



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. S-1461

PUBLIC RECORDS:
Access to and Microfilming of
Confidential Department of
Transportation Information

John D. Kramer, Secretary
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62764

Dear Mr. Kramer:

This responds to your request for an opinion concerning your responsibilities to maintain the confidentiality of written accident reports made to the Department of Transportation pursuant to the provisions of Article IV of chapter 11 of the Illinois Vehicle Code (Ill. Rev. Stat. 1977, ch. 95 1/2, pars 11-401 through 11-416).

Your first question is whether traffic accident reports filed pursuant to section 11-406 of the Illinois Vehicle Code (Ill. Rev. Stat. 1977, ch. 95 1/2, par. 11-406) may be released to the Department of Public Health and to

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private researchers. It is my opinion that they may not be. Section 11-406 requires the filing of accident reports. Section 11-412 (Ill. Rev. Stat. 1977, ch. 95 1/2, par. 11-412) states:

"All required accident reports and supplemental reports shall be without prejudice to the individual so reporting and shall be for the confidential use of the Department and the Secretary of State and, in the case of second division vehicles operated under certificate of convenience and necessity issued by the Illinois Commerce Commission, of the Commission, except that the Administrator or the Secretary of State or the Commission may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident and the Department shall disclose the identity of the insurance carrier, if any, upon demand. No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the Administrator shall furnish upon demand of any person who has, or claims to have, made such a report, or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the Administrator solely to prove a compliance or a failure to comply with the requirement that such a report be made to the Administrator." (Emphasis added.)

Former Attorney General Castle addressed this issue as it relates to private parties. (1954 Ill. Att'y Gen. Op. 118.) His conclusion that traffic accident reports "may not be inspected by the public" is still valid. The statute states plainly that the reports "shall be for the confidential use of the Department" and it is a well-established rule of statutory construction that statutes are to be given their

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plain meaning unless otherwise required. There is nothing requiring a different interpretation here.

The same reasoning applies to requests by State agencies, even though State agencies are required to cooperate with one another by reason of section 31 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1977, ch. 127, par. 31). This is true because section 31 states a general State policy and thus does not override a specific statute such as section 11-412. This conclusion is further supported by the fact that section 11-412 is written more narrowly than analogous sections in other acts. Section 917 of the Illinois Income Tax Act (Ill. Rev. Stat. 1977, ch. 120, par. 9-917), for example, allows inspection of confidential records for any "official purpose". Clearly, had the legislature wished to allow similar inspections of traffic accident reports, it could have done so. Accordingly, unless an agency is specifically authorized by name in the statute, it may not have access to the traffic accident reports. Since the Department of Public Health is not so listed, it is my opinion that it may not be granted such access.

You refer in your letter to the practice of giving out the identifying number of the driver's accident report, by means of which researchers can locate the Illinois State

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Police's copy of a desired accident report. I agree with your determination that the number is not confidential. The person making the request could look through all police traffic accident reports until he found the desired one since police traffic accident reports are not confidential. Supplying the number of the report simply speeds the process along. Furthermore, in the case of American Insurance Co. v. Formeller (1970), 123 Ill. App. 2d 244, the court held that only that information required by the form is confidential; additional, volunteered facts in the report may be disclosed. Since the number is a purely administrative addition to the report and is in no way part of the data required of the one filling out the report, it is not confidential.

Your second question is whether the traffic accident reports may be sent as part of the accident case file to a company on contract with the Department for the purpose of having the company make the case files "camera-ready" for microfilming. I am of the opinion that they may, subject to certain safeguards.

As noted above, the use of these records is limited to "the confidential use of the Department." I addressed in opinion No. S-1289 (1977 Ill. Att'y Gen. Op. 154) the question of whether the Department of Revenue could "utilize the expertise of an outside consulting firm to prepare a management plan to

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help alleviate the case backlog * * * of the Department of Revenue" without violating the confidentiality provisions of the Revenue Code. Section 917 of the Illinois Income Tax Act (Ill. Rev. Stat. 1977, ch. 120, par. 9-917) provides that information from income tax returns "shall be confidential, except for official purposes within the Department or pursuant to official procedures for collection * * *." I said in that opinion:

" * * *

In order to guard against any breach of confidentiality, the contract entered into between the Department of Revenue and the management consulting firm should contain provisions incorporating section 917, stating that the returns and the information in them are confidential and may be examined only for official purposes related to the management problem; stating that the employees and agents of the consulting firm may not divulge any information from any return to any person other than an employee of the Department or to another employee or agent of the consulting firm and then only for purposes of the management survey; and providing for practical procedures that the Director deems necessary to insure confidentiality. Such procedures could include naming the management firm people who could examine the returns and limiting their number, directing supervision and control of returns to be handled by certain department employees, providing for safekeeping, and requiring careful adherence by everyone to the requirements for keeping the information in the returns confidential. In short, the Department should retain a greater supervisory role over the operations of the consultants than is usually the case with an independent contractor."

Although the language of section 11-412 differs from that of the Revenue Code cited above, it does provide that reports

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shall be for the "use of the Department [of Transportation]". I am of the opinion that this section allows the Department to take reasonable steps to prepare the records for storage, including use of a contractor. The contractor is not using the information. He is only working with the physical material. However, in order to guard against any breach of confidentiality, the contract entered into should contain provisions stating that the information in the files is confidential, and that the employees and agents of the contractor may not divulge any information to any person, and providing for practical procedures that the Director deems necessary to insure confidentiality.

Very truly yours,

A T T O R N E Y G E N E R A L