

**LETTER OPINION**  
**95-L-146**

June 21, 1995

Honorable Marv Mutzenberger  
State Representative  
205 East Arbor Avenue  
Bismarck, ND 58504

Dear Representative Mutzenberger:

Thank you for your May 15, 1995, letter asking whether the list of employers implementing and maintaining risk management plans approved by the Workers' Compensation Bureau (Bureau) can be disclosed to the public.

"Except as otherwise specifically provided by law, all records of public or governmental . . . bureaus . . . of the state . . . are public records, open and accessible for inspection during reasonable office hours." N.D.C.C. ? 44-04-18; see also N.D. Const. art. XI, ? 6. Thus, as a governmental bureau, any record possessed or kept by the Bureau is open unless "otherwise specifically provided by law." 1985 Op. Att'y Gen. 77, 78. It is specifically provided in N.D.C.C. ? 65-04-15 that "information contained in an employer's report is for the exclusive use and information of the bureau in the discharge of its official duties and is not open to the public . . . ." (Emphasis added).

You ask whether this section prohibits the Bureau from disclosing to the public the names of employers who implement and maintain risk management programs under N.D.C.C. ? 65-04-19.1. The Bureau maintains a list of these employers under N.D. Admin. Code ? 92-05-01-09. "The name and address of an employer [making a report to the Bureau] in effect constitutes information contained in [that] report." Letter from Attorney General Helgi Johanneson to Owen T. Owen (June 8, 1964). Thus, this list is confidential under N.D.C.C. ? 65-04-15 if it is based on information supplied to the Bureau in an "employer's report."

The term "report" is not defined in N.D.C.C. title 65. The only employer reports mentioned in N.D.C.C. ch. 65-04 are

payroll reports. See N.D.C.C. ?? 65-04-05, 65-04-14. However, undefined terms in a statute normally must be given their plain and ordinary meaning. N.D.C.C. ? 1-02-02. Thus, the term "report" refers not only to payroll reports, but to any "official or formal statement of facts or proceedings" provided to the Bureau by an employer. Black's Law Dictionary 1300 (6th ed. 1990); see also The American Heritage Dictionary 1049 (2d coll. ed 1991).

Previous opinions of this office also may suggest that "report" as used in N.D.C.C. ? 65-04-15 refers only to payroll reports and possibly accident reports. See 1985 Op. Att'y Gen. at 79; Letter from Attorney General Helgi Johanneson to E. Odin Sjaastad (May 9, 1966). However, at the time these opinions were issued, these reports were the only documents provided to the Bureau by employers that arguably fit within the plain meaning of "report." These opinions predate the 1993 authorization of a premium discount for risk management programs. See 1993 N.D. Sess. Laws ch. 624, ? 1.

To be entitled to a premium discount under N.D.C.C. ? 65-04-19.1, employers must obtain the Bureau's approval for their risk management program by sending a written copy of the program to the Bureau. N.D. Admin. Code. ? 92-05-01-03. The program must include several elements listed in N.D. Admin. Code ? 92-05-01-04. Thus, to become listed by the Bureau as maintaining an approved risk management program, an employer must send the Bureau a written document or statement of the risk management procedures implemented by the employer. Such a statement would clearly be an "employer's report" under N.D.C.C. ? 65-04-05.

In conclusion, the list of employers implementing and maintaining an approved risk management program under N.D.C.C. ? 65-04-19.1 is based on information provided in an "employer's report." Therefore, it is my opinion that the list is confidential and may not be disclosed to the public.

As this office previously indicated, "[a]ny departure from the ordinary meaning disclosed by the language used in section 65-04-15 should be by legislative action rather than by construction or administrative proceedings." Letter to Owen T. Owen, supra.

Sincerely,

Honorable Marv Mutzenberger  
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Heidi Heitkamp  
ATTORNEY GENERAL

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