

**LETTER OPINION**  
**95-L-148**

June 21, 1995

Mr. Larry W. Quast  
Mercer County State's Attorney  
P.O. Box 39  
Stanton, ND 58571-0039

Dear Mr. Quast:

Thank you for your letter regarding the confidentiality of information contained in a petition for a disorderly conduct restraining order.

You question whether N.D.C.C. ? 14-07.1-18 requires that certain information contained in a petition for a disorderly conduct restraining order pursuant to N.D.C.C. ? 12.1-31.2-01 be confidential. You also question whether the confidentiality of information under N.D.C.C. ? 14-07.1-18 is waived by electing to proceed and obtain a domestic violence restraining order pursuant to N.D.C.C. ch. 12.1-31.2. Since these two questions are related, I will address them together.

The North Dakota Supreme Court has recognized a distinction between the accessibility to the public of judicial records and the accessibility of "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. . . ." N.D.C.C. ? 44-04-18(1). See Grand Forks Herald v. Lyons, 101 N.W.2d 543, 546 (N.D. 1960) (the Legislature did not intend "agencies of the state" to include the courts for purposes of N.D.C.C. ? 44-04-18). This issue was addressed in a prior Attorney General's opinion which concluded that management of judicial records is an inherent power of the court. 1994 N.D. Op. Att'y Gen. 76. Pursuant to N.D.C.C. ? 11-17-01(1), the clerk of district court takes charge of all papers and records filed or deposited in the office of the clerk of court, and safely keeps and disposes of them according to Supreme Court rule. The clerk of court, however, does not have independent authority to decide questions of access to court records, but rather acts as an adjunct to the judge. 1994 N.D. Op. Att'y Gen. 76 at 78. "[T]he Supreme Court and the district court may adopt reasonable rules relating to who may review the records and files and to the time, place, and manner for that inspection. The clerk of

Mr. Larry W. Quast  
June 21, 1995  
Page 2

district court may apply to the district court for direction regarding the disclosure of court records." 1994 N.D. Op. Att'y Gen. 76 at 78-79. Therefore, it is within the discretion of the particular court to determine the extent of accessibility of judicial records to the public.

You also inquire regarding the applicability of N.D.C.C. ? 14-07.1-18 to certain information contained in petitions for disorderly conduct restraining orders. This statute very specifically applies to "all agents, employees, and volunteers participating in a domestic violence or sexual assault program. . . ." N.D.C.C. ? 14-07.1-18(1).

The statute requires that the above-identified individuals maintain the confidentiality of certain information specifically identified. If any of this specific information is contained in a petition for a disorderly conduct restraining order filed with the court, this statute would not prohibit the court from disclosing this information to the public pursuant to its discretion described above. The statute prohibits the specified individuals from disclosing such information, unless one of the exceptions set out in the statute applies. If it is alleged that one of these individuals has violated the statute by disclosing certain information, the remedy is to charge that individual with an infraction. N.D.C.C. ? 14-07.1-18(3).

The inclusion of information that is confidential under N.D.C.C. ? 14-07.1-18 in a document filed with the court does not prohibit such information, in the possession of the court, from being accessible to the public; once the information becomes part of a court record, accessibility is within the discretion of the court, as described above.

You also inquire whether the proceeding under N.D.C.C. ch. 12.1-31.2 is a criminal law proceeding. N.D.C.C. ? 12.1-31.2-01 authorizes a judge to issue a disorderly conduct restraining order if the judge finds reasonable grounds to believe the person has engaged in disorderly conduct. N.D.C.C. ? 12.1-31.2-01(5). Service of the disorderly conduct restraining order may be accomplished by publication pursuant to Rule 4 of the North Dakota Rules of Civil Procedure. N.D.C.C. ? 12.1-31.2-01(6). This combination of using a civil standard of proof and references to the Rules of Civil Procedure leads to the conclusion that the proceeding under N.D.C.C. ? 12.1-31.2-01 is a civil proceeding. Further, the initial procedure to obtain a disorderly conduct restraining order has no criminal implications and requires no law enforcement or prosecutorial involvement. Therefore, while criminal sanctions are authorized for a violation of an order issued pursuant to this chapter, N.D.C.C.

Mr. Larry W. Quast  
June 21, 1995  
Page 3

? 12.1-31.2-01(8), the proceeding in which the order is actually obtained is civil in nature.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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