

Summary of Open Records Opinions – By Date Issued

Some of the Attorney General opinions listed in this Appendix may have been superseded in whole or in part by subsequent Attorney General opinions, statutory or rule changes, or court decisions.

1942 - 1980

N.D.A.G. 42-71
September 4, 1942

WORKERS COMPENSATION BUREAU

The opinion suggests that the Workmen's Compensation Bureau pass a resolution to the effect that correspondence which, in the discretion of the board, is confidential comes within the exemption of N.D.C.C. § 48-06-02. The board has the power to determine what correspondence is confidential.

N.D.A.G. 45-240
February 10, 1945

MEDICAL RECORDS

The federal Department of Justice asked the Public Health Advisory Council for information concerning the time and place that a particular party they were attempting to apprehend consulted with a physician and surgeon within this state. Inasmuch as the information desired is not in connection with the nature of the malady, consultation or advice given by the physician and surgeon, but merely for the purpose of aiding the Department of Justice in ascertaining the whereabouts of a party charged with the federal offense, there is no reason why the information could not be given. Such information could not be construed as requiring the party involved to testify against himself.

N.D.A.G. 45-241
May 8, 1945

MEDICAL RECORDS

There is no state law concerning the ownership of medical records. Undoubtedly the hospital, doctor, or the clinic that makes the record is the owner of the record subject to such use as the statutes prescribe. Various state laws address the use of medical records, including their use as evidence in court. No state law requires a hospital to keep its records for any specific length of time. It would be wise to preserve such records for a period of at least six years after the patient has been treated.

N.D.A.G. 45-26
August 13, 1945

OPEN RECORDS, IN GENERAL

Changing an original birth certificate 18 months after the birth may only be accomplished through proper court proceedings. Public records cannot be changed indiscriminately, but must remain until changed through judicial procedure.

N.D.A.G. 45-302
December 18, 1945

VETERANS

An honorably discharged veteran may have his discharge recorded without charge. He or his representative can obtain any number of certified copies of the recorded discharge, as long as the copy is needed for an application for benefits available under federal or state law.

N.D.A.G. 49-196
April 30, 1949

VETERANS

Veterans are entitled to one free certified copy of their discharge papers for each specific benefit for which they apply.

N.D.A.G. 49-149
May 27, 1949

COURTS

The dockets of a justice of the peace are public records and are not the private property of any particular justice, but must be turned over to his successor. The board of county commissioners is required to provide the duly elected and qualified county justice of the peace with reasonable and necessary dockets for his necessary and reasonable public work.

N.D.A.G. 50-199
October 18, 1950

VETERANS

Section 37-01-36, N.D.C.C., provides that any veteran or his representative shall receive a certified copy of any public record free of charge for use to apply for benefits made available by federal and state laws. This provision applies to any and every official in whose office the document of which a copy is required is now of record.

N.D.A.G. 51-37
June 14, 1951

COUNTIES

The county auditor would not abuse the discretion with which he is clothed in recording the required documents by the microfilming method. Upon the completion of the microfilming procedure, an accurate record would be in existence and the prior record could be destroyed.

N.D.A.G. 56-95
April 4, 1956

HUMAN SERVICES

Section 50-09-12, N.D.C.C., provides that upon the personal written request of any elected public official the state or county welfare board shall open for his inspection certain records. The public welfare board is authorized only to open such records to elected public officials and cannot open such records to employees of elected public officials.

N.D.A.G. 56-139
August 13, 1956

SECRETARY OF STATE

The Secretary of State must pass upon and file public documents in all other respects entitled to be passed and filed where the notary has failed to include his typed, printed, or stamped name immediately following his signature to the jurat.

N.D.A.G. 57-148
August 22, 1957

SECRETARY OF STATE

Any time the office of the Secretary of State must secure information from records of the state or examine the records in the office in order to provide information at the request of a party, this constitutes a "search" under N.D.C.C. § 54-09-04 for which a \$2.00 fee may be assessed.

N.D.A.G. 58-149
March 21, 1958

TAX RECORDS

The Tax Commissioner is not prohibited from disclosing the fact that his office has no record of a particular person having filed an income tax return.

N.D.A.G. 58-148
June 4, 1958

RECORD, DEFINED

The language in the open records law that "all records" are public records is all-inclusive and includes records of official proceedings, reports and other documents required to be filed with an agency, as well as day-to-day correspondence of public officials on matters relating to their official duties. Such records may be inspected by members of the public, regardless of what their purpose might be.

N.D.A.G. 61-171
October 3, 1961

RECORD RETENTION

Motor vehicle titles which have been microfilmed are admissible in court and may be used for reference in accordance with the provisions of N.D.C.C. § 31-08-01.1. Under N.D.C.C. § 46-04-20, the final decision regarding what records, documents, and correspondence may be destroyed rests with the Secretary of State in his capacity as State Records Administrator. (§ 46-04-20, N.D.C.C., was repealed in 1971. The chief information officer of the state, or that officer's designee, is now the state records administrator. N.D.C.C. § 54-46-03.)

N.D.A.G. 61-116
December 28, 1961

DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS

The Governor has no right to demand from the Insurance Commissioner a written statement containing the names of persons spoken with and a full report of the discussions with those persons. The Commissioner is not permitted to disclose confidential communications falling within N.D.C.C. § 31-01-06(4) to the Governor or any other unauthorized party.

N.D.A.G. 62-118
January 12, 1962

DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS

No one may examine a public officer regarding confidential communications which the public officer in his sound discretion believes to fall within the privilege allowed by statute, except as a court might rule otherwise. For some persons to have greater rights to information than other members of the public, there must be statutory authority. Confidential communications might be made to almost any public official in official confidence whereby a disclosure of such would result in injury to the public interests. See N.D.C.C. § 31-01-06(4).

N.D.A.G. 62-152
February 23, 1962

MEDICAL RECORDS

Section 39-20-02, N.D.C.C., provides, in part: “[u]pon the request of the person who is tested, full information concerning the test or tests taken at the direction of the law enforcement officer shall be made available to him.” The word “him” in this quoted sentence refers to the person who is tested and simply gives him the opportunity to request full information concerning the test and the results of the same.

N.D.A.G. 62-46
May 4, 1962

SECRETARY OF STATE

Annual reports of foreign and domestic corporations to the Secretary of State are not confidential. These reports are required to make certain information available to the general public. (But see N.D.C.C. § 10-19.1-146(2)).

N.D.A.G. 62-280
November 30, 1962

WORKERS COMPENSATION BUREAU

Upon request by the claimant or his attorney for information of medical examinations and reports or information in his file, the Workmen's Compensation Bureau must release such information. If such information is not made available to the claimant, the bureau may not use such information in arriving at its determination. The bureau is not required to release medical information to a private insurance company. The bureau may do so if authorized by the claimant to release it or upon proper judicial procedure and through the process of subpoena.

N.D.A.G. 64-152
March 9, 1964

TRANSPORTATION, DEPARTMENT OF

Highway Department records must be available for inspection during reasonable office hours and reasonable regulations may be prescribed under which such inspection may be conducted. These regulations, including the charges for making copies, would apply equally to everyone.

N.D.A.G. 64-287
June 8, 1964

WORKERS COMPENSATION BUREAU

The Workmen's Compensation Bureau was asked to supply the Tax Commissioner with a list of all employers and their addresses to help him determine whether any income tax liability exists on the part of the employers. Since the information requested is part of the employer's report submitted to the bureau, which under N.D.C.C. § 65-04-15 may not be disclosed to anyone other than an officer or employee of the bureau, the Tax Commissioner is not entitled to this information. (But see amended N.D.C.C. § 65-04-15.)

N.D.A.G. 64-404
July 31, 1964

TAX RECORDS

The Tax Commissioner may not prepare a list of the names and addresses of each person who filed a North Dakota individual income tax return for the year 1963 for the use of a non-profit organization as a mailing list to solicit contributions from the public even though the organization is willing to pay for the cost of preparing the list.

N.D.A.G. 64-239
December 30, 1964

HUMAN SERVICES

The County Welfare Board received requests for: (1) a photocopy of a signature of a welfare recipient, for possible use in a prosecution upon a federal complaint; and (2) a request for information by the Internal Revenue Service for records concerning the amount of welfare assistance paid to certain welfare recipients. Section 50-24-31, N.D.C.C., would prohibit disclosure of the requested information. In some instances, of course, federal statutes or other state statutes might override N.D.C.C. § 50-24-31 in particular circumstances.

N.D.A.G. 65-75
January 15, 1965

COUNTIES

While some of the county records are not open to the public for inspection or may not be disseminated to the general public, all of the records are nevertheless public records. The County Welfare Board would come within this provision.

N.D.A.G. 66-502
May 9, 1966

WORKERS COMPENSATION BUREAU

The awards made by the Workmen's Compensation Bureau are not confidential but are public records. In hearing and determining claims, the bureau is acting as a quasi-judicial body. Where the bureau acts in a quasi-judicial capacity, the same rules would apply regarding making the matter public as would apply to the judicial proceedings in a court.

N.D.A.G. 66-370
May 25, 1966

TAX RECORDS

The State Fire Marshal may not require the Tax Commissioner to produce state income tax returns for inspection pursuant to N.D.C.C. § 18-01-10 because the production of same would violate the secrecy provisions of N.D.C.C. § 57-38-57. However, the returns would have to be produced if so ordered by a court. It makes no difference whether the taxpayer of the requested return is living or dead.

N.D.A.G. 66-49
August 22, 1966

COUNTIES

Given the broad definition of public records in N.D.C.C. § 44-04-18, it would seem that a great number of non-elected county employees keep public records. The county engineer, county nurse, and county extension agent are county officers who have charge of public records, therefore, they must be provided office space within the county seat as provided in N.D.C.C. § 11-10-20.

N.D.A.G. 67-129
April 13, 1967

TOXICOLOGIST

The statute does not positively state that test results of blood specimens of accident victims are to be confidential, but the statute does state that such results are to be used only for statistical purposes. Therefore, the State Toxicologist is neither required nor authorized to release his findings of individual examinations of blood specimens to any person or agency.

N.D.A.G. 67-173
May 10, 1967
to Ben Wolf

PUBLIC SERVICE COMMISSION

The Public Service Commission, its officers and agents are included in N.D.C.C. § 44-04-18 and all correspondence made as part of the duties of their office comes within the authority of that statute. This statute does not necessarily include a requirement that litigation materials be presented to opposing counsel prior to the appropriate time in pending litigation. The Public Service Commission may make a schedule of charges concomitant with the cost of furnishing assistance in records inspection.

N.D.A.G. 67-354
August 23, 1967

WORKERS COMPENSATION BUREAU

The Workmen's Compensation Bureau may release and furnish to a recognized vocational rehabilitation agency pertinent information from the claimant's claim folder without first obtaining a release from the claimant.

N.D.A.G. 67-175
November 20, 1967

COURTS

Although the records of psychological or psychiatric evaluations of court defendants are confidential, this does not preclude the court from allowing the attorneys for the prosecution and the defense to examine the reports. The results are subject to such inspection and confrontation of witnesses as the court may permit or require in the interests of justice. See N.D.C.C. § 50-06-05.1(15), (16).

N.D.A.G. 68-301
February 6, 1968

TAX RECORDS

In the absence of fraud, deception, or concealment, the net effect of the statute on preservation of records is that it constitutes a statute of limitations if tax returns with payments were made by the retailer for the years in question.

N.D.A.G. 68-525
November 6, 1968

VETERANS

The filing of discharges and separation papers from any of the branches of military service of the United States does not create a public record. If a person of his own volition records his discharge papers, it would appear that confidentiality would be waived. If the records are filed as received from the Department of Veterans' Affairs or other United States agency, the records would be confidential pursuant to N.D.C.C. § 37-18-11. The clerk of the district court may refuse to allow the public to examine the record of such discharges and separations if facts are not readily ascertainable from the record concerning the person or agency effecting the recordation.

N.D.A.G. 71-408
November 22, 1971

TAX RECORDS

Section 57-38-57, N.D.C.C., generally provides that income tax returns provided to the North Dakota Tax Commissioner be kept secret. The opinion addresses numerous questions regarding the Multistate Tax Compact and its relationship to the secrecy provisions of N.D.C.C.

§ 57-38-57, because the Multistate Tax Compact authorizes the sharing of income tax information between states.

N.D.A.G. 71-83
December 3, 1971

COUNTIES

The transcript of a county coroner's inquest is open for public inspection during reasonable office hours. This, however, does not mean that a copy must be provided free of charge.

N.D.A.G. 72-322
February 9, 1972

HUMAN SERVICES

Certain statutes allow certain records of the Grafton State School to be closed. See N.D.C.C. §§ 54-23-19, 31-01-06, and 25-16-07.

N.D.A.G. 72-356
May 22, 1972

DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS

The authorized representatives of the Unsatisfied Judgment Fund are entitled to access to reports filed by persons involved in accidents in order to examine portions of the reports relating to proof of financial responsibility to determine whether a defendant was an insured motorist at the time of the accident. The confidentiality of such records under N.D.C.C. § 39-08-14 does not apply to the Unsatisfied Judgment Fund.

N.D.A.G. 72-340
October 11, 1972

SECRETARY OF STATE

A document of conveyance of real property, after being recorded with the Register of Deeds, should be presented to the Secretary of State so that the Secretary of State may fulfill his responsibilities under the provisions of

N.D.C.C. § 54-09-02(4) which requires him to "record in proper books all conveyances made to the state." This does not mean that a copy of the instrument cannot be made and kept with the department directly involved. These documents constitute part of the public records and would be subject to examination, inspection, or review pursuant to the provisions of N.D.C.C. § 44-04-18.

N.D.A.G. 72-343
December 1, 1972

RECORD RETENTION

In examining the provisions of N.D.C.C. ch. 54-46, and specifically N.D.C.C. § 54-46-08, it becomes clear that the administrator is vested with the authority to grant permission for the destruction or disposition of public records. Under the existing statutes, it cannot as a matter of law be stated that the administrator must agree to transferring records of the Governor's office to the University of North Dakota. It would also appear that a transfer without the administrator's approval is not in accordance with the existing statutes.

N.D.A.G. Letter
January 10, 1973

CITIES

By requiring the assessment roll to be open to public inspection, N.D.C.C.

§ 40-19-03, it is possible to conclude that the Legislature did not intend that other papers and documents used to prepare the assessment roll should be open to the public. The ordinary “work product” used in the preparation of a public record does not necessarily become a public record. While it might appear that N.D.C.C. § 44-04-18 provides access to public records during reasonable office hours, such statute at best applies to the total assessment roll of the city, but does not necessarily go to the work cards and field notes of the assessor’s office, except to the individual property owner reviewing his own property. The assessor’s field cards and work products are not public records within the meaning of the open records law. (But see N.D.A.G. 90-124 (December 31, 1990 to Wayne Solberg).)

