

**OPINION**  
**58-149**

March 21, 1958            (OPINION)

RECORDS

RE: Tax Department - Disclosure of Files

Pursuant to your letter request of March 21, 1958, please be advised that it is the opinion of the Attorney General that section 57-3857 of the North Dakota Revised Code of 1943 does not prohibit disclosure by the Tax Commissioner of the fact that his office has no record of a particular person having filed an income tax return.

The above referred to section provides that the commissioner "shall not divulge nor make known, in any manner, the amount of income, or any particulars set forth or disclosed in any report or return required under this chapter" (Chapter 57-38 "Income Tax"). A disclosure that a particular person has not filed a tax return is not the disclosure of information or particulars set forth in a return or report. The secrecy provision is predicated upon the theory that a return will be on file. If the return is not on file, then the secrecy provision is not applicable.

The reason for the statute is apparently to protect persons from having used against them information which they themselves have produced. Not having produced such information, they are not in a position to claim such protection. When the commissioner discloses that a person has not filed a tax return he does so upon reference to all the applicable records in his office and not upon information furnished him by the person who has not filed.

We note that Chapter 305 of the Session Laws of 1957 provides that except as specifically provided by law the records of all governmental agencies are open to public inspection. Since section 57-3857 is not applicable to the fact that a particular person has not filed a tax return, it would appear that Chapter 305 would be applicable to provide authority for the disclosure of that fact.

LESLIE R. BURGUM

Attorney General