

LETTER OPINION  
96-L-16

February 8, 1996

Honorable Marv Mutzenberger  
State Representative  
205 East Arbor Avenue #201  
Bismarck, ND 58504

Dear Representative Mutzenberger:

Thank you for your letter concerning the confidentiality of workers compensation information. Your concern centers on the allegation that some construction contractors are not paying the proper premiums and whether relevant information concerning this allegation may be released by the Workers Compensation Bureau (Bureau) 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.

N.D.C.C. § 65-04-04 requires each covered employer to "pay into the fund annually the amount of premiums determined and fixed by the bureau for the employment or occupation of the employer." N.D.C.C. § 65-04-04 further provides that "[t]he amount must be determined by the classifications, rules, and rates made and published by the bureau and must be based on a proportion of the annual expenditure of money by the employer for the service of persons subject to the provisions of [title 65]." After payment is made, the Bureau mails the employer a receipt or certificate indicating that the premium has been paid. Id. This certificate of premium payment must be displayed by the employer in a conspicuous manner at the workplace. Id.

The North Dakota Workers Compensation Bureau Classification Manual effective July 1, 1995, lists approximately 143 employment classifications in North Dakota. For example, the iron or steel

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construction and pile driving classification 5040 includes "workers engaged in the erection of iron or steel frame structures, including assembly, disassembly, or fabricating at the job site." The building construction classification 5410 "includes all contractors and operative builders primarily engaged in the construction of residential, farm, industrial, commercial, and other buildings." The premium rate for each classification varies depending upon the risk involved. See N.D.C.C. § 65-04-01. I understand that your constituent believes that some construction contractors may be misclassifying their workers doing iron or steel construction (classification 5040) as general building construction workers (classification 5410) which results in a much lower premium being paid.

N.D.C.C. § 65-04-05 requires each covered employer to furnish payroll information to the Bureau. N.D.C.C. § 65-04-15 provides that "[t]he information contained in an employer's report is for the exclusive use . . . of the bureau in the discharge of its official duties and is not open to the public nor usable in any court in any action or proceeding pending therein unless the Bureau is a party thereto." N.D.C.C. § 65-04-15 permits the Bureau to tabulate and publish this information in statistical form for the use of the state and the public. N.D.C.C. § 65-04-15 directs the Bureau to disclose the rate classification of an employer to a requester, but prohibits the Bureau from disclosing "any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying." The only way to ascertain whether an employer is paying the proper premiums based on the rate classifications of the employer's employees, is through an examination and audit of the employer's report. Therefore, it is my opinion that a requester is entitled to receive a copy of the Bureau's certificate of premium payment including the employer's rate classifications, but the information contained in an employer's report or derived therefrom would not be available except as tabulated and published by the Bureau in statistical form. Accord Letter from Attorney General Heidi Heitkamp to Representative Marv Mutzenberger (June 21, 1995).

In connection with your concern, I understand that the Bureau issued on December 15, 1995, a "Notice to Contractors" alerting them of the importance of filing a correct payroll report. For your convenience, I have enclosed a copy of this notice. Any record of the employers who were sent this notice would be an open record. If through an audit the Bureau determines an employer willfully misrepresented to the Bureau the amount of its payroll upon which the employer's

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premium is based, the Bureau, under N.D.C.C. § 65-04-14, must collect the penalty imposed.

Further, whether any premium adjustments have been made is a matter of public record. See 1985 Op. Att'y Gen. 77.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

dec\jrs  
Enclosure