportation or other state agencies for accident prevention purposes or for the administration of laws relating to the deposit of security and proof of financial responsibility. N.D.C.C. § 39-08-14. A city may, by ordinance, "require that the driver of a vehicle involved in an accident shall file with a designated city department a report of such accident or a copy of any report herein required to be filed with the [Department of Transportation]." N.D.C.C. § 39-08-16. Any such report is confidential and is also subject to N.D.C.C. § 39-08-14. Id.

It is only upon compliance with N.D.C.C. § 39-08-13(5) that a copy of the report containing the investigating officer's opinion regarding fault or responsibility for the accident may be obtained. Further, it is only upon compliance with N.D.C.C. § 39-08-13(6) that a copy of the report without the investigating officer's opinion regarding fault or responsibility for the accident may be obtained. "To conclude otherwise would frustrate the legislative policy providing for the confidentiality of the investigating officer's opinion." Letter from Attorney General Nicholas J. Spaeth to Dwaine Heinrich (May 11, 1992). Therefore, it is my opinion that the local law enforcement agency or the investigating officer may not release a copy of the report required to be filed with the director of the Department of Transportation under N.D.C.C. § 39-08-13.

The resolution of the first question in this manner moots your second question about whether a fee may be charged.

Sincerely,

Mr. J. Thomas Traynor, Jr.
June 5, 1996
Page 3

Heidi Heitkamp
ATTORNEY GENERAL

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