

Date Issued: February 5, 1981 (AGO 81-8)

Requested by: Lloyd F. Zander,
Commissioner of Veterans Affairs

- QUESTION PRESENTED -

Whether the North Dakota Commissioner of Veterans Affairs has authority to authorize the release of information and records on file with the Department of Veterans Affairs pertaining to a particular veteran.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that all records maintained by the Department of Veterans Affairs are subject to the open records law of section 44-04-18, N.D.C.C., except for that information and those records identified as confidential by section 37-18-11, N.D.C.C.

- ANALYSIS -

Section 44-04-18 of the North Dakota Century Code states as follows:

44-04-18. ACCESS TO PUBLIC RECORDS - PENALTY.

1. Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.
2. Violations of this section shall be punishable as an infraction.

This law is applicable to the records maintained by all governmental bodies and agencies except where North Dakota law or federal law specifically exempt the release of the information or record in question. With respect to the question posed by your letter, your attention is directed to Section 37-18-11, N.D.C.C., which provides a list of those records and that information which is to be maintained by the Department of Veterans Affairs in strict confidence. These may not be released to the general public.

Subsections 1, 2, 3, 4, and 10 of section 37-18-11, N.D.C.C. are on point with regard to the lawful exceptions to section 44-04-18, N.D.C.C. The types of reports, information, and records described by these subsections, which are repeated below for your consideration, are those types of records and papers which cannot be released pursuant to the open records law of this state.

1. All records and papers of the department are to be utilized in the manner to best serve the public interest, but the veteran's right of privacy as to information pertaining to his military or naval service and to confidential information contained in his application for benefits will be respected.
2. All reports of investigation made by employees of the department or at the direction of the department for official departmental purposes are for the use of the commissioner and his staff only. Materials and information which disclose the investigative techniques of the department or the identity of confidential informants and material received in confidence by representatives of the department will not be released.
3. Records pertaining to any application for benefits, whether pending or adjudicated, will be deemed confidential and no disclosure therefrom will be made except in the circumstances and under the conditions set forth in this chapter, and any person making application for benefits shall hereinafter be referred to as the applicant.
4. An applicant may not have access to official department records concerning himself, but information from official records may be disclosed to an applicant or his duly authorized representative as to matters concerning the applicant.
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10. A county veterans' service officer may be permitted to inspect records pertaining to any application for benefits in which his office may be directly involved upon the condition that only such information contained therein as may be properly disclosed will be disclosed by him only to the applicant or if the applicant is incompetent, to his legally constituted representative.

-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

Prepared by: Terry L. Adkins
Assistant Attorney General