N.D.A.G. Letter to Bock (March 14, 1985)

March 14, 1985

Mr. Rick Bock, Director
Records Management Division
Office of Management and Budget
State Capitol
Bismarck, ND 58505

Dear Mr. Bock:

Thank you for your memo of March 7, 1985 concerning the open records law memorandum I sent to all state agencies on February 11, 1985. According to your memo, you take issue with the statements in my memorandum which indicates there is no statutory definition of "record" for purposes of the open records law. You indicate that the "record" is defined in N.D.C.C. § 54-46-02 as well as in various portions of Chapter 43 of the United States Code.

I am afraid you have confused the term "record" under the open records law with the term "record" under the records management law. N.D.C.C. Ch. 54-46 does provide for records management, retention and disposal within the State of North Dakota. You are correct that the term "record" is defined in N.D.C.C. § 54-46-02. However, according to the introductory language to this statute, these definitions are for the terms "as used in this chapter". In other words, the definitions provided for in this chapter are restricted solely to N.D.C.C. Ch. 54-46 and may not be carried over to the terms as they may be found in other portions of the North Dakota Century Code.

For purposes of the open records law, "record" is not defined and the definition provided for in N.D.C.C. § 54-46-02(2) is not applicable by the very terms of that statute. Indeed, the North Dakota Supreme Court in City of Grand Forks vs. Grand Forks Herald, 304 N.W. 2d 572 (N.D. 1981), concluded that the open records law did not define the term "records".

Therefore, the statement contained in my memorandum of February 11, 1985 indicating that there is no statutory definition of the term "record" for purposes of the open records law is indeed accurate. The definition of "record" as found in N.D.C.C. Ch. 54-46 is simply inapplicable to the open records law.

I apologize if the memorandum has caused any confusion in distinguishing the open records law with the records management law. These are two distinct statutes designed to accomplish two distinct goals.

Sincerely,

Nicholas J. Spaeth

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