N.D.A.G. 73-352
June 21, 1973

RECORD RETENTION

Papers, documents, etc., deposited with the State Historical Society pursuant to the direction of the Records Management Administrator, under the authority granted by N.D.C.C. § 54-46-03, 54-46-04, and 54-46-05 may not be sent or loaned to any university for indexing or cataloging, by virtue of the Records Management Administrator’s original directions for deposit with the State Historical Society. Papers, documents, etc., determined to be “subject to disposal” pursuant to N.D.C.C. § 54-46-08, and that will, after the effective date of N.D.C.C. § 54-46-08.1, be “transferred” to the State Historical Society pursuant to that section, may, at the discretion of the State Historical Society, in the absence of contrary directions from the Records Management Administrator, be sent or loaned to any university for indexing and cataloging.

N.D.A.G. 73-488
November 28, 1973

TOXICOLOGIST

Records of a deceased person’s blood alcohol tests may be released for other than statistical purposes upon the issuance of a court subpoena. The state toxicologist may only release the results in compliance with the subpoena, and the fact that a subpoena has been issued does not authorize him to release the information to anyone who might subsequently request it.

N.D.A.G. 74-606
April 8, 1974

SECRETARY OF STATE RECORD RETENTION

This opinion addresses the disposition of financing statements filed pursuant to the Uniform Commercial Code. For filings made after January 1, 1974, if no continuation statement is filed, then one year after the expiration date, the financing statement could be pulled from the files and destroyed (except for those provided for in subsection 6 of section 41-09-42). For prior filings, the period of expiration and time for destruction varies. In the absence of microfilming, the filing officer may remove filing statements from the files at any time after one year after receipt of the termination statement; however, no provision is made for the destruction of the removed documents, so they should not be destroyed.

N.D.A.G. 74-348
December 4, 1974

RECORD RETENTION

State departments may microfilm their official records. See N.D.C.C. ch. 54-46.1. The head of the department must determine the time, circumstances, and when records should be microfilmed, unless or until the state records administrator has adopted rules and regulations to properly effectuate the records management act which would specify otherwise. Corporate records, the original or duplicate of which must be filed with the Secretary of State, may be microfilmed and the original or duplicate original may be destroyed.

N.D.A.G. 75-27
November 18, 1975

COURTS

Courts are not subject to the state open records law. Accordingly, access to probate records of the county court is governed by the court and by other state statutes, but not by N.D.C.C. § 44-04-18.

N.D.A.G. Letter
November 23, 1976 to
Arthur Link

OPEN RECORDS, IN GENERAL

This opinion addresses whether an entity of the state, in requesting certain information from the federal government, can agree to keep that information confidential as required by federal law, in view of North Dakota's open records law. The language "except as otherwise provided by law" in North Dakota's open records law includes regulations of the federal government.

N.D.A.G. Letter to Russell
Staiger
February 23, 1978

OPEN RECORDS, IN GENERAL PUBLIC ENTITY

The State Planning Division is a governmental body or agency of the state and is governed by the open records law. There are no specific statutes which would exempt any of the records of the State Planning Division from the open records law. The open records law does not limit the right of inspection of public records to someone who demonstrates a right to know or a need to know. Members of the media have no greater or no lesser right of inspection than does the general public. There is no provision that limits the right to inspect records to only residents of this state. Any person appearing at the division's offices during reasonable office hours would have the right to examine the records. The division may not refuse access to its records even if the requesting party is knowingly utilizing only one of a series of reports which in itself would present a distorted picture of the facts or would lend itself to be used out of context to the detriment of others.

N.D.A.G. 78-154
to Myron Just May
4, 1978

AGRICULTURE

Section § 4-10.1-17, N.D.C.C., sets forth which records of the North Dakota State Potato Council must be made available for public inspection.

N.D.A.G. 78-124
to Ronald Splitt
September 7, 1978

COUNTIES

The sale of a joint ownership interest in the master microfilm roll of the records of the county register of deeds is not authorized by the laws of this state.

N.D.A.G. 79-201
January 26, 1979 to
John Zuger

LAW ENFORCEMENT

Certain statutes are relevant to the openness of police records, including N.D.C.C. §§ 44-04-18, 65-13-05(5), 12.1-13-01, 27-20-52, 39-08-13, and 39-08-14. While certain statutes appear to specifically exempt some of the material that might be found in some police records, there are no North Dakota statutes that speak directly to the overall openness or confidentiality of police, law enforcement, or criminal investigation records. Law enforcement officials, in cases where records contain a mixture of confidential and nonconfidential information, should make every effort to make available upon request for public use the nonconfidential information.

N.D.A.G. 79-195
July 16, 1979

COUNTIES

Under the facts stated and assumptions made, it is permissible for the county commissioners to allow an abstract company to microfilm the records of the register of deeds at the expense of the abstract company. Or, at the abstract company's request, the county commissioners may authorize the sale of microfilmed records directly to the abstract company. Any charges made by the county commissioners should be reasonable and should reflect at least an approximation of the actual cost of the service.

N.D.A.G. 79-106
August 8, 1979

OPEN RECORDS, IN GENERAL

The meaning of the term "reasonable" office hours as used in N.D.C.C. § 44-04-18, takes on its meaning only with reference to the facts and circumstances involved. What is reasonable in one case, under different facts, may be less reasonable or even unreasonable.

1980 - 1989

N.D.A.G. 81-5
February 3, 1981

PUBLIC EMPLOYEES

An employment application submitted by an individual for the position of city police officer is subject to N.D.C.C. § 44-04-18, North Dakota's open records law.

N.D.A.G. 81-19
February 5, 1981

VETERANS

All records maintained by the Department of Veterans' Affairs are subject to the open records law of N.D.C.C. § 44-04-18, except for the information and records identified as confidential by N.D.C.C. § 37-18-11.

N.D.A.G. 81-19
February 5, 1981

VETERANS

All records maintained by the Department of Veterans' Affairs are subject to the open records law of N.D.C.C. § 44-04-18, except for the information and records identified as confidential by N.D.C.C. § 37-18-11.

N.D.A.G. 81-112
October 16, 1981

COURTS

An adoptive parent may obtain a certified copy of an adoption decree from the district court at any time subsequent to the adoption upon complying with the provisions of N.D.C.C. § 14-15-16 and any rules of the Social Service Board pertaining to this section.

N.D.A.G. 81-130
December 7, 1981

SCHOOLS

The “except as otherwise specifically provided by law” language in the open records law includes both state laws and federal laws. Student directory records are open for public inspection pursuant to North Dakota’s open records law so long as the prior notice requirements contained in the federal Family Educational Rights and Privacy Act (FERPA) at 20 U.S.C.

§ 1232g(a)(5)(B), are followed. Where a school board does not comply with the prior notice requirements of federal law, the student directory information is confidential and may not be released. A school board has discretion under federal law, but has no discretion under state law, in allowing the inspection of student directory records which are legally available for public inspection.

N.D.A.G. 82-02
January 20, 1982

COUNTIES

FEES FOR ACCESS AND COPIES OPEN RECORDS, IN GENERAL

An elected county official may allow individuals access to public records under his control kept in the county courthouse, after regular office hours, and may not receive compensation directly from people allowed access but only that additional compensation as set by the board of county commissioners.

N.D.A.G. 82-23
March 25, 1982

OPEN RECORDS, IN GENERAL

A state official or his employees, in response to a request for a public record, in light of the relatively limited statutory and case law exceptions to the open records law, should know what public records are covered by an exception to this law. However, in cases where it appears no prior determination has been made, a reasonable amount of time may be taken to determine whether an exception exists for that particular record.

N.D.A.G. Letter to Duane
Liffbrig
December 19, 1983

FEES FOR ACCESS AND COPIES TRANSPORTATION, DEPARTMENT OF

The state of North Dakota is not in the business of making money by selling information in public records that are available to any citizen. Insofar as any agency incurs costs and expenses associated with making public information available to the public, then the reasonable cost of doing so can be charged to the requesting party.

N.D.A.G. 84-05
January 19, 1984

ABUSE AND NEGLECT MEDICAL RECORDS

Otherwise privileged information concerning the treatment of a child at a medical facility is available for review to determine if there exists probable cause to believe child abuse or neglect is indicated.

N.D.A.G. 84-31
August 17, 1984

ABUSE AND NEGLECT

The prosecutor who provides child abuse reports to defense counsel as part of required discovery in criminal or juvenile court cases does not violate the confidentiality provisions of N.D.C.C. § 50-25.1-11.

N.D.A.G. 84-37
November 14, 1984

SCHOOLS

School officials are not required to obtain parental consent before a child is interviewed at school by a protective service worker regarding a report of suspected child abuse or neglect. Diligence in obtaining parental consent for the release of student information pursuant to the federal Family Educational Rights and Privacy Act (FERPA), among other concerns, has led some schools to extend such a policy to exclude contact by outsiders with a child unless parental consent has been obtained. No law prohibits such contacts. Permitting the interviewing of children by protective service workers is not a release of educational records. School officials have a limited immunity from liability if they permit an investigative interview with a child.

N.D.A.G. Letter to Robert
Manly
December 27, 1984

COURTS

Earlier Attorney General opinions and letters on the subject of access to county probate records are no longer applicable given the repeal of N.D.C.C. chs. 27-07 and 27-08, relating to county courts and county courts of increased jurisdiction, respectively. Both of these chapters were replaced by N.D.C.C. ch. 27-07.1, relating to county courts.

N.D.A.G. 85-03
January 22, 1985

HIGHER EDUCATION PUBLIC EMPLOYEES RECORD, DEFINED

A private investigator's report, prepared at the request and in the possession of a state college, concerning a member of that college's faculty, is not exempt from North Dakota's open records law. Release of the private investigator's report would not constitute an invasion of the faculty member's right to privacy.

N.D.A.G. Letter
March 14, 1985
to Rick Bock

RECORD, DEFINED

The definition of "record" as found in N.D.C.C. ch. 54-46 is inapplicable to the open records law.

N.D.A.G. Letter
April 15, 1985
to Gail Hagerty

COURTS

The North Dakota Supreme Court has previously indicated that the open records law is not applicable to court records. The Supreme Court has indicated that the phrase "agencies of the state" in N.D.C.C. § 44-04-18 does not include the courts of the state. Any right of inspection of the respondent's criminal records is subject to reasonable rules and regulations of the court regarding who may inspect the records and where and how such inspection may be made.

N.D.A.G. 85-23
June 12, 1985

WORKERS COMPENSATION BUREAU

Information contained in the Workers Compensation Bureau's Minute Record, including employers' names and amounts of premium adjustments, is open to public inspection. Confidential information, when made a part of an otherwise public record, remains confidential.

N.D.A.G. 85-24
June 12, 1985

TRADE SECRETS

Chapter 47-25.1, N.D.C.C., on trade secrets does not constitute a specific exemption from the open records law. Records of a public or governmental agency containing trade secrets material are open for public inspection pursuant to North Dakota's open records law. However, trade secrets may still be protected in a formal hearing or proceeding before an administrative agency.

N.D.A.G. Letter
July 11, 1985
to Richard Wilkes

COUNTIES

OPEN RECORDS, IN GENERAL

Investigative reports received concerning noxious weeds in the possession of the Burke County Weed Control Officer are subject to the open records law. However, if a criminal investigation is involved, there are certain instances in which criminal investigative reports may be withheld from public disclosure.

N.D.A.G. Letter
November 14, 1985 to
Robert Alexander

LAW ENFORCEMENT

If a criminal proceeding has not been instituted and is not contemplated, and there appears to be no other statute specifically exempting records of closed criminal files from the open records law, the inescapable conclusion is that such records are indeed subject to the open records law and may be inspected by the public at large.

N.D.A.G. Letter
January 27, 1986 to
Stephen McLean

LAW ENFORCEMENT

If a police ticket book contains facts which are described in the "offense report" document named in the 1979 opinion, such information must be made available for public disclosure. On the other hand, if there are facts within the ticket book which would fit the description of "personal history and arrest records" as described in the 1979 opinion, such information should not be disclosed to the public. Where there is a mixture of such information, every effort should be made to disclose the non-confidential information.

N.D.A.G. Letter
February 12, 1986 to
James Marion

INMATE RECORDS

The Notice of Application for Parole and its responses may not be disclosed directly or indirectly to anyone other than those persons listed in N.D.C.C.

§ 12-59-04 who are eligible to receive such information. The Parole Board or a court, in its discretion, may allow the inspection of such documents by the defendant or prisoner or his attorney whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful. The decision to disclose or not disclose these particular documents is to be made by the Parole Board or a court. (But see amended N.D.C.C. § 12-59-04.)

N.D.A.G. Letter
June 5, 1986 to
Emil Riehl

SCHOOLS

The clerk of a school district should maintain a log book showing those individuals who voted by absentee ballot. Pursuant to the open records law, this log book would be subject to public inspection.

N.D.A.G. Letter
June 6, 1986
to Wayne Sanstead

SCHOOLS

Section 40-38-12, N.D.C.C., excepts from the open records law certain library records. Public school libraries fall within the scope of N.D.C.C.

§ 40-38-12. Not all records of the public school library fall within this exception. Public school library records may also be exempt pursuant to the federal Family Educational Rights and Privacy Act (FERPA), at 20 U.S.C.

§ 1232g, which defines and provides for the confidentiality of student directory information.

N.D.A.G. Letter
December 10, 1986 to
William Patrie

HIGHER EDUCATION

PUBLIC BUSINESS

TRADE SECRETS

This opinion addresses the impact of the North Dakota open records law on university research projects performed for private companies, i.e., whether research information gathered pursuant to a contract between a university research center and a private company may be subject to public disclosure pursuant to North Dakota's open records law. The private entity is leasing university personnel and facilities to perform the desired research. A close scrutiny of the facts indicate that the private entity is actually paying for the use of the university personnel and its facilities. Thus, state funds are not involved in performing the private research. Therefore, in this unique situation, the open records law would not be applicable and information gathered pursuant to such contractual relationships may not be required to be publicly disclosed pursuant to the open records law.

N.D.A.G. Letter
March 17, 1987
to Alan Person

PUBLIC EMPLOYEES

Based on N.D.C.C. § 54-52.1-04.2, allowing the Public Employees Retirement System (PERS) to self-insure, and various clauses in its administrative agreement with Blue Cross Blue Shield, the medical records held by Blue Cross Blue Shield in its capacity as claims administrator for PERS are the property of the PERS. There is not a statutory exemption from the open records law for the medical records in question, therefore, they are public records. This is true even though the records may not be in the actual possession of PERS.

N.D.A.G. Letter
November 2, 1987 to
Richard Olson

FEES FOR ACCESS AND COPIES

OPEN RECORDS, IN GENERAL

Public officials are urged, in complying with the open records law, to make copies available to further the spirit and intent of the open records law.

N.D.A.G. Letter
November 17, 1987
to William Bohn

COURTS

LAW ENFORCEMENT

N.D.C.C. ch. 12-60 represents an exception to the North Dakota open records statute that applies only to criminal history record information required or permitted to be retained by the Bureau of Criminal Investigation (BCI). N.D.C.C. ch. 12-60 requires criminal justice agencies to report offenses and events to the BCI, where they are compiled to form criminal history records. N.D.C.C. ch. 12-60 applies to those criminal justice agencies and to those records. It does not apply to records maintained by the courts. Any requests for access to court information should be responded to in accordance with court policies and procedures and not with reference to N.D.C.C. ch. 12-60.

