

# LAW ENFORCEMENT RECORDS CHECKLIST

The following is a non-exclusive summary of the major categories of law enforcement records for which disclosure is 1) prohibited, 2) authorized but not required, or 3) mandatory. It is intended to aid law enforcement agencies in responding to a request for records under the state open records law but is *not* a substitute for a case-by-case review of a requested record prior to disclosure.

## 1. Confidential (Release is Prohibited)

NOTE: Marsy's Law: A victim of a crime has the right to prevent disclosure of information or records that reasonably could be used to locate or harass the victim or the victim's family. If the victim has asserted these rights, the victim's contact information (including address, work information, telephone, email) and contact information for family members, is protected and cannot be released.

- Records (whether active or inactive) which have a connection with an allegation or finding that a child is delinquent, unruly, or deprived, unless the child is transferred to adult court or a court orders release. N.D.C.C. § 27-20.2-23. This provision continues to apply *even* after the death of the child. N.D.A.G. 2000-F-09. Note: This provision does not apply to: 1) certain individuals who are specifically authorized to inspect the records; 2) the release of general information which does not identify the child; 3) the release of the records for the purpose of apprehending a juvenile who has escaped from custody or who is alleged to have committed certain acts (N.D.C.C. § 27-20.2-22); or 4) the release of records regarding certain drug and alcohol offenses which must be provided to the principal of the school in which the child is enrolled (N.D.C.C. § 15.1-24-05).
- The name and identifying biographical information of a living child victim or child witness of a crime, except for fires and criminal traffic offenses under N.D.C.C. title 39. N.D.C.C. § 12.1-35-03.
- The telephone number and home address of an employee of a law enforcement agency or a state or local correctional facility, and an employee of the department of corrections and rehabilitation. N.D.C.C. § 44-04-18.3(1).
- Home address of an individual in N.D.C.C. § 44-04-18.3(1) which is included in a geographic information system, a property title record, or tax parcel data is **if** an individual in subsection 1 or the individual's employer submits a written request to the custodian of the records. The request will remain confidential for the remainder of a calendar year and must be renewed annually. N.D.C.C. § 44-04-18.3(5).
- Information which would reveal the identity of, or provide a means of identifying, an undercover law enforcement officer or a confidential informant. N.D.C.C. § 44-04-18.3(2).
- Any record containing the work schedule of employees of a law enforcement agency. N.D.C.C. § 44-04-18.3(2). Criminal history record information, except for releases to a criminal justice agency, to a court, pursuant to a judicial, legislative, or administrative subpoena, or as otherwise required by law. N.D.C.C. §§ 12-60-16.5, 12-60-16.6. Note: This prohibition does not apply to the BCI upon written request and payment of the appropriate fee. This prohibition does not apply to source documents of a local law enforcement agency regarding specific crimes or events which are used to compile a person's criminal history record. N.D.A.G. 2000-L-99.

- Child abuse and neglect reports and related information, unless the disclosure is specifically listed in N.D.C.C. § 50-25.1-11.
- The name of a seriously injured or deceased person, when the death or injury is being investigated by a law enforcement agency, until a member of the person's immediate family has been notified and given an opportunity to notify other immediate family members, or until 24 hours after the person has been identified, whichever occurs first. N.D.C.C. § 39-08-10.1.
- Records received from the Department of Corrections' Division of Juvenile Services. N.D.C.C § 27-21-12(3).

## **2. Exempt (Release is Discretionary)**

- Active criminal intelligence and investigative information, except for certain information about arrests, convictions, the disposition of warrants, and a crime summary. N.D.C.C. § 44-04-18.7. This provision does not include the names of people involved in a traffic accident. N.D.A.G. 97-O-1.
- An individual's "personal information" in an active or inactive file as defined in N.D.C.C. § 44-04-18.7(6).
- A computerized index of names created by a criminal justice agency included in active or inactive criminal files. N.D.C.C. § 44-04-18.7(7).
- Address, phone number, or any identifying information that could be used to locate or identify a victim/alleged victim of domestic violence, human trafficking, a sex offense, a sexual performance by a child. N.D.C.C. § 44-04-18.20. SEE the Marsy's Law note.
- An individual's personal information including driver's license number, day/month of birth (but the year of birth is open), home street address (the city, state, zip is open), height, weight, home and personal cell phone numbers § 44-04-18.7. Note: If a victim has asserted Marsy's law, the full home address, email address, employment address and other contact information is also exempt.
- Offender registration information of juveniles, if public disclosure is necessary to protect public health or safety. N.D.C.C. § 12.1-32-15(16).
- Offender registration information of adults, unless disclosure is required for public protection. N.D.C.C. § 12.1-32-15(14). If the registration information is required to be disclosed, the information becomes an open record and must be released to members of the public upon request.
- Crime scene images of a victim of a homicide or sex crime, or any image of a minor victim of any crime. N.D.C.C. § 44-04-18.7(7).
- Interviews/statements of child victims or child witnesses obtained during an investigation of a violent crime or sex offense. N.D.C.C. § 12.1-35-03(2).
- Law enforcement training materials and information about prospective criminal activity which affects officer safety, until the information is publicly disclosed. N.D.C.C. § 44-04-18.7(3).
- Name and medical condition of, and medical treatment provided to, an individual who received medical treatment from a public entity during an emergency medical response. N.D.C.C. § 44-04-18.22.

- Personnel records for employees of the ND Department of Corrections and Rehabilitation, state and local law enforcement agencies, and correctional facilities may not be released to inmates in correctional facilities unless authorized by the director of Corrections and Rehabilitation or employing agency as applicable. N.D.C.C. § 44-04-18.3(1).
- Body camera images taken in a private place by law enforcement or firefighter. N.D.C.C. § 44-04-18.7.
- Driver's license number, phone number, day/month of birth and insurance information of a party in the report from a motor vehicle accident form, except that it is open to the parties involved in the accident or their insurers. N.D.C.C. § 39-08-13(4).
- Name of a minor party in the report, driver's license number of a minor party in the report, and the phone number uniquely owned by a minor party in the report except that it is open to the parties involved in the accident or their insurers. N.D.C.C. § 39-08-13(5).
- Records relating to the internal investigation of a complaint of misconduct by an employee, but only until the investigation is complete or 75 days from date of the complaint, whichever is first. N.D.C.C. § 44-04-18.1.

### **3. Open (Release is Mandatory Upon Request)**

Following are examples of records which will generally not be closed or confidential under the statutes described above or under other statutes.

- The name of a seriously injured or deceased person after a member of the person's immediate family has been notified and given an opportunity to notify other immediate family members, or 24 hours after the person has been identified, whichever occurs first. See N.D.C.C. § 39-08-10.1.
- The names of people involved in a traffic accident or a fire unless disclosure of their identity must be delayed under N.D.C.C. § 39-08-10.1.
- Arrestee description, including name, date of birth, address, race, sex, physical description, and occupation of arrestee, facts concerning an arrest, conviction information, the disposition of all warrants, a list of incidents, a crime summary, a radio log, and arrestee photographs if release of the photograph will not adversely affect a criminal investigation. N.D.C.C. § 44-04-18.7(2).
- Inactive criminal intelligence and investigative information to the extent it is not "personal information" or made confidential or closed under Marsy's law or other statutes. N.D.C.C. § 44-04-18.7.