

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 81-5

Date Issued: February 3, 1981

Requested by: F. C. Rohrich, City Attorney for the City of Linton

- QUESTION PRESENTED -

Whether an employment application submitted by an individual for the position of city police officer is subject to the requirements of section 44-04-18 of the North Dakota Century Code.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the application in question is subject to the open records requirement of North Dakota law.

- ANALYSIS -

In an opinion of this office dated January 26, 1979, addressed to Bismarck City Attorney John Zuger, Article 100 of the North Dakota Constitution and section 44-04-18, N.D.C.C., were discussed as they apply to law enforcement records. In that opinion law enforcement records dealing specifically with the investigation, detection, prosecution, etc., of criminal activities were held not subject to the requirements of section 44-04-18, N.D.C.C., and Article 100 of the Constitution of North Dakota. Records kept by law enforcement agencies other than those specific records were held to be subject to the open records requirements of North Dakota law.

"Law enforcement agencies, just as other government agencies, keep many other records as well pertaining to their general functioning and administration. These records unless specifically exempted by state law from disclosure or unless otherwise directly related to the investigation and detection of crime, would be open records under the provisions of Article 100 of the Constitution and section 44-04-18 of the North Dakota Century Code." Attorney General's Opinion of January 26, 1979.

There is no state statute exempting an employment application from the requirements of Article 100 or section 44-04-18, N.D.C.C. The fact that an employment application is not made a part of an official proceeding or hearing makes no difference. It is noted that this opinion is not based on any federal statute or rule, and that only state law has been considered. It is also noted that the individual whose employment application is in question is free to petition the court for a protective order based on any claimed right.

-EFFECT-

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

ROBERT O. WEFALD  
Attorney General

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