N.D.A.G. Letter
November 20, 1987 to
Lawrence DuBois

PUBLIC ENTITY

Entities created through public or governmental process, such as a city's Office of Economic Development, must be considered public or governmental in nature. As such, they are subject to the requirements of the open meetings and open records laws.

N.D.A.G. Letter
January 11, 1988 to
Alan Person

PUBLIC EMPLOYEES

Medical records and related data in the possession of BCBS regarding the state's group health insurance program is the property of PERS. N.D.C.C.

§ 54-52.1-12. Section 54-52.1-12, N.D.C.C., and the administrative services agreement establish that PERS is entitled to the claims information that it has requested. There is no legal basis for BCBS' argument that this is "proprietary information" and cannot be released to PERS.

N.D.A.G. 88-04
February 8, 1988

ABUSE AND NEGLECT LAW ENFORCEMENT

Section 50-25.1-11, N.D.C.C., makes confidential that law enforcement agency information which results from an investigation of child abuse or neglect. A person who is the subject of a report of child abuse or neglect waives confidentiality requirements by making the content of that report public, but only to the extent that the person has authority to waive confidentiality requirements.

N.D.A.G. 88-04
February 8, 1988

ABUSE AND NEGLECT LAW ENFORCEMENT

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N.D.A.G. Letter
April 21, 1988
to R.L. Rayl

PUBLIC EMPLOYEES RECORD, DEFINED

A copy of a pre-termination letter held by the Director of Institutions, the original of which was sent to an employee of the Director of Institutions' Office, is possessed as part of the official duties and responsibilities of a state official. Thus, the document comes within the purview of the open records law.

N.D.A.G. 89-07
June 23, 1989

FEES FOR ACCESS AND COPIES

An agency subject to the public records law may not assess a charge (other than copying costs) for access to public records unless such a charge is provided for by statute.

N.D.A.G. Letter
June 23, 1989
to Rod Larson

LAW ENFORCEMENT

Section 27-20-52, N.D.C.C., provides that law enforcement records and files concerning a child are not open to public inspection except under particular circumstances. The lack of an ongoing investigation is not relevant to the statutory requirement that the records of a child not be disclosed to the public. (But see amended N.D.C.C. § 27-20-52; N.D.A.G. 2000-F-09 (February 28, 2000, to Frank Wald).)

1990 - 1999

N.D.A.G. 90-01
January 4, 1990

COURTS

A school principal's authority to inspect juvenile court files is not limited to those matters concerning, and to the extent necessary to enforce, the rules and regulations of the North Dakota High School Activities Association. However, a principal who wants to inspect records of a juvenile under either subdivision e or f of subsection 1 of N.D.C.C. § 27-20-51 may do so only if the court authorizes the inspection.

N.D.A.G. Letter
January 26, 1990 to
Gary Knell

SCHOOLS

Because school districts are subject to the open records law and there is no specific exception for student survey questions, the survey questions are open to public inspection. (But cf. N.D.C.C. § 44-04-18.8.)

N.D.A.G. Letter
March 13, 1990
to Douglas Manbeck

SCHOOLS

The posting by a high school of a restricted privileges list or a deficiency list may jeopardize the receipt of federal funds pursuant to federal statute and regulations. The release of students' names in this manner appears to constitute the release of personally identifiable information which generally would be considered harmful or an invasion of privacy if disclosed. The release of such information is prohibited by the federal Family Educational Rights and Privacy Act (FERPA) unless the written consent of the parents is first obtained.

N.D.A.G. Letter
March 19, 1990
to Janet Wentz

RECORD, DEFINED

North Dakota's open records law is inapplicable to mental or thought processes where no writing has occurred.

N.D.A.G. 90-32
December 31, 1990

CITIES

Field notes of a city assessor are public records and must be open to public inspection.

N.D.A.G. Letter
July 17, 1991
to Steven Tomac

OPEN RECORDS, IN GENERAL

"Reasonable office hours," under the open records law, means regular or normal office hours. Thus, access to public records may not be denied during regular or normal office hours. A city may require that an employee or city official be present when access is permitted. The city may justifiably impose this requirement as a security measure to protect important city records. Nevertheless, this may not be used as an excuse to unreasonably deny access to records. However, the city may adopt a policy providing for notice to the employee if access to the records is not delayed pending that notice. If the city has two sets of records concerning city employee work hours, both sets are public records.

N.D.A.G. Letter
August 2, 1991
to Ken Solberg

NONGOVERNMENTAL ORGANIZATIONS PUBLIC ENTITY

NDIRF falls within the meaning of the term “agencies” as used in N.D.C.C.

§§ 44-04-19 and 44-04-18. The governing body of a government self-insurance pool supported by public funds and spending public funds performs a government function. Accordingly, NDIRF is subject to the open meetings and open records laws. When information made confidential under N.D.C.C. § 26.1-23.1-06 is discussed at a meeting which would otherwise be open to the public, that portion of the meeting relating to the confidential information may be closed. This exception should be narrowly construed in a manner that does not frustrate the general policies providing for open meetings and access to public records.

N.D.A.G. Letter
August 13, 1991
to Howard Swanson

FEES FOR ACCESS AND COPIES OPEN RECORDS, IN GENERAL

Public officials should make copies of public records available upon request and a request may not be denied because it involves a substantial number of copies or because the same individual makes multiple requests.

N.D.A.G. Letter
October 8, 1991
to Charlie Whitman

COMPUTER RECORDS FEES FOR ACCESS AND COPIES RECORD, DEFINED

Previous Attorney General opinions which conclude that a public entity may assess a reasonable charge for copying costs but may not assess an additional fee for access to public records unless such a charge is statutorily provided, apply to all public information and all public records, including information stored in computers.

N.D.A.G. Letter
November 4, 1991 to
Wayne Sanstead

ABUSE AND NEGLECT SCHOOLS

Reading N.D.C.C. § 31-01-06.1 and ch. 50-25.1 together leads to the conclusion that elementary and secondary school counselors in North Dakota may refuse to divulge communications with their clients which occurred during a counseling session for any purposes other than the mandatory child abuse or neglect reports.

N.D.A.G. Letter
December 19, 1991 to
Lloyd Omdahl

ABUSE AND NEGLECT DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS

The authority to exchange information between the Department of Human Services and county social service boards and other entities in connection with child abuse or neglect investigations and follow-up protective services is provided by N.D.C.C. § 50-25.1-11. The Department of Human Services and county social service boards, as well as other entities, must cooperate and exchange information in connection with programs providing protective services for children in carrying out the purpose of N.D.C.C. ch. 50-25.1.

N.D.A.G. 92-04
January 17, 1992

ATTORNEY WORK PRODUCT

Attorney work product prepared in anticipation of an adversarial administrative proceeding is exempt from disclosure under N.D.C.C.

§ 44-04-19.1(3)(c) if the requirements of N.D.C.C. § 44-04-19.1(3)(a) and (b) are also met. Attorney work product prepared prior to the effective date of the statute is exempt from disclosure when the request for disclosure is made after the effective date of the statute.

N.D.A.G. Letter
April 3, 1992
to Orell Schmitz

INMATE RECORDS

The Protection and Advocacy Project (P&A) is not authorized by N.D.C.C. § 12-47-36 to review a prison inmate's records by virtue of a release of information provided P&A by the inmate. Also, N.D.C.C. ch. 25-01.3 does not generally give P&A access to the penitentiary.

N.D.A.G. 92-08
April 8, 1992

MINUTES

The governing body of a modern council city was not required to publish minutes of meetings in an official newspaper.

N.D.A.G. Letter
May 18, 1992
to Wayne Solberg

OPEN RECORDS, IN GENERAL PUBLIC EMPLOYEES

The confidentiality provided for public employee medical and employee assistance records under N.D.C.C. § 44-04-18.1 does not prohibit a third party contractor from disclosing records which are the subject of a contract between it and a governmental entity to that governmental entity. The statute regulates the conduct of the governmental entity and its duty to maintain the confidentiality of specific personnel records. If the records are in the hands of the governmental entity and are declared by a specific statute to be confidential, then the governmental entity is required to respect that confidentiality. Violations of confidentiality statutes are punishable as a class C felony. N.D.C.C. § 12.1-13-01.

N.D.A.G. Letter
June 16, 1992
to Donald Rudnick

LAW ENFORCEMENT

Section 44-04-18.7, N.D.C.C., declares that active criminal intelligence information and active criminal investigative information are exempt from N.D.C.C. § 44-04-18, the open records law. However, information, including a description of an arrested person, facts concerning the arrests, conviction information, disposition of warrants, and other information concerning a criminal offense, is not exempt from the open records law. N.D.C.C. § 44-04-18.7(5). Thus, basic information concerning a reportable event of an arrest contained in a police log or other information at a local law enforcement agency ordinarily would not be subject to the nondisclosure exceptions under the open records law.

N.D.A.G. Letter
September 9, 1992 to
Lonnie Olson

LAW ENFORCEMENT RECORD, DEFINED

Since the term "records" in N.D.C.C. § 44-04-18 must be given an expansive meaning, a videotape of an adult who was arrested for driving under the influence that is in the possession of a public agency or official and no longer falls within the exception of N.D.C.C. § 44-04-18.7 is accessible to the public under the North Dakota open records law.

N.D.A.G. Letter
September 10, 1992 to
Helen Tracy

COMPUTER RECORDS WORKERS COMPENSATION BUREAU

If electronically stored information in computer records was not considered a public record, government agencies could circumvent open-records laws by storing records on computer systems. Therefore, raw data which exists in uncompiled and electronically stored form constitutes a public record to the extent that it consists of the specified information required to be made available to the public under N.D.C.C. § 65-05-32(5).

N.D.A.G. Letter
September 15, 1992 to
Ronald McBeth

COURTS

The clerk of court and the county state's attorney do not have authority to limit access to public information in court records with respect to child support proceedings. Any request by a custodial parent that the custodial parent's address or telephone number not be disclosed should be addressed to the district court with jurisdiction in the matter. The court may then determine if the circumstances furnish a lawful basis for the issuance of an order restricting access to that portion of the court's file which contains the custodial parent's current address and telephone number.

N.D.A.G. Letter
December 18, 1992 to
Rosellen Sand

SECRETARY OF STATE

TRADE SECRETS

Section 44-04-18.4, N.D.C.C., relating to the confidentiality of commercial and financial information, does not provide an exception to the open records law for financial information provided in annual reports filed with the Secretary of State pursuant to N.D.C.C. § 10-23-01. (But see N.D.C.C. § 10-19.1-146(2)).

N.D.A.G. 93-L-95
March 17, 1993

NONGOVERNMENTAL ORGANIZATIONS

The Greater North Dakota Association (GNDA) is supported in part by public funds and is, therefore, an entity subject to the open records law. All of the records of the GNDA, and not just those that relate to the use of public funds, are subject to the open records law and may be accessed by members of the public during reasonable office hours. (But see Adams County Record v. Greater North Dakota Association, 564 N.W.2d 304 (N.D. 1997) and Adams County Record v. Greater North Dakota Association, 529 N.W.2d 830 (N.D. 1995).)

N.D.A.G. 93-L-104
March 22, 1993

MEDICAL RECORDS

Various North Dakota laws address information regarding a person's Human Immunodeficiency Virus (HIV) status. The confidentiality of information regarding a person's HIV status, under North Dakota law, to a large extent depends on the source of the information.

N.D.A.G. 93-L-204
June 25, 1993

TRADE SECRETS

The confidentiality of commercial and financial information of a Technology Transfer, Inc., applicant is provided for by N.D.C.C. § 10-30.4-06.

N.D.A.G. 94-L-1
January 3, 1994

TRADE SECRETS

The loan document and guaranty related to the community development block grant awarded to Mercer County for the Fish 'N Dakota project constitute commercial or financial information received from a person or business applying for or receiving financing assistance and are therefore exempt under N.D.C.C. § 44-04-18.2 from the open records law.

N.D.A.G. 94-L-03
January 27, 1994

ABUSE AND NEGLECT

The Department of Human Services may transfer reports, as well as other information obtained, concerning an investigation made pursuant to N.D.C.C. ch. 50-25.1 to appropriate officials within the United States Department of Interior who require such information in connection with the discharge of their official duties concerning the Wahpeton Indian School.

N.D.A.G. 94-L-52
March 7, 1994

COUNTIES

The fact that certain records are confidential and otherwise not open for public inspection does not render the records “nonpublic.” Records retained by officials in charge of the Family Planning Branch of the Richland County Public Health Department relate to the performance of a governmental or proprietary function of the county. Accordingly, such records constitute public records.

N.D.A.G. 94-L-90
April 4, 1994

COUNTIES

RECORD, DEFINED

A county entered into a settlement agreement with the county auditor, whereby the county auditor would resign and receive payments from the county after the date of resignation. To the extent that the terms and conditions of any settlement are reduced to writing, they constitute a public record within the meaning of the North Dakota open records statute. There appear to be no statutory exceptions which would exempt such an agreement from the provisions of North Dakota’s open records law.

N.D.A.G. 94-F-12
April 5, 1994

ABUSE AND NEGLECT

The State Child Protection Team appointed by the Department of Human Services must provide to the public information reflecting the disposition of reports of institutional child abuse or neglect received by the Department, provided the identity of the persons reporting the child abuse or neglect, the children, and their parents, is protected. The information reflecting the disposition of reports of institutional child abuse or neglect provided to the public may include a description of the investigation, the findings of the investigation, the determination whether there exists probable cause to believe that child abuse or neglect is indicated, and any recommendations made by the State Child Protection Team. The description must be adequate to fairly advise the public that corrective action is not necessary or that proper corrective action has been taken to protect the health and welfare of children.

N.D.A.G. 94-L-103
April 14, 1994

CITIES

RECORD, DEFINED

Because no specific statutory or constitutional exemption (including a right to privacy) to the open records law exists regarding home improvement loan program records maintained by a political subdivision, all such records are public records, open and accessible for inspection by the public during reasonable office hours. A city checkbook is an open record. (But see N.D.C.C. § 44-04-18.9 (account numbers); N.D.A.G. 2000-L-107 (June 28 to Lisa Gibbens) (personal financial information).)

N.D.A.G. 94-F-18
July 1, 1994

COURTS

The clerk of district court is required to release en masse to the news media child support records and files for review unless either the Supreme Court or the district court has adopted rules restricting who may review the records or the time, place, or manner of inspection or the district judge has impounded the files and records and ordered they may not be inspected. The clerk of district court may not release for review or public inspection any papers or records concerning a paternity determination, other than the final judgment, unless the consent of the court and all interested persons has been obtained or upon an order of the court for good cause shown in exceptional cases.

N.D.A.G. 94-F-19
July 1, 1994

PUBLIC BUSINESS

Records relating to the State Labor Commissioner's payroll, accounting, telephone usage, and employee travel claims are public records open and available for inspection under North Dakota's open records law.

N.D.A.G. 94-F-21
July 28, 1994

ABUSE AND NEGLECT MEDICAL RECORDS

Otherwise privileged medical information concerning the treatment of a child at a medical facility is available for review to determine if there is probable cause to believe child abuse or neglect is indicated.

