

**OPINION  
78-154**

May 4, 1978           (OPINION)

The Honorable Myron Just  
Commissioner of Agriculture  
Chairman, North Dakota State  
Potato Council  
State Department of Agriculture  
State Capitol  
Bismarck, ND 58505

Dear Commissioner Just:

This is in response to your letter of March 8, 1978, wherein you requested our opinion as to whether or not certain records of the North Dakota State Potato Council must be made available to the Crop Reporting Service in Fargo, North Dakota. In your letter, you state as follows:

The North Dakota State Potato Council has received a request from the Federal State Crop Reporting Service in Fargo.

The request asks for a listing of all potato growers in the State of North Dakota.

It is the desire of the Council to retain the anonymity of its growers to the greatest extent possible, however, Section 4-10.1-17 of the Potato Industry Promotion Act reads:

Records of council - inspection. All of the records of the Council, including acreage reports, tax returns, claim of exemption, and any other data, records, or information retained by the Council shall be public information and shall be available for the inspection of any person for any lawful purpose; provided, however, that the Council shall be empowered to make rules and regulations concerning the inspection of such information or data, and the time or place of such inspection or the manner in which the information shall be made available.

We are asking your office for the following opinion:

Is the North Dakota State Potato Council required to supply them with a list, or may we define "inspection" to mean merely letting them look at the list?

And in a further letter of April 20, 1978, you state as follows:

1. The North Dakota Crop and Livestock Reporting Service will be glad to copy the list themselves or just the records of the Council to update their existing list. The list is used for drawing a stratified sample of potato producers to be surveyed for potato acreage and production.
2. The Crop and Livestock Reporting Service would also like to

know the hundredweight sold to help stratify the list for more efficient sampling.

3. The list and the hundredweight sold would be kept strictly confidential by their office and not be made available to anyone else.
4. The list and control data would be used for statistical purposes only.

We would appreciate your taking these points into consideration when making your opinion.

As you note in your letter of March 8, 1978, Section 4-10.1-17 sets forth which records must be made available for public inspection. This section also empowers the Council to adopt rules and regulations governing the time, place and manner of inspection. Since, from our files, it appears that the Council has adopted no such regulations, which regulations must be on file with this office to be of legal effect, the answer to your question must be governed by the language of Section 4-10.1-17.

The language of this section requires only that the records "be . . . available" for inspection. On its face, this section does not require the Potato Council to take any other action to insure availability, once it has been determined that the request is for a lawful purpose.

In direct answer to your question, we do not believe that the Council is required to supply the Reporting Service with copies of any requested records in order to comply with the requirements of Section 4-10.1-17.

We trust that the foregoing adequately answers your question.

Sincerely,

ALLEN I. OLSON

Attorney General