


From: **Madan, Rafael A. (OJP)** Rafael.A.Madan@usdoj.gov 
Subject: [External] RE: Disclosure of Death in Custody Reporting Act reports (Form DRC-1A)
Date: March 31, 2021 at 6:14 PM
To: Gilchrist, Jane Jane.Gilchrist@ncdps.gov
Cc: Valand, Caroline caroline.valand@ncdps.gov

RM

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Dear Madam:

I write in response to your e-mail message, below, sent in your official capacity as General Counsel of the North Carolina Department of Public Safety. I am happy to confirm the accuracy of the communications made by Mr. Brien.

Among other things, the federal statute you cite in your message, 34 U.S.C. § 10231(a), provides that “no recipient of assistance under the provisions of [title I of the Omnibus Crime Control and Safe Streets Act of 1968] shall use or reveal any research or statistical information furnished under [such title I] by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with [such title I].” I understand the North Carolina Department of Public Safety to be a “recipient of assistance under the provisions of [title I of the 1968 Act],” and, as Form DCR-1A is a means by which “research and statistical information [is] furnished under [such title I],” 34 U.S.C. § 10231(a) governs whether (and how) “any research or statistical” matter in Form DCR-1A may be “use[d] or reveal[ed]” by the North Carolina Department of Public Safety. Specifically, 34 U.S.C. § 10231(a) would forbid the North Carolina Department of Public Safety from “us[ing] or reveal[ing] any research or statistical” matter in Form DCR-1A, “identifiable to any specific private person[,] for any purpose other than the purpose for which it was obtained in accordance with [title I of the 1968 Act].”

Please note that it is Form DCR-1A, *itself*, that comes within the ambit of 34 U.S.C. § 10231(a). Thus, in a situation where an item of “research or statistical information ... identifiable to any specific private person” is contained in a Form DCR-1A furnished under title I of the 1968 Act and *also* happens to be contained in some other record of the furnishing party, 34 U.S.C. § 10231(a) would apply only to the item *in Form DCR-1A*—it would *not* apply to the (same) item *in the other record*. Cf. *Kansas v. Garcia*, 589 U.S. ____ (2020). (In such a situation, I presume that State confidentiality and privacy laws would apply to the item of information in the “other” record.)

I hope that this is helpful.

—Rafael A. Madan

General Counsel
Office of Justice Programs
U.S. Department of Justice

From: Gilchrist, Jane <Jane.Gilchrist@ncdps.gov>
Sent: Friday, March 26, 2021 5:18 PM
To: Madan, Rafael A. (OJP) <Rafael.A.Madan@ojp.usdoj.gov>
Cc: Valand, Caroline <caroline.valand@ncdps.gov>
Subject: Disclosure of Death in Custody Reporting Act reports (Form DRC-1A)

Dear Mr. Madan,

In the spring of 2020, the North Carolina Department of Public Safety (DPS) requested guidance from the U.S. Department of Justice regarding whether Death in Custody Reporting Act reports (Form DRC-1A) are public records, or if release is prohibited under federal law. On April 14, 2020, DPS received the attached email response from Assistant General Counsel Peter M. Brien, with the Office of Justice Programs. Mr. Brien stated the information contained in the DRC-1A form is confidential, pursuant to 34 U.S.C.A. § 10231. Since that time DPS has received requests to produce these forms and has declined to do so, citing 34 U.S.C.A. § 10231 and Assistant General Counsel Brien's guidance.

On [March 18, 2021](#), a local newspaper published an on-line article indicating DPS refused to release these forms and other states, including Virginia, Georgia, and South Carolina had provided data collected by the DRC-1A. A copy of the updated article is attached for your reference in the event the link does not allow you to access the article.

DPS strives to follow the law and works diligently to provide transparency whenever possible. Given the fact other states are providing information collected on the DRC-1A or the entire unredacted document to various media outlets upon request, I am writing to confirm your office's position as to whether DPS is properly declining to provide these forms. Any additional guidance you can provide on this matter would be greatly appreciated.

Thank you in advance for your attention to this matter. I look forward to your response.

Sincerely,

Jane Ammons Gilchrist
General Counsel

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