N.D.A.G. 94-L-194
August 1, 1994

OPEN RECORDS, IN GENERAL TRADE SECRETS

To determine whether particular information is confidential commercial or financial information under N.D.C.C. § 44-04-18.4, it is beneficial to resort to the guidance of federal case law which offers a two-prong test to determine whether certain commercial or financial information is "privileged and confidential." It is confidential if its disclosure will likely (a) impair the government's ability to obtain necessary information in the future or (b) cause substantial harm to the competitive position of the person from whom the information was obtained. (Section 44-04-18.2, N.D.C.C., has been repealed. See amended N.D.C.C. § 44-04-18.4).

N.D.A.G. 94-F-25
August 5, 1994

FEES FOR ACCESS AND COPIES

When determining a reasonable fee to be charged for a copy of public records pursuant to N.D.C.C. § 44-04-18(2), a public agency may consider the costs of the copying equipment and materials and other costs actually and necessarily incurred in making the copies as well as the labor expenses, excluding the labor expenses incurred in locating and reviewing the records. (BUT SEE amended N.D.C.C. § 44-04-18(2) (copy charge of 25¢)).

N.D.A.G. 94-L-267
October 7, 1994

HUMAN SERVICES

If an investigation under N.D.C.C. § 25-03.1-08 concerns a person who is or has been an alcohol or drug abuse patient, the mental health professional may not obtain information from the patient's treatment records without a release or a specialized court order.

N.D.A.G. 94-L-278
October 17, 1994

SCHOOLS

Providing information for purposes of a child abuse investigation under N.D.C.C. ch. 50-25.1 is not a violation of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232(g), because interviews of a child at school and assistance in the investigation do not constitute a release of educational records.

N.D.A.G. 94-L-305
November 3, 1994

AUDITOR, STATE

Records declared confidential by N.D.C.C. § 25-01.3-10 regarding protection and advocacy are, nonetheless, available under N.D.C.C. § 54-10-22.1 to the State Auditor and the Auditor's employees for audit purposes.

N.D.A.G. 94-L-309
November 9, 1994

PUBLIC EMPLOYEES

The Public Employees Retirement System (PERS) Board wanted to modify its policy to more readily accommodate the needs of participating members by providing confidential information to them over the telephone if they have identified themselves by name and authenticated who they are by correctly answering three of the following five personal items: social security number, beginning participation date in the retirement system, birthrate, latest month's salary, and spouse's birthrate. The PERS Board is authorized to adopt the proposed policy as a reasonable implementation of N.D.C.C. § 54-52-26.

N.D.A.G. 94-L-311
November 10, 1994

LAW ENFORCEMENT

A county social service board is required to pay a \$20 fee for a criminal history record check by the Bureau of Criminal Investigation (BCI) because it is a noncriminal justice agency. N.D.C.C. § 12-60-16.9. Only BCI may disseminate criminal history record information to a noncriminal justice agency. N.D.C.C. § 12-60-16.6. The office of county state's attorney is not authorized to disseminate criminal history record information to the county social service board.

N.D.A.G. 95-L-1
January 17, 1995

AUDITOR, STATE

Neither the North Dakota Rules of Evidence nor the North Dakota Rules of Professional Conduct are relevant to the release by the Protection and Advocacy Project (P&A) of its attorney's billings. P&A must provide to the state auditor the unaltered, original billings P&A received from its attorney.

N.D.A.G. 95-L-4
January 17, 1995

HUMAN SERVICES

A parent, guardian, custodian, health care provider, or counselor would be a person with a definite interest in the well-being of a child, as well as a person who would be in a position to serve the child's interests. While the press and others may have a general interest in the well-being of a child or children, that interest is not necessarily a definite interest established beyond doubt or question, or a clearly-defined interest. Because the information and records pertaining to an investigation and inspection of the conditions of a facility and the qualifications of providers do not specifically relate to "children receiving early childhood services," they are not made confidential under N.D.C.C. § 50-11.1-07(3).

N.D.A.G. 95-L-74
March 21, 1995

LAW ENFORCEMENT

Only the Bureau of Criminal Investigation may disclose criminal history record information to parties not described in N.D.C.C. § 12-60-16.5, including a person who is the subject of the records. N.D.C.C. § 12-60-16.6.

N.D.A.G. 95-L-88
April 3, 1995

COUNTIES

The records of the medical county coroner are public records subject to inspection under N.D.C.C. §§ 44-04-18(1) and 11-19.1-08, notwithstanding the provisions of N.D.C.C. § 23-02.1-27 restricting access to vital records information concerning the cause of death of an individual. Under certain circumstances, however, exceptions may apply to the records of the medical county coroner.

N.D.A.G. 95-L-94
April 17, 1995

RECORD RETENTION

Disposal of records related to North Dakota Protection and Advocacy project was in accordance with the records management system established by the Records Management section under N.D.C.C. ch. 54-46 and acquiesced by the Records Management Task Force.

N.D.A.G. 95-L-146
June 21, 1995

WORKERS COMPENSATION BUREAU

The list of employers implementing and maintaining a risk management program approved by the Workers Compensation Bureau under N.D.C.C. § 65-04-19.1 is based on information provided in an “employer’s report.” Therefore, the list is confidential and may not be disclosed to the public.

N.D.A.G. 95-L-148
June 21, 1995

COURTS

It is within the discretion of the particular court to determine the extent of accessibility of judicial records to the public. If any of the specific information made confidential under N.D.C.C. § 14-07.1-18 is contained in a petition for a disorderly conduct restraining order filed with the court, the court is not prohibited from disclosing this information to the public pursuant to its discretion.

N.D.A.G. 95-L-174
July 24, 1995

CITIES

Client files held by an attorney belong to the client rather than the attorney. Because the legal files of a municipality belong to the municipality as the client rather than the city attorney, and because these files also pertain to the office of city attorney as described in N.D.C.C. § 40-20-01, these files must be delivered to the current city attorney under N.D.C.C. § 40-13-10 within five days after notification and request.

N.D.A.G. 95-L-181
July 31, 1995

LAW ENFORCEMENT SCHOOLS

Section 27-20-52, N.D.C.C., does not apply to school records, but rather to records held by law enforcement. This section strictly limits who may inspect law enforcement records on a child. Neither a school district nor school employees are among those who may inspect the records absent a court order.

N.D.A.G. 95-L-243
October 23, 1995

AGRICULTURE

The legal and tax assistance program records of the Credit Review Board and the Agriculture Commissioner are open records and not subject to the confidentiality requirements for mediation records under N.D.C.C. § 6-09.10-10.

N.D.A.G. 95-L-253
November 8, 1995

TRADE SECRETS

The basic public policy in favor of disclosure of government-held information and the statutory penalty attendant thereto, must be balanced against the broad definition of confidential information applicable to the NDDEF, and the greater statutory penalty for the unauthorized disclosure of such information. While the determination of which information is confidential and which information may be disclosed will need to be made on a case-by-case basis.

N.D.A.G. 96-L-16
February 8, 1996

WORKERS COMPENSATION BUREAU

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 is not available except as tabulated and published by the Bureau in statistical form. See N.D.C.C. § 65-04-15. Also, whether any premium adjustments have been made is a matter of public record.

N.D.A.G. 96-L-119
June 5, 1996

LAW ENFORCEMENT TRANSPORTATION, DEPARTMENT OF

A local law enforcement agency or an investigating officer may not release a copy of the report required to be filed with the director of the Department of Transportation under N.D.C.C. § 39-08-13, regardless of whether the record is open or contains confidential information. (Superseded by N.D.A.G. 96-L-232 (December 3 to J. Thomas Traynor).)

N.D.A.G. 96-F-18
September 13, 1996

NONGOVERNMENTAL ORGANIZATIONS

The International Peace Garden, Inc. is both expending public funds directly appropriated by the State Legislature and supported in whole or in part by public funds, and is therefore subject to the open meetings and records laws. A report on a personnel matter prepared at the direction of the board of directors of the corporation, whether in the possession of the corporation or the private investigator who prepared the report, is a record of the corporation for purposes of the open records law. A meeting of the board of directors of the corporation to discuss the record, or any other matter, must be open to the public unless another exception to the open records or meetings laws applies.

N.D.A.G. 96-L-200
November 7, 2000

DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS

Confidential information communicated to a person entitled to receive the information through a relay operator under a telecommunications device for the deaf (TDD) system does not violate state confidentiality laws. No breach of confidentiality occurs because the operator is required to preserve the confidentiality of the communication.

N.D.A.G. 96-L-232
December 3, 1996

FEES FOR ACCESS AND COPIES LAW ENFORCEMENT TRANSPORTATION, DEPARTMENT OF

An accident report required to be filed under N.D.C.C. § 39-08-13, except for any confidential portion containing an investigating officer's opinion regarding fault or responsibility for the accident, is an open record in the hands of local law enforcement agencies and must be disclosed upon request. Although the Department of Transportation is authorized, by N.D.C.C. § 39-08-13(6), to charge a \$2 fee for providing a copy of the portion of the report that is not confidential, local law enforcement agencies are authorized to charge only a reasonable fee as authorized by N.D.C.C. § 44-04-18. (Superseding N.D.A.G. 96-L-119 (June 5 to J. Thomas Traynor).)

N.D.A.G. 97-L-13
January 29, 1997

PERSONAL INFORMATION
TRANSPORTATION, DEPARTMENT OF

The state does not have to provide notice of the procedure for individuals to contact the Department of Transportation to request that personal information not be disclosed prior to the next renewal of the person's automobile title, registration permit, license, or identification card. Because no notice is required until such renewal, and a person has no current right to have personal information withheld from public disclosure, the Department of Transportation could not be found legally liable for failing to provide notice of the procedure for requesting that personal information be closed to the public.

N.D.A.G. 97-F-06
September 10, 1997

PUBLIC EMPLOYEES
RECORD, DEFINED

Each item of recorded information possessed or kept by PERS regarding public business, including each entry of information on forms submitted to PERS, is open unless "otherwise specifically provided by law." There are numerous alternative definitions for the plain meaning of "record." Sections 54-52-26, 54-52.1-11, and 54-52.3-05, N.D.C.C., make confidential any recorded information submitted on the forms having a logical or natural association with: a member's or beneficiary's retirement benefits, including the person's identity and other personal identifying information; medical claims by a member and amounts of life insurance coverage, which does not include the application for participation in the PERS health care plan; and an employee's medical or dependent care reimbursement under the pre-tax benefits program.

N.D.A.G. 97-O-1
November 10, 1997

DENIAL OF RECORDS
LAW ENFORCEMENT
UNREASONABLE DELAY

Unwritten information about a motor vehicle accident which is known to the county sheriff and state's attorney is not a "record" for purposes of the open records law. An explanation of the legal basis for denying records is sufficient without citing the number of the specific statute authorizing the denial. Access to public records outside regular office hours is not required. However, under the facts, immediate disclosure of the sheriff's field notes regarding an accident was required and any delay in providing access or copies was unreasonable.

N.D.A.G. 98-F-02
January 8, 1998

LAW ENFORCEMENT

State statutes which make juvenile court files and law enforcement records of a juvenile confidential do not prevent a state professional licensing board from asking an applicant about his or her juvenile record. However, because the board will not have access to those records, it will be unable to confirm the truthfulness of the applicant's response.

N.D.A.G. 98-O-03
February 20, 1998

DENIAL OF RECORDS
FEES FOR ACCESS AND COPIES OPEN
RECORDS, IN GENERAL
PRELIMINARY DRAFTS AND WORKING PAPERS TRADE
SECRETS
UNREASONABLE DELAY

Completed forms in the possession of a job development authority are not "working papers." Economic development records are not exempt under N.D.C.C. § 44-04-18.4 if they have previously been publicly disclosed or if they do not contain any protectable information (trade secrets, commercial or proprietary information) regarding the business. A verbal request for records over the telephone has the same effect as a written request and must be fulfilled or denied within a reasonable time. Factors to be considered include the need for removing closed or confidential material, the need to obtain legal advice regarding the openness of the requested records, the quantity of records requested, and whether staff are employed by the public entity on a full or part-time basis. A denial must clearly address all the requested records which are not disclosed and the legal authority supporting the denial.

N.D.A.G. 98-L-17
March 2, 1998

TRADE SECRETS

The terms "commercial" and "financial" as used in N.D.C.C. § 44-04-18.4 refer broadly to information pertaining to commerce (the buying or selling of goods or services) or finances (monetary resources). Protectible information is "of a privileged nature" under N.D.C.C. § 44-04-18.4 if disclosure is likely to impair the public entity's future ability to obtain necessary information or if disclosure would likely cause substantial competitive injury to the person or entity from whom the information was obtained. In making this decision, it is appropriate for an agency to contact the person or entity which provided the information. The disclosure of contract prices is a part of doing business with the government and, as a matter of law, does not cause a competitive injury to the contractor.

N.D.A.G. 98-O-04
March 3, 1998

DENIAL OF RECORDS
FEES FOR ACCESS AND COPIES
MINUTES
PRELIMINARY DRAFTS AND WORKING PAPERS PUBLIC
ENTITY
UNREASONABLE DELAY

A joint enterprise of several counties to carry out public business on the counties' behalf, such as the Southwest Multi-County Correction Center, is an agency of those counties and therefore falls under the definition of "public entity." A public entity is not required under this section to disclose records which do not exist, or to create a new record by compiling information from other records. However, even if the reason for a denial is that the requested records do not exist, the denial still must be made in writing if requested. Once a "working paper" or "preliminary draft" is no longer being worked on or is distributed to members of a governing body, the record must be disclosed upon request. Notes of meetings are no longer working papers once draft minutes of the meeting are prepared, even if the minutes have not yet been approved by the governing body. Draft minutes usually must be prepared and made available before the next regular meeting of the governing body. The disclosure of draft minutes cannot be delayed until the minutes are approved by the governing body.

N.D.A.G. 98-L-32
March 30, 1998

HUMAN SERVICES
LAW ENFORCEMENT

The term "law" as defined in N.D.C.C. § 44-04-17.1(7) includes federal regulations which prohibit further disclosure of criminal history record information received from the Federal Bureau of Investigation. Accordingly, the Department of Human Services is not required to disclose FBI criminal history record information in its possession under the open records law.

N.D.A.G. 98-F-09
April 9, 1998

LAW ENFORCEMENT

The information obtained by a criminal justice agency under a search warrant is "criminal investigative information" under N.D.C.C. § 44-04-18.7. If such information is "active," disclosure is not required and is left to the discretion of the public entity possessing the records unless disclosure is prohibited by another statute which makes the records confidential rather than exempt. Once criminal investigative information is no longer active, the information is an open record unless another exception applies.

N.D.A.G. 98-O-07
April 24, 1998

OPEN RECORDS, IN GENERAL

A public entity complies with N.D.C.C. § 44-04-18 when it mails records to a requester, even if the records are lost in the mail. The open records law is violated when records are destroyed or thrown away while a request for those records is still pending. Throwing the records away while a request is pending is also a denial of the request which must be explained and made in writing if requested.

N.D.A.G. 98-L-51
April 24, 1998

SCHOOLS

The Family Educational Rights and Privacy Act (FERPA), 12 U.S.C. § 1232g, is a "law" prohibiting the disclosure of certain education records under the open records law. Teacher journals which are prepared to record events in the special education of a student are not prepared simply to aid the personal memories of the teachers and are therefore "education records" which must be available to the parents of the student.

N.D.A.G. 98-F-11
April 30, 1998

PERSONAL INFORMATION
PUBLIC EMPLOYEE
RECORD, DEFINED

Resumes and other personal information submitted by a person applying for a position or office with a public entity fall under the definition of "record" in N.D.C.C. § 44-04-17.1(15) and therefore are open records. There is no general exception to the open records law for resumes or other personal information submitted by an applicant for employment with a public entity. Certain personal information is closed under N.D.C.C. § 44-04-18.1(2), but only for certain information provided by a public employee in the context of the person's employment.

N.D.A.G. 98-O-10
May 7, 1998

DENIAL OF RECORDS

A denial of a request for records must be made in writing, if requested, even if the reason for not disclosing the records is that the records do not exist.

N.D.A.G. 98-F-13
May 12, 1998

OPEN RECORDS, IN GENERAL
TRANSPORTATION, DEPARTMENT OF

Certain highway safety records are not subject to disclosure under federal law and are therefore not subject to the open records law. Normally, the identity of a requester and purpose of the request are irrelevant; the right to access to public records applies to all persons equally. However, when an exception to the open records law is based on the identity and purpose of the person making the request, it is appropriate for the public entity to determine that the person's identity or purpose do not make them subject to the exception before the entity is required to disclose the requested records. A request by a litigant in a case involving a public entity, or by an agent of a litigant, for records of a public entity must be submitted to the attorney representing the public entity and is subject to the rules of discovery.

N.D.A.G. 98-O-11
June 8, 1998

MINUTES

Draft minutes of an open meeting are open records, even if the minutes have not been approved by the governing body, and must be available for access and copying upon request.

N.D.A.G. 98-L-73
June 8, 1998

OPEN RECORDS, IN GENERAL RECORD,
DEFINED

Confidential records received by the Information Services Division (ISD) from another state agency to fulfill the purposes of N.D.C.C. ch. 54-44.2 continue to be closed or confidential in ISD's possession. Mere possession of records, rather than ownership, is all that is necessary for a public entity to be required to disclose the record under this section. When two public entities possess the same record, each entity usually possesses the record in its own capacity and has an independent duty to determine whether the information is an open record. However, when a state agency holds records on behalf of another agency as its agent, and not in its own capacity, the agency possessing the records is required to respond on behalf of the entity providing the records and may not refer the requester to the providing entity. (BUT SEE N.D.C.C. § 54-59-16 (requests may be referred to the agency providing the records).)

N.D.A.G. 98-F-19
June 10, 1998

NONGOVERNMENTAL ORGANIZATIONS

An organization receiving public funds under a contract with a state agency is not supported by public funds under N.D.C.C. § 44-04-17.1, even if the contract is entitled "Grant Agreement," as long as the goods or services provided in exchange for those funds are reasonably identified in the agreement and have a fair market value that is equivalent to the amount of public funds it receives, including a commercially reasonable amount of profit for the contractor.

N.D.A.G. 98-L-77
June 17, 1998

AGRICULTURE
TRADE SECRETS

Field inspection applications and reports by the State Seed Department are records. These seed field records are commercial information under N.D.C.C. § 44-04-18.4. The information in these records regarding the parentage of seeds has a privileged nature under N.D.C.C. § 44-04-18.4 because disclosure of the information would allow a competitor to duplicate and sell the same product in competition with the person providing the information, causing substantial competitive harm to that person.

N.D.A.G. 98-F-22
June 23, 1998

WORKERS COMPENSATION BUREAU

The portion of an administrative hearing by the Workers' Compensation Bureau during which closed or confidential records are introduced or testimony is taken regarding those records must be closed to the public unless the worker consents to an open hearing. The remainder of the administrative hearing must be open.

N.D.A.G. 98-O-15
July 2, 1998

MINUTES

For purposes of an opinion issued under N.D.C.C. § 44-04-21.1, whether minutes have been requested is a question of fact. Based on the public entity's statement, this office will assume, without weighing the credibility of the requester against the public entity, that the minutes were never requested.

N.D.A.G. 98-O-19
August 12, 1998

UNREASONABLE DELAY

A delay by a public entity of more than two weeks before granting a request for minutes of a meeting of a water resource district board was an unreasonable delay.

N.D.A.G. 98-L-128
September 2, 1998

PUBLIC BUSINESS

RECORD, DEFINED

An item of recorded information is not a record if it has not been received or prepared for use in connection with public business. Mere possession of recorded information by a public entity is not sufficient. Rather, the term "connection" requires a link or association between the recorded information and the public entity's public business.

N.D.A.G. 98-O-20
September 15, 1998

OPEN RECORDS, IN GENERAL

UNREASONABLE DELAY

Once a request for records is made to a public entity under N.D.C.C.

§ 44-04-18, the public entity must either provide the records or explain why the request is not being satisfied. In either case, a response must be provided within a reasonable time. A delay of almost a month and a half before denying a request was unreasonable. A public entity is not required to provide more than one copy of an open record. However, before denying a request for an additional copy, the public entity is responsible for making sure that the requested record is the same as the record previously provided by the public entity. The city was not required to compile

information from other city records at the request of a member of the public.

N.D.A.G. 98-O-22
October 16, 1998

COMPUTER RECORDS
FEES FOR ACCESS AND COPIES
TRADE SECRETS UNREASONABLE
DELAY

A public entity cannot deny a request for a record on the basis that the record does not exist if the record was created or received while the request was pending. The definition of trade secret includes any compilation prepared by a public entity which the public entity attempts to keep secret and from which the public entity may derive economic value if the information is not publicly disclosed. Disclosure of a park district's membership list cannot cause competitive injury as a matter of law unless the district is in competition with another entity which offers similar accommodations or services. A public entity may not deny a request for an open record because the record also contains closed or confidential information, no matter whether the record is a paper document or a computer file. The bank account number and credit card number of persons purchasing memberships from a city park district are exempt from the open records law under N.D.C.C. § 44-04-18.9.

N.D.A.G. 98-F-28
November 23, 1998

DISCLOSURE OF CLOSED OR
CONFIDENTIAL RECORDS

The authority to disclose closed or confidential records under N.D.C.C. § 44-04-18.10 is subject to federal restrictions on such disclosures. Since N.D.C.C. § 25-03.1-43 limits how certain records may be shared with other state agencies, it prevails over the general disclosure authority in N.D.C.C. § 44-04-18.10.

N.D.A.G. 98-L-194
November 23, 1998

DISCLOSURE OF CLOSED
OR CONFIDENTIAL RECORDS

Names, addresses, and telephone numbers provided to a 911 answering point by a telecommunications company are confidential under state law. However, the information may be shared for law enforcement and debt collection purposes under N.D.C.C. § 44-04-18.10, child support purposes under N.D.C.C. §§ 50-09-08(4) or 50-09-08.2(1), pursuant to a court order, or for the purpose of responding to a call for emergency help.

N.D.A.G. 98-O-24
November 23, 1998

NONGOVERNMENTAL
ORGANIZATIONS
PUBLIC BUSINESS

An organization is supported by public funds if it receives unrestricted funds for its general support, but not if the funds received by the organization were paid in exchange for goods or services having an equivalent fair market value. The definition of public funds includes cash and other assets or property which have a significant economic value, including the free use of public property. When an organization has received public funds for its general support, all of its financial records pertain to public business and are open because the organization's use of public funds can be fully determined only if those transactions are placed in context with the organization's overall finances. As a result, the budget of an organization supported by public funds, such as the Fargo Youth Commission, is an open record because it relates to the use and impact of the public funds received by the organization, notwithstanding the fact that the information may be speculative and outdated.

N.D.A.G. 98-O-25
November 24, 1998

EXECUTIVE SESSION,
RECORDINGS AND MINUTES
MINUTES

Unless a statute provides otherwise, the minutes of executive sessions are treated the same as recordings of those sessions and continue to be closed even if disclosure would no longer defeat the purpose of the executive session. The Office of Attorney General cannot review an alleged deficiency in the minutes of a meeting until after the minutes have been approved by the governing body, because the deficiencies may still be cured by the body prior to adopting the minutes. The requirements in

N.D.C.C. § 44-04-19.2(2) for closing a meeting should not be applied so rigidly that a script needs to be prepared ahead of time in order to comply with those requirements.

N.D.A.G. 99-L-30
April 5, 1999

DISCLOSURE OF CLOSED
OR CONFIDENTIAL RECORDS

The confidentiality requirements in N.D.C.C. § 57-40.6-07 apply only to information provided to a 911 answering point by a telecommunications company. The application of a statute making certain records confidential may be waived by the party or parties for whose benefit the statute was enacted.

N.D.A.G. 99-O-02
April 5, 1999

NONGOVERNMENTAL ORGANIZATIONS
OPEN RECORDS, IN GENERAL
PUBLIC ENTITY

The North Dakota Insurance Reserve Fund is a public entity because it is a joint enterprise of several political subdivisions that have united to self-insure against their legal liability and it is expending public funds. Any settlement agreement by the North Dakota Insurance Reserve Fund or its attorneys, as agents of the public entities who participate in the fund, is an open record. Any confidentiality agreement by the North Dakota Insurance Reserve Fund or its attorneys, as agents of the public entities who participate in the fund, is against public policy and is void.

N.D.A.G. 99-O-03
April 7, 1999

NONGOVERNMENTAL ORGANIZATIONS

The definition of public funds does not include funds provided from the federal government directly to a non-governmental organization. The Coalition Against Domestic Violence is a public entity because it has received unrestricted state funds for its general support and those unrestricted funds were pooled with other income. Therefore, to fully determine the Coalition's use of the public funds it has received, all of its financial records are open to the public, including the minutes of any meeting at which the organization's finances were discussed.

N.D.A.G. 99-O-07
June 29, 1999

EXECUTIVE SESSION, RECORDING
AND MINUTES

A state licensing board does not violate the open records law when it denies a request for a copy of the recording of an executive session.

N.D.A.G. 99-L-57
July 6, 1999

HUMAN SERVICES

PERSONAL INFORMATION

The Department of Human Services is not an "occupational or professional board, association, or commission" as those terms are used N.D.C.C.

§ 44-04-18.1, so personal information regarding individuals who are licensed by the department is not exempt from the open records law under that section.

N.D.A.G. 99-L-71
August 6, 1999

COURTS

LAW ENFORCEMENT

Chapter 12-60, N.D.C.C., applies to criminal justice agencies and does not apply to records maintained by the courts. A clerk of district court is an adjunct of the district court and, when acting in that capacity, is not a "criminal justice agency" for purposes of N.D.C.C. ch. 12-60. Although "criminal history record information," as a compilation of information, may only be obtained from the Bureau of Criminal Investigation, source documents for each conviction may be available from the clerks of court and from local law enforcement agencies.

N.D.A.G. 99-L-115
November 18, 1999

DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS

EXECUTIVE SESSION, RECORDING AND MINUTES

Each member of a governing body of a public entity has an inherent right to attend all meetings of that body, including executive sessions, unless the subject of the executive session is litigation involving that member. The same is true for access to closed or confidential records of the public entity. A member who was absent from an executive session is entitled to listen to the recording of the session, even though the recording is not open to the public. Allowing an absent member to listen to the recording does not make the recording an open record.

N.D.A.G. 99-L-126
December 9, 1999

LAW ENFORCEMENT

Chapter 27-20, N.D.C.C., does not prohibit the sharing of information about juvenile offenders between attorneys within the same state's attorney's office, although the subsequent use of that information will be governed by

N.D.C.C. ch. 27-20, the North Dakota Rules of Evidence, and the fair treatment standards for victims and witnesses in N.D.C.C. ch. 12.1-34.

2000

N.D.A.G. 2000-L-4
January 18, 2000

LAW ENFORCEMENT

Section 27-20-52, N.D.C.C., does not apply to all law enforcement records regarding children. Rather, to be confidential under this section, the record must pertain to a child who was alleged or found to be delinquent, unruly, or deprived. Thus, records regarding the death of a minor who died while in the custody of a public corrections facility are not confidential under

N.D.C.C. § 27-20-52, except possibly for the records which identify the reason why the child was an inmate at the facility.

N.D.A.G. 2000-L-18
February 14, 2000

INMATE RECORDS

As a general rule, all records of the Department of Corrections and Rehabilitation, including records of an inmate's protective custody placement, are confidential and may not be disclosed except in the manner provided in N.D.C.C. § 12-47-36. (See also N.D.A.G. 2000-L-48 (April 4, 2000 to Warren Emmer).)

N.D.A.G. 2000-F-09
February 28, 2000

COURTS

INMATE RECORDS

LAW ENFORCEMENT

OPEN RECORDS IN GENERAL

The phrase "law enforcement" as used in N.D.C.C. § 27-20-52 refers to officers and agencies involved in the detection, investigation, and prosecution of crimes, not correctional facilities. The phrase "juvenile court" in N.D.C.C. § 27-20-51 is limited to district courts in North Dakota and does not include courts in other jurisdictions. Law enforcement records regarding a juvenile continue to be confidential under N.D.C.C. ch. 27-20 after the juvenile has died. N.D.C.C. § 27-20-51 does not prohibit further disclosure of confidential juvenile court records which are shared with a public institution which has custody of the juvenile. Unless another open records exception applies to records in the possession of the institution, such as for the Department of Corrections and Rehabilitation, the juvenile court records shared with the institution become open records. Public entities do not have the authority to create open records exceptions by contract.

N.D.A.G. 2000-O-04
March 15, 2000

SCHOOLS

Normally, the location of a record is not relevant to whether it is open to the public. However, including a non-academic record of a student in the student's permanent file makes the record an "education record" under the Family Education Rights and Privacy Act (FERPA).

N.D.A.G. 2000-L-48
April 4, 2000

DISCLOSURE OF CLOSED

OR CONFIDENTIAL RECORDS

INMATE RECORDS

Notwithstanding the general rule of confidentiality in N.D.C.C. § 12-59-04 for records of the Department of Corrections and Rehabilitation, disclosure of certain records will be authorized or required under other specific statutes. Examples include notification of victims and witnesses; offender registration, reporting of criminal history record information and other notification to law enforcement agencies; DNA testing; and other disclosures permitted under N.D.C.C. § 12-47-36.

N.D.A.G. 2000-O-06
May 5, 2000

SCHOOLS

A letter to a school board from a school bus driver which was based on the driver's personal observations as a parent of students attending the school is not an education record which is confidential under the Family Education Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g(b).

N.D.A.G. 2000-L-94
May 26, 2000

FEES FOR ACCESS AND COPIES

The fee of two dollars per page in N.D.C.C. § 11-15-07(4) is an exception to the "reasonable fee" provided in N.D.C.C. § 44-04-18(2), although the increased fee only applies to "papers" and not to other types of records.

N.D.A.G. 2000-L-99
June 13, 2000

LAW ENFORCEMENT

A distinction exists under N.D.C.C. ch. 12-60 between a compilation of a person's criminal history and the source documents from which a person's criminal history is compiled. Section 12-60-16.6, N.D.C.C., specifies the Bureau of Criminal Investigation (BCI) as the only agency which may disseminate compiled criminal history information to parties other than those listed in N.D.C.C. § 12-60-16.5. This provision does not apply to requests for source documents in the possession of a local criminal justice agency pertaining to a person's arrest or conviction of a particular criminal offense, although other statutes may prohibit disclosure of the records or authorize restrictions on the release of such records. A release signed by the subject of the source documents is not necessary for disclosure of those records to be required, nor will such a release allow a person to obtain a copy of a criminal history record without making the request to BCI and paying the appropriate fee.

N.D.A.G. 2000-O-07
June 26, 2000

TRADE SECRETS

The exemptions for economic development records in N.D.C.C. § 44-04-18.4(5) authorize a public entity to conceal the identity, nature, and prospective location of a business or industry, but only until the business or industry discloses that information to the public. This authority no longer applies once a business or industry has already located, relocated, or expanded within the state. The second part of the exemption for economic development records applies to trade secrets and commercial and financial information that is received from a business, even if the business' identity has been previously disclosed. However, this exception does not apply to the identity of the business or to information generated by the public entity itself. The confidentiality provisions in N.D.C.C. ch. 6-08.1 and § 6-09-35 for customers of the Bank of North Dakota do not apply to records of recipients of PACE (partnership in assisting community expansion) loans which are in the possession of a different public entity, such as the Stark Development Corporation.

N.D.A.G. 2000-L-107
June 28, 2000

TRADE SECRETS

The exemption in N.D.C.C. § 44-04-18.4(1) for financial information of a privileged nature applies not only to financial information of a business, but also to personal financial information such as a detailed breakdown of a person's income and medical expenses. Disclosure of financial information of an applicant for a tax credit, who is not in competition with other applicants, cannot cause a competitive injury to the applicant. Thus, whether the information is "of a privileged nature" depends on whether disclosure would impair the public entity's future ability to obtain such information from other applicants. Disclosure of the detailed, personal information in the application form on senior citizens and disabled persons would impair, as a matter of law, the county's future ability to obtain such information.

N.D.A.G. 2000-O-11
September 1, 2000

FEES FOR ACCESS AND COPIES

Subsection 8 of N.D.C.C. § 44-04-18 authorizes two separate fees. The first fee is for making copies of a requested record and is limited to the actual cost to the public entity of making the copies. The second fee is for locating requested records when it takes the public entity longer than one hour to find the records that have been requested. The fee charged by a school district was not authorized by law because the fee was for the time needed to prepare and compile a new record that had not been requested by the member of the public rather than providing copies of existing records.

N.D.A.G. 2000-O-13
December 14, 2000

DENIAL OF RECORDS

INMATE RECORDS

MEDICAL RECORDS

A public entity failed to adequately explain the legal basis for its denial of a request for records when it indicated the denial was based on a conversation with the Attorney General's office, the entity's health care administrator, and the entity's attorney. Medical records of a deceased juvenile inmate at a county jail or multi-county correctional center are not protected by an implied right to privacy and are, as a general rule, open to the public upon request. BUT SEE N.D.C.C. § 12-44.1-28 (enacted in 2001).

N.D.A.G. 2000-L-179
December 29, 2000

FEES FOR ACCESS AND COPIES

If a state's attorney possesses records indicating whether a service charge has been paid to the district court, the state's attorney is required to respond to a request for those records, but may charge a copying fee as well as a search fee for locating the requested records if locating the records takes longer than one hour.

2001

N.D.A.G. 2001-O-02
April 5, 2001

PRELIMINARY DRAFTS AND WORKING PAPERS UNREASONABLE DELAY

Providing access to records which are open to the public is a ministerial act which will not require action of a governing body in most cases. A public entity's response to an open records request cannot be automatically extended until the next scheduled meeting of the governing body simply to enable the governing body to give its permission to release the records. A delay to obtain legal advice on whether the release requested records is authorized only if there is a legitimate legal and factual question on what information must be disclosed, and is limited to the length of time which is reasonably necessary to obtain that advice. Further delay after the attorney is prepared to advise the governing body is not authorized, even if it is necessary for the governing body to hold a special meeting to receive that advice.

N.D.A.G. 2001-O-04
May 16, 2001

NONGOVERNMENTAL ORGANIZATIONS
PRELIMINARY DRAFTS AND WORKING PAPERS
PUBLIC ENTITY
UNREASONABLE DELAY

A delay of seven days in responding to a request for records was unreasonable because the city did not need to obtain legal advice prior to indicating that the requested records did not exist. An advertising firm hired to perform an educational campaign on the city's behalf was an "agent" of the city for purposes of N.D.C.C. § 44-04-18. Documents created by the city's advertising company in the course of conducting the advertising campaign may be withheld only while the documents are being used to create a final record. The city was not authorized to continue withholding the records until completion of the advertising campaign.

N.D.A.G. 2001-O-06
June 18, 2001

OPEN RECORDS, IN GENERAL

The plain meaning of the word "copy" in N.D.C.C. § 44-04-18(2) means a duplicate or exact reproduction of the original record. A black and white photocopy of three color pictures was not a "copy" of those photographs as required under N.D.C.C. § 44-04-18(2).

N.D.A.G. 2001-O-10
September 7, 2001

NONGOVERNMENTAL
ORGANIZATION
PUBLIC ENTITY

There are four ways the open records and meetings laws may apply to a "nongovernmental" organization. A local economic development organization was supported by public funds because the city's payments were to fund the operations of the organization rather than to purchase services at fair market value. Because the funds were provided for the organization's general support, all meetings and records of the organization pertained to public business and are required to be open unless otherwise specifically provided by law. Nothing limits the "agency of government" test to personnel firms working for a public entity. The question is whether the provider is acting in place of a public entity, or merely providing services to the entity.

N.D.A.G. 2001-O-11
September 13, 2001

NONGOVERNMENTAL ORGANIZATIONS
PUBLIC BUSINESS
PUBLIC ENTITY
TRADE SECRETS

The total amount of public funds provided to the corporation, coupled with the indistinct terms of the contract dealing with the purposes for which the funds are to be expended, lead to the conclusion that the local economic development corporation is supported by public funds. Public funds are being used to support the organization rather than purchase services. Because the public funds received by the corporation are pooled with other funds of the corporation, all recorded information regarding the corporation's finances or performance of governmental functions is open to the public unless otherwise specifically provided by law. An audit report involving the corporation and the performance of its chief executive is open to the public. The report was not a personnel record and could not be withheld under N.D.C.C. § 44-04-18.1(3).

N.D.A.G. 2001-L-36
September 14, 2015

AUDITOR, STATE
TAX RECORDS

No statutory exception to the confidentiality provisions of N.D.C.C. § 57-38-57 that would authorize the State Auditor to access income tax return information of Service Payments for the Elderly and Disabled (SPED) program recipients held by the Tax Commissioner as part of a performance audit on the Department of Human Services conducted to verify the accuracy of the financial information provided by program recipients when applying for services.

N.D.A.G. 2001-O-12
September 26, 2001

OPEN RECORDS, IN GENERAL
UNREASONABLE DELAY

A delay of over a month in providing copies of requested records was not unreasonable when the requester indicated he would pick up the copies and had not yet done so. A request for a large number of records is not, by definition, overbroad. The request for records in this case reasonably identified the records being requested. The number of records being requested affected the time within which the public entity was required to respond to the request, but not whether the request was sufficient under N.D.C.C. § 44-04-18.

N.D.A.G. 2001-F-10
December 11, 2001

OPEN RECORDS, IN GENERAL

The name of an agricultural or commercial borrower of the Bank of North Dakota and the amount of financing provided to the borrower are open to the public upon request to the Industrial Commission under N.D.C.C.

§§ 6-08.1-02(7) and 44-04-18, but only after the loan has closed. If the Industrial Commission writes off a loan, there is no authority for public disclosure of that information. All other information of customers of the Bank of North Dakota is confidential and may only be released as allowed or required by law, including the exceptions located in N.D.C.C. § 6-09-35 and N.D.C.C. ch. 6-08.1, or if disclosure is inherent in the business of financial institutions.

2002

N.D.A.G. 2002-O-01
January 10, 2002

ATTORNEY WORK PRODUCT

To effectively conceal a public entity's attorney work product or attorney consultations from its adversary in a pending or reasonably predictable lawsuit or administrative proceeding, that information must be concealed from the public as well. A public entity essentially waives its right to invoke the exceptions to the open records and meetings laws in N.D.C.C.

§ 44-04-19.1 if the public entity allows its adversary to review the work product or attend the consultation.

N.D.A.G. 2002-L-06
January 29, 2002

DISCLOSURE OF CLOSED
OR CONFIDENTIAL RECORDS
MEDICAL RECORDS

Generally, public entities possessing the same record must independently determine whether an exception applies to a record in the entity's possession. Even if release of a confidential record to another public entity is authorized, the receiving entity must have an applicable open records exception or else the record is open to the public in the entity's possession. Information in vital records regarding out-of-wedlock births and indicating causes of death are confidential, but may be released for statistical purposes.

N.D.A.G. 2002-O-03
February 11, 2002

UNREASONABLE DELAY

Failure to provide copies of requested records, deny the request, or require payment of the fee for copying the requested records until more than two months after receiving the request was an unreasonable delay.

N.D.A.G. 2002-O-04
February 25, 2002

FEES FOR ACCESS AND COPIES

Unless it takes a public entity longer than one hour to find the requested records, state law effectively maintains free access to public records.

N.D.A.G. 2002-L-15
February 28, 2002

OPEN RECORDS, IN GENERAL
PUBLIC ENTITY

A "representative organization" of teachers is not a public entity because it represents the interests of its individual members and does not exercise public authority or perform a governmental function. A school district's copy of a hearing report issued by the Education Factfinding Commission is open to the public from the first day the report is delivered by the Commission to the members of the board of the district, even if the report has not yet been made public by the Commission.

N.D.A.G. 2002-L-19
April 1, 2002

COURTS
LAW ENFORCEMENT
SCHOOLS

Whether or not the records of a child who is at least 14 years old are protected depends on whether the child is subject to the jurisdiction of the juvenile court. Records of the child's offense under N.D.C.C. §§ 27-20-51 or 27-20-52 are open to the public unless disclosure of court records is restricted by the municipal court or rules of the North Dakota Supreme Court. However, if a child under 14 years old has committed the same offense as an "unruly child" subject to the jurisdiction of the juvenile court, the records of the child's offense are not open to the public under N.D.C.C.

§§ 27-20-51 and 27-20-52. If a school district acquires records regarding a child who has committed a non-criminal tobacco-related offense under N.D.C.C. § 12.1-31-03(2), those records become "education records" subject to the Family Educational Rights and Privacy Act (FERPA) and may not be released except as authorized in FERPA or with the consent of the student's parents.

N.D.A.G. 2002-O-05
April 1, 2002

ATTORNEY WORK PRODUCT
OPEN RECORDS, IN GENERAL
SCHOOLS

The exception to the open records law in N.D.C.C. § 44-04-19.1 for “attorney work product” protects the products of an attorney’s thought process on legal issues posed by a pending or reasonably predictable court action or adversarial administrative proceeding. The types of records protected under the exception are similar to those that may be protected as “opinion work product” under N.D.R. Civ. P. 26(b)(3). A public entity receiving an open records request from or on behalf of an adversary to a pending court action or adversarial administrative proceeding is entitled under subsection 5 of N.D.C.C. § 44-04-18 to the full scope of the discovery privilege in N.D.R. Civ. P. 26(b)(3) for material prepared in anticipation of a court action or adversarial administrative proceeding. Since the exception in subsection 5 of N.D.C.C. § 44-04-18 is based on the identity of the person making the request, it is appropriate for the public entity to determine that the person is not an adversary or agent of an adversary before disclosing the requested records.

N.D.A.G. 2002-L-32
June 5, 2002

OPEN RECORDS, IN GENERAL

An official or entity responding to an open records request must follow the law that is in effect at the time the request is made.

N.D.A.G. 2002-O-06
June 27, 2002

FEES FOR ACCESS AND COPIES
UNREASONABLE DELAY

The board’s delay in providing copies of the requested records for approximately one and one half months was an unreasonable delay. The board violated state law when it charged more than the actual cost of making copies of the requested records.

N.D.A.G. 2002-L-39
July 12, 2002

COUNTIES
DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS

Under N.D.C.C. § 30.1-11-01, wills may be deposited with the county recorder for safekeeping, and must be kept confidential. The county recorder may disclose the fact that the testator has deposited a will for safekeeping to members of the general public who request the information, but not the contents of the will. Only the testator or a person authorized in writing by the testator may receive the will, and the personal representative named in the will may not receive the will without the specific written authorization before the testator’s death.

N.D.A.G. 2002-L-41
July 12, 2002

CITIES
RECORDS, DEFINED

A city’s appraisal of real property in connection with a flood protection project is an open record.

N.D.A.G. 2002-O-08
July 17, 2002

TRADE SECRETS
TRANSPORTATION, DEPARTMENT. OF
UNREASONABLE DELAY

A 37-day delay in responding to an open records request was an unreasonable delay. Contractor payroll reports submitted to the State Department of Transportation (DOT) pursuant to federal law are not confidential records under N.D.C.C. § 24-02-11 or confidential commercial or financial information under N.D.C.C. § 44-04-18.4(1) because the release of such records will not cause substantial harm to the contractor's competitive position and disclosure of the information is not likely to impair the DOT's ability to obtain such information in the future.

N.D.A.G. 2002-O-09
September 17, 2002

CITIES
NONGOVERNMENTAL ORGANIZATIONS
PUBLIC ENTITY
TRADE SECRETS

Under N.D.C.C. § 44-04-17.1(12)(c), the Minot Area Chamber of Commerce Task Force is considered a "public entity" because it (1) is supported by public funds from the city of Minot that are not provided in exchange for goods or services having an equivalent fair market value and

(2) it acted as an agent of the city to encourage the retention and oppose the closure of the Minot Air Force Base, essentially an economic development function of the city. However, strategies and plans of the task force's expert consultant relating to base retention activities are protected as trade secrets or commercial information under N.D.C.C. § 44-04-18.4(1). Such information is privileged and, therefore, confidential under N.D.C.C.

§ 44-04-18.4(1) because release of such information would cause substantial harm to the task force and the city in that it would place them at a competitive disadvantage.

N.D.A.G. 2002-L-55
October 4, 2002

DISCLOSURE OF CLOSED
OR CONFIDENTIAL RECORDS
PUBLIC EMPLOYEES

Section 54-52-26, N.D.C.C., does not prevent an agency head or his designee from viewing retirement benefit records contained in the personnel file of that agency's employee. Whether a specific employee or official is currently participating in the uniform group insurance program is confidential under N.D.C.C. § 54-52.1-11. All records indicating the amount of public funds paid by an employer on behalf of a specific employee as premiums for that employee's participation in the uniform group insurance program are confidential.

2003

N.D.A.G. 2003-O-01
January 30, 2003

OPEN RECORDS, IN GENERAL
NONGOVERNMENTAL
ORGANIZATIONS
PUBLIC ENTITY
SCHOOLS
POSSESSION OF RECORDS

A document that a public entity has returned and no longer has in its possession is not a public record. A nongovernmental entity receiving public funds under a guaranteed energy savings contract entered into after going through a request for proposals is presumed to be paid fair market value for the goods and services provided and is therefore not a “public entity” subject to the open records law. A nongovernmental entity providing system improvements to a school district and implementing energy conservation measures to two elementary schools was not acting as an agent of the school district and was therefore not a public entity.

N.D.A.G. 2003-O-02
February 21, 2003

NONGOVERNMENTAL
ORGANIZATIONS
PUBLIC ENTITY

James River Senior Citizen’s Center is a public entity subject to the open records law because it receives mill levy money for its general support without a specific contract with the county for specific services to be provided in exchange for the mill levy money. In addition, the senior center has the discretion to decide how the mill levy funds are spent within general areas that are outlined in statute. Except for information protected from public disclosure by other state laws, all records of the senior center regarding its use of the mill levy funds are open to the public.

N.D.A.G. 2003-O-04
February 25, 2003

CITIES
COMPUTER RECORDS
FEES FOR ACCESS AND COPIES
RECORD DEFINED
RECORDS RETENTION

Emails contained on an electronic backup system are records in the possession of a public entity. Once an email is deleted from a computer’s electronic backup system, it is no longer in the possession of the public entity. A request for a copy of emails pertaining to specific identified individuals for a specific period of time is a request for a copy of specific public records. The city could charge \$25 per hour after the first hour for retrieving the emails of certain city officials from emails of all other city employees with which they are intermingled.

N.D.A.G. 2003-O-06
April 25, 2003

COURTS
COURT RECORDS

The Disciplinary Board and the Judicial Conduct Commission are adjuncts of the Supreme Court. Therefore, records in their possession are records in the possession of the court and are not subject to the open records law.

N.D.A.G. 2003-O-08
July 22, 2003

NONGOVERNMENTAL
ORGANIZATION
PUBLIC ENTITY
NOTICES
OPEN RECORDS, IN GENERAL

The Dakota Center for Independent Living is a public entity for purposes of the open records and meetings laws because it is recognized by state law (N.D.C.C. ch. 50-06.5) to exercise public authority and perform the governmental function of providing services to the disabled. The center is supported in whole or in part by public funds and expends public funds because the center decides how to use the fund it receives in a manner that resembles a legislative appropriation for general support of an agency or division of an agency, rather than a contract for services. A standing request for notice of meetings is valid (BUT SEE N.D.C.C. 44-04-20(5), amended in 2005). The public entity must be able to reasonably identify the records sought by the requestor. A request for "other communications with consumers" is overbroad.

N.D.A.G. 2003-O-09
August 27, 2003

DENIAL OF RECORDS
UNREASONABLE DELAY
FEES FOR ACCESS AND COPIES
COMPUTER RECORDS

Records cannot be withheld pursuant to agency policy. If a public entity asks a requestor to explain a request in writing, the entity should advise the requestor that doing so is not a prerequisite to obtaining access to or a copy of the record, but only for clarification. The department determined within the first hour of searching its records, that it did not have a record in a form requested. The additional time for which it charged \$25 involved discussing the request and converting the data from certain electronic files to a text format by use of specialized software. Because the department was not required to create a record, it may not charge for that process. In addition, the \$25 fee may be charged only for an extended period of time locating data, not for the time it takes to put the data in a different format.

N.D.A.G. 2003-O-10
September 4, 2003

NONGOVERNMENTAL AGENCY
ABUSE & NEGLECT
PUBLIC ENTITY
UNREASONABLE DELAY

Tri-County is a public entity for purposes of the open records law because it receives money for its general support from the Domestic Violence and Sexual Assault Prevention Fund, state general funds and county funds. As a public entity, all of Tri-County's recorded information regarding its public business must be open to the public upon request unless otherwise specifically provided by law. Except for the information regarding domestic and sexual assault clients and programs protected from public disclosure under N.D.C.C. § 14-07.1-18, all recorded information of Tri-County

regarding its use of the unrestricted funds received from the state and counties must be open to the public.

N.D.A.G. 2003-O-11
September 4, 2003

TAX RECORDS

DISCLOSURE OF CLOSED OR CONFIDENTIAL INFORMATION

Given the long-standing interpretation of the Tax Department of the provision of this manner, the Tax Department is reasonable to interpret

N.D.C.C. § 57-39.2-23(1) to prohibit the divulging, in relation to any person, corporation, or limited liability company, the 1) business affairs, 2) operations, 3) or information obtained by an investigation. The act of entering into an agreement to collect, report, and remit sales and use taxes in North Dakota constitutes the “business affairs” or “operations” of a person or entity, and the release of the names of the companies entering into such agreements is prohibited by N.D.C.C. § 57-39.2-23. The Tax Department did not violate the law by refusing to disclose the names of 12 companies that have agreements with North Dakota under the Streamlined Sales Tax Project.

N.D.A.G. 2003-L-38
September 15, 2015

DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS

Department of Health, granted authority to obtain access to privately owned land for installing wells to monitor ground water for pesticide pollution under the ground water quality monitoring program, must protect the names and addresses of participating landowners that could be linked to the findings of the program under N.D.C.C. § 23-33-08. Ground water monitoring information may be disclosed if it is done in a manner that does not link the participants to the findings.

N.D.A.G. 2003-O-17
October 31, 2003

UNREASONABLE DELAY

CITIES

ATTORNEY WORK PRODUCT

Taking a couple of months to respond to a records request was a violation of N.D.C.C. § 44-04-18. Once any litigation and adversarial administrative proceeding is completed, including exhaustion of all appellate remedies, the attorney work product must be available for public disclosure unless other exceptions apply.

N.D.A.G. 2003-O-19
November 12, 2003

UNREASONABLE DELAY

OPEN RECORDS, IN GENERAL

A request for records made at a public meeting is a valid request for records. Even though the records were not available at the meeting, the records should have been made available as soon as possible after the meeting ended. A delay of four months in providing requested records was unreasonable and violated N.D.C.C. § 44-04-18.

N.D.A.G. 2003-O-21
December 1, 2003

UNREASONABLE DELAY

OPEN RECORDS, IN GENERAL

DENIAL OF RECORDS

Five days was not unreasonable for the department to respond to the records request because Ms. Olson had the documents, and the large volume of documents reviewed in order to find the requested record and the need to review the contents of the document with legal counsel. Public entities should not require request for records in writing under the pretext of clarification. The department failed to clarify that a written request was not a prerequisite to getting the record.

2004

N.D.A.G. 2004-O-01
January 2, 2004

ECONOMIC DEVELOPMENT POSSESSION OF RECORDS

All financial institutions within the state of North Dakota, including the Bank of North Dakota, are prohibited from disclosing any customer information.

N.D.C.C. § 6-08.1-03. As BND's governing body, the Industrial Commission is generally required to comply with the confidentiality requirements in

N.D.C.C. § 6-09-35(1). Since the qualification requirements for a PACE loan are different than the qualification requirements for other loans, distinguishing entities that have obtained PACE loans would result in a release of commercial and financial information of a customer in violation of the confidentiality requirements of N.D.C.C. § 6-09-35(1). Since the requestor specifically requested only information on PACE loans, the Industrial Commission's response was accurate, and the Industrial Commission did not violate the open records laws with its response. The Department of Commerce does not have any records regarding PACE loans and, therefore, could not provide those records. In this case, the information requested regarding the North Dakota Development Fund is clearly commercial or financial information and is, therefore, confidential under N.D.C.C. 10-30.5-07.

N.D.A.G. 2004-O-03
January 20, 2004

LAW ENFORCEMENT

A case is not active when the county state's attorney does not intend to move forward on the matter and no one knows if the suspect will ever return to this country. There must be a reasonable good faith anticipation of securing an arrest or prosecution in the foreseeable future. If the case is not "active" the criminal investigative information is open to the public.

N.D.A.G. 2004-L-09
January 30, 2004

DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS

Social security numbers, made confidential under N.D.C.C. § 44-04-28, may be disclosed by the Department of Human Services under N.D.C.C.

§ 50-06-15 when the information is used to administer DHS programs as specified in its department rules.

N.D.A.G. 2004-O-05
February 17, 2004

UNREASONABLE DELAY OPEN RECORDS, IN GENERAL MINUTES COUNTIES

A delay was reasonable when minutes had not been prepared at the time of the request; the minutes had to be transcribed; the secretary is a part time employee; and the commission sought records from other departments of Grand Forks County. Three working days after the open records request was submitted, the requestor was advised of the actions being taken in response to his request.

N.D.A.G. 2004-O-06
March 19, 2004

DISCLOSURE OF CLOSED OR
CONFIDENTIAL RECORDS

The plain meaning of N.D.C.C. § 52-01-03(1) is that records maintained by Job Service for the administration of the unemployment compensation law are confidential and may be disclosed to a claimant only “to the extent necessary for the proper presentation of the claimant’s claim” in a proceeding before Job Service. Since the records under N.D.C.C.

§ 52-01-03(1) are confidential records that may be disclosed to a claimant only in connection with a claim in a proceeding under the North Dakota unemployment compensation law. Job Service did not violate the open records law by failing to disclose those records.

N.D.A.G. 2004-L-25
April 1, 2004

PUBLIC ENTITY
DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS HIGHER
EDUCATION
TRADE SECRETS NONGOVERNMENTAL
ORGANIZATIONS

Regardless of funding, an entity may also be subject to the open records laws if it is an agent of a public entity. Since the bookstore operated by Barnes & Noble is acting as an agent of the University of North Dakota, a public entity, the booklist created and maintained by the bookstore is subject to disclosure under the open records law unless a specific provision of the open records law exempts the booklist from disclosure. The booklist, a compilation of all the required textbooks and materials for courses at the University of North Dakota, is a trade secret and not subject to disclosure by Barnes & Noble. Neither a public entity nor its agent may by contract, rule, or policy make a record confidential unless the record comes within a specific exemption of the open records law.

N.D.A.G. 2004-O-07
April 6, 2004

UNREASONABLE DELAY FEES
FOR ACCESS & COPIES
PRELIMINARY DRAFTS & WORKING PAPERS SCHOOLS

Motions distributed and discussed at the school board meeting, are complete in themselves and are not protected as “working papers”. The school district should have provided access to or a copy of the motion immediately at its meeting. It took 12 days to send 6 documents, all of recent origin and related to the same general subject matter. No special circumstances that would justify a delay have been identified.

N.D.A.G. 2004-O-10
May 3, 2004

EXECUTIVE SESSION, RECORDS
AND MINUTES

The recording of a closed portion of a meeting is a closed record and did not have to be released.

N.D.A.G. 2004-O-11
May 17, 2004

SCHOOLS
DENIAL OF RECORDS
POSSESSION OF RECORDS

The request was for a preliminary budget document that did not exist and therefore did not have to be provided. While a denial of a request need not cite the specific legal authority for the denial, the legal reason for the denial must be described.

N.D.A.G. 2004-O-13
June 28, 2004

EXECUTIVE SESSION,
RECORDINGS AND MINUTES

The district was not required to disclose a copy of the tape made of an executive session if the discussion in the executive session was limited to the topics announced in the open portion of the meeting.

N.D.A.G. 2004-O-20
September 7, 2004

OPEN RECORDS, IN GENERAL
UNREASONABLE DELAY
FEES FOR ACCESS & COPIES CITIES

The requestor had to ask four times for access to draft city ordinances, until the city finally told her they were located in the home of a council member. If existing records are not available when requested, a public entity has a duty under the open records law to provide access or copies of the records within a reasonable time. The fee for making copies should not be raised to punish or deter certain requestors.

N.D.A.G. 2004-O-23
October 27, 2004

RECORD, DEFINED
DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS
COUNTIES

Records in a county recorder's office are open records unless otherwise provided by law. Marriage records are vital records kept in the recorder's office and are therefore open. Even though the records contained social security numbers, a public entity may not deny a request for an open record because the record also contains confidential or closed information. The entity is required to redact or withhold the confidential information and disclose the rest of the record.

2005

N.D.A.G. 2005-O-01
January 10, 2005

CITIES
UNREASONABLE DELAY

The parties had agreed upon a date for the requestor to review the ordinances. The city auditor knew she would not be available the afternoon of the agree-upon date, but she did not attempt to contact the requestor to make alternate arrangements, therefore, access was unreasonably delayed.

N.D.A.G. 2005-O-05
March 30, 2005

COMPUTER RECORDS
FEES FOR ACCESS AND COPIES
HIGHER EDUCATION
UNREASONABLE DELAY

If a public entity chooses to narrow an open records request against the requestor's wishes, the requestor should not have to pay for charges that stem from narrowing the request. When a person requests a paper copy of an electronic record the document printed from the computer is the copy for which the person may be charged. The person should not be charged for duplicate copies made thereafter. When a public entity asks for estimated costs to be paid up front, the entity should make sure the estimate is based on legally allowable charges. A copy of an electronically stored record must be provided at the requester's option. The duty to redact confidential information from some records is not a reason to refuse to provide any of the records in electronic form. NDSU added to the delay in providing the records by trying to limit the requestor's request and failing to investigate faster ways to provide the electronic records.

N.D.A.G. 2005-O-06
May 11, 2005

OPEN RECORDS, IN GENERAL
TRADE SECRETS

A public entity may not withhold records on the basis that the information in its possession is preliminary and tentative. Any record that is responsive to the request must be provided. A request for a record cannot be denied because the records contain exempt or confidential information. The entity has a duty to redact the exempt or confidential information and disclose the rest of the record. An agreement to maintain confidentiality is not valid, only a state or federal law can make a record exempt or confidential

N.D.A.G. 2005-O-09
May 27, 2005

OPEN RECORDS, IN GENERAL
SCHOOLS
UNREASONABLE DELAY

A public entity may not require that an open records request be made in writing. It is a clear violation of the open records law to refuse to provide records for two and a half months because the requestor did not put the request in writing

N.D.A.G. 2005-O-11
June 27, 2005

OPEN RECORD, IN GENERAL

A public entity does not have to provide records that do not exist. The Grand Forks Historical Commission provided the requestor with all the records that fulfilled the request that were in its possession.

N.D.A.G. 2005-O-12
June 28, 2005

OPEN RECORDS, IN GENERAL

A public entity may not require proof of permanent residency prior to providing records to a requestor. It is also a violation to require that a request for records be made in person, before the board. The motive of the requestor is irrelevant and it is not up to the public entity to decide whether or not a request is meritorious.

N.D.A.G. 2005-O-13
August 10, 2005

DISCLOSURE OF
CLOSED OR CONFIDENTIAL RECORDS

Each agency of a political subdivision is responsible only for the records in its possession and not for records that are in the possession of another agency of the same political subdivisions. Information in an evidence log is criminal intelligence information or criminal investigative information that, in the case of an active case, is exempt even if it contains information that was released pursuant to N.D.C.C. § 44-04-18.7(5), which contains a list of information that may be released to the public. A case is active if the prosecution is not complete (See also N.D.A.G. 2004-O-03).

N.D.A.G. 2005-O-16
October 6, 2005

CITIES
DENIAL OF RECORDS
OPEN RECORDS, IN GENERAL

Marking a record “confidential” is of no legal significance absent a state or federal law that expressly declares the record confidential. Whether the records only contained suggestions is irrelevant. If it concerned public business and was in the possession of a public entity, it is subject to the open records law.

N.D.A.G. 2005-O-20
December 5, 2005

DENIAL OF RECORDS

A city council member was posting notice on behalf of another governing body when he was asked for a copy of the notice. There was no reason why he could not provide a copy of the notice, or at least pass on the request to the governing body. In any respect, he had a duty to make sure the request for a copy was honored.

2006

N.D.A.G. 2006-O-01

PUBLIC ENTITY
UNREASONABLE DELAY

NDSU Research Foundation is subject to open records law because it acts as an “agent” of NDSU. The Foundation failed to provide requested records within a reasonable time when it took six months and two interventions from this office to produce all the requested records.

N.D.A.G. 2006-O-03
February 14, 2006

PUBLIC ENTITY
DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS

The Red River Valley Fair Association is a public entity because it is both supported by public funds and recognized under state law to exercise the governmental function of managing and operating a county fair and cannot exempt personnel records from disclosure. Therefore, applications for a new fair manager were not exempt records and had to be provided to the requester. The exemption for personnel records applies to a public entity if it is a public entity solely because it is supported by public funds

N.D.A.G. 2006-O-04
February 21, 2006

DENIAL OF RECORDS
DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS
NONGOVERNMENTAL ORGANIZATIONS
OPEN RECORDS, IN GENERAL

The Bismarck-Mandan Orchestral Association is a public entity because it is supported, in part, by public funds. As such, all of its records must be open to the public unless a specific law provides otherwise. The association may not deny a request for certain records because those records contain closed or confidential information and must provide those records with the closed or confidential information redacted. However, because the association is a public entity solely because it is supported by public funds, the personnel records of the association are exempt from the open records laws. There was no authority under law for the Bismarck-Mandan Orchestral Association to deny records to an individual just because litigation is certain and imminent.

N.D.A.G. 2006-O-08
May 4, 2006

DENIAL OF RECORDS
LAW ENFORCEMENT
PUBLIC ENTITY
UNREASONABLE DELAY

The North Dakota Stockmen's Association, a public entity, received a request for records that involved a criminal investigation. It properly withheld some records under the exemption found in N.D.C.C. § 44-04-18.7 for active criminal information, but did not provide the remaining records within a reasonable time when it had to wait over two weeks for advice from an attorney.

N.D.A.G. 2006-O-09
May 15, 2006

DENIAL OF RECORDS
A city attorney was not required to give the requester his legal opinion on issues related to the record request.

N.D.A.G. 2006-O-12
July 25, 2006

DENIAL OF RECORDS
The request for a transcript of radio calls to the Pembina County Sheriff's Office was properly denied because the sheriff's office does not transcribe the radio calls it receives and the record did not exist. But in response to a request for receipts, an inaccurate reason was given for denial of those records which is a violation of N.D.C.C. § 44-04-18.

N.D.A.G. 2006-O-13
August 14, 2006

FEES FOR ACCESS AND COPIES
The University of North Dakota School of Aerospace Sciences was asked to provide a copy of a number of email records. The records were segregated, redacted as to confidential or closed information, and copied to a CD as per the request. UND's charged fees for locating, redacting and copying these records were within the statutory authority of N.D.C.C. § 44-04-18 and N.D.C.C. § 44-04-18.10.

N.D.A.G. 2006-O-14
October 4, 2006

DENIAL OF RECORDS
As an entity that is supported in whole or in part by public funds, the Williston Family Crisis Shelter is subject to the Open Records and Open Meetings laws. Its board may hold executive sessions but the minutes of the regular meeting during which the executive session is convened must include the topics to be considered at the executive session.

N.D.A.G. 2006-O-15
December 18, 2006

OPEN RECORDS, IN GENERAL
FEES FOR ACCESS AND COPIES
UNREASONABLE DELAY

The Bismarck Parks and Recreation District received a request to provide various documents. The district's delay in providing the records was due to the reliance on one employee's absence; however other employees should have been able to provide the records. The fees charged by the district were within the limits of N.D.C.C. § 44-04-18(2) but the district violated the law when it had the requester fill out a form, implying that it was necessary in order to receive the records.

2007

N.D.A.G. 2007-O-01
February 12, 2007

DENIAL OF RECORDS
OPEN RECORDS, IN GENERAL
FEES FOR ACCESS AND COPIES

Carfax was denied access to the DOT's electronically stored accident records because a program would have to be written to provide access to the raw data requested. Although a public entity is not required to create new records or reformat its records to comply with a request for information, automation of records cannot take away the right to access those records. There must be some meaningful access to records kept in electronic form. The DOT is statutorily allowed to charge another entity a specified fee for outside access to its data base as well as for making an electronic copy of the data itself.

N.D.A.G. 2007-O-03
March 1, 2007

TRANSPORTATION DEPARTMENT
DENIAL OF RECORDS

The DOT may only request the purpose of the records requested if the request is for certain highway safety records or if there is a reasonable basis to believe the records relate to a civil or criminal action or administrative proceeding.

These exceptions to records requests must be narrowly interpreted.

N.D.A.G. 2007-O-06
April 17, 2007

OPEN RECORDS, IN GENERAL
UNREASONABLE DELAY

An individual requesting public records is not required to take further action after the initial request. A request for records must be honored promptly and any delay in providing requested records must be explained.

N.D.A.G. 2007-O-07
April 24, 2007

ATTORNEY WORK PRODUCT
OPEN RECORDS, IN GENERAL
PUBLIC BUSINESS
RECORD, DEFINED

The records held by a private attorney working for a public entity are subject to the open records laws unless the records meet the definition of attorney work product in N.D.C.C. § 44-04-19.1(4). The attorney is an agent of the public entity and the records of his work for the public entity belong to the public entity.

A record is recorded information of any kind, in the possession of and received or used for public business or contains information relative to public business. It is not a thought process or mental impression.

N.D.A.G. 2007-O-10
June 26, 2007

UNREASONABLE DELAY

Publication of minutes in a newspaper is not a valid reason to deny or delay providing requested minutes.

N.D.A.G. 2007-O-11
August 3, 2007

DENIAL OF RECORDS
UNREASONABLE DELAY

The City of Mandan failed to respond to two requests by a citizen within a reasonable time when it failed to tell the requester that one of the records did not exist and delayed providing the other records because it feared the requester would misinterpret the record.

N.D.A.G. 2007-O-12
September 5, 2007

UNREASONABLE DELAY

It was reasonable for the Park Board to believe the original records request originated from a joint committee and did not fall under the open records request.

2008

N.D.A.G. 2008-L-01
February 13, 2008

COUNTIES
FEES FOR ACCESS AND COPIES
POSSESSION OF RECORDS

Examination of N.D.C.C. § 11-18-05 relating to documents in the possession of county recorders including fees for copies, authorization for county recorders to set up rules for accessing and copying of records, and prohibiting the public to access duplicate records stored offsite. Private entities do not retain any control over records in the possession of county recorders even if the private entity provided the record to the county.

N.D.A.G. 2008-O-03
February 29, 2008

DENIAL OF RECORDS

Surveillance video is an exempt record as a “security system plan” in § 44-04-24(b) thus disclosure is left to the discretion of the public entity.

N.D.A.G. 2008-O-04
February 29, 2008

DENIAL OF RECORDS

It is a violation of the open records law to use an improper statute as the legal authority to deny disclosure of an open record.

N.D.A.G. 2008-O-05 February 29, 2008	<p>DENIAL OF RECORDS</p> <p>The fact that a record includes the words “liability” or damages, does not justify the use of N.D.C.C. § 32-11-12.2 to deny a record.</p> <p>A public entity is not required to provide an index or list of records that are being denied.</p>
N.D.A.G. 2008-O-06 March 14, 2008	<p>UNREASONABLE DELAY</p> <p>It was unreasonable to take 23 days (16 working days) to tell a requester that the requested records did not exist.</p>
N.D.A.G. 2008-O-07 March 20, 2008	<p>DENIAL OF RECORDS</p> <p>RECORD, DEFINED</p> <p>A public entity cannot deny a request without first conducting a thorough search for the records. A public entity must ask the members of its governing body for records that may be responsive to a request.</p> <p>If a record is in the possession of an employee or governing body member of a public entity it is subject to the open records law, even if it is located on a private business or home computer.</p>
N.D.A.G. 2008-O-08 April 2, 2008	<p>OPEN RECORDS, IN GENERAL</p> <p>UNREASONABLE DELAY</p> <p>Pierce County violated open record laws when it asked a requestor to put a request for records in writing for clarification purposes. The County also violated open record laws when it failed to provide a response to a request within a reasonable time.</p>
N.D.A.G. 2008-O-09 April 4, 2008	<p>ATTORNEY WORK PRODUCT</p> <p>Legal memorandum prepared by WSI attorney that reflects the attorney’s legal theories qualifies as “attorney work product” that is exempt from open records law and it was not a violation when WSI did not turn the memorandum over pursuant to an open records request.</p>
N.D.A.G. 2008-O-12 June 23, 2008	<p>DENIAL OF RECORDS</p> <p>UNREASONABLE DELAY</p> <p>Round Prairie Township violated the open records law when it failed to provide copies of minutes because the requester had access to them at the meeting. The Township refused to provide copies of minutes for months.</p>
N.D.A.G. 2008-O-14 June 24, 2008	<p>FEES FOR ACCESS AND COPIES</p> <p>UNREASONABLE DELAY</p> <p>Dickinson State University properly charged the statutorily authorized amounts for requested records and responded within a reasonable time to the request under the circumstances.</p>
N.D.A.G. 2008-O-15 July 1, 2008	<p>COMPUTER RECORDS</p> <p>POSSESSION OF RECORDS PUBLIC BUSINESS</p> <p>Fargo Public School District and Fargo Park District violated the open records law by denying a request for emails kept on the home computers of their agents serving on the Board of Directors of the Metro Sports Foundation, Inc.</p>

<p>N.D.A.G. 2008-O-16 July 9, 2008</p>	<p>FEES FOR ACCESS AND COPIES The City of Mandan violated the open records law by failing to subtract an hour from the time spent searching for records and an hour from the time spent redacting records.</p>
<p>N.D.A.G. 2008-O-17 July 15, 2008</p>	<p>COMPUTER RECORDS DENIAL OF RECORDS FEES FOR ACCESS AND COPIES Adams County violated the open records law by refusing to provide a copy of a database of public records and by trying to charge a fee that was not authorized by law.</p>
<p>N.D.A.G. 2008-O-18 July 15, 2008</p>	<p>FEES FOR ACCESS AND COPIES Mountrail County violated the open records law by attempting to charge a per parcel fee, for which it had no statutory authority, in addition to the cost of “personnel costs” in an estimate for copies of the county’s computerized tax assessment roll.</p>
<p>N.D.A.G. 2008-O-19 July 15, 2008</p>	<p>DENIAL OF RECORDS OPEN RECORDS, IN GENERAL UNREASONABLE DELAY It is a violation to unreasonably delay providing copies of records to an out of state business.</p>
<p>N.D.A.G. 2008-O-20 August 1, 2008</p>	<p>DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS UNREASONABLE DELAY Safety grant records that do not reveal premium or payroll information must be released by WSI.</p>
<p>N.D.A.G. 2008-O-25 October 31, 2008</p>	<p>UNREASONABLE DELAY The Fire Department’s seven week delay in providing requested records was unreasonable.</p>
<p>N.D.A.G. 2008-O-26 November 12, 2008</p>	<p>DENIAL OF RECORDS NONGOVERNMENTAL ORGANIZATIONS Neither CommunityWorks nor the ND Housing Finance Agency violated the open records law by refusing to provide records. CommunityWorks isn’t subject to the law and Housing Finance has a statute that protects the requested records.</p>
<p>N.D.A.G. 2008-O-27 December 1, 2008</p>	<p>DENIAL OF RECORDS DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS HIGHER EDUCATION The University of North Dakota violated the open records laws by incorrectly interpreting FERPA regulations and refusing to release student disciplinary records after the personally identifiable information had been removed.</p>
<p>N.D.A.G. 2008-O-29 December 12, 2008</p>	<p>COMPUTER RECORDS OPEN RECORDS, IN GENERAL The Association is a public entity and violated the law by failing to email a copy of a records, give notice of meetings by email.</p>

N.D.A.G. 2008-L-20
December 22, 2008

Part of the North Dakota Pesticide Act (N.D.C.C. § 4-35-24(5)) makes records of pesticide application and sales of any person confidential only until Commissioner requires the records for enforcement of the Pesticide Act, when the records become public.

2009

N.D.A.G. 2009-O-01
February 2, 2009

PRELIMINARY DRAFTS AND WORKING PAPERS UNREASONABLE DELAY

It was not an unreasonable delay for NDSU to withhold a draft lease agreement until it was substantially completed.

N.D.A.G. 2009-O-02
February 20, 2009

OPEN RECORDS, IN GENERAL

Mandan violated the open records law when it asked a requester for his full name and employer before agreeing to provide records.

N.D.A.G. 2009-O-07
June 4, 2009

UNREASONABLE DELAY

The delay by the Department of Human Services of two weeks to provide one record was unreasonable.

N.D.A.G. 2009-O-08
June 15, 2009

DENIAL OF RECORDS DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS NONGOVERNMENTAL ORGANIZATIONS RECORD, DEFINED

A copy of a software vendor contract in the possession of the Alumni Association and Foundation should have been released to a requester because the contract related to public business conducted by the Alumni Association and Foundation on behalf of UND.

2010

N.D.A.G. 2010-O-02
February 26, 2010

POSSESSION OF RECORDS PUBLIC ENTITY UNREASONABLY DELAY

Requested records were not in County Emergency Service's possession, but County did not inform requestor of this until six weeks later when prompted from this office and this was unreasonable delay. Reasonableness is based on volume and complexity of request and other circumstances or responsibilities that may demand entity's immediate attention.

N.D.A.G. 2010-O-04
April 20, 2010

OPEN RECORDS, IN GENERAL UNREASONABLE DELAY

Although the response to a record request was not a voluminous request, the request came at an opportune time that did not allow the public entity to provide an immediate response. Because of the circumstances in this case, the delay in providing the record was not unreasonable.

N.D.A.G. 2010-O-08
June 24, 2010

ATTORNEY WORK PRODUCT
RECORD DEFINED

Requested billing records related to civil suit from the Risk Management division of the Office of Management and Budget. Risk Management provided billing records that were redacted under N.D.C.C. § 44-04-19.1(1) and (6), for attorney work product. Billing records related to ongoing civil suit against state and it was reasonable for division to redact portions that reveal attorney's thought process for trial strategy and legal theories.

2011

N.D.A.G. 2011-O-07
May 26, 2011

MINUTES
UNREASONABLE DELAY

Delay in responding to repeated requests for names and addresses of HRC members, without justification, was unreasonably and violated N.D.C.C. § 44-04-18. However, at time of request, draft minutes were not prepared. It was not an unreasonable delay to provide the minutes they day after the minutes were prepared.

N.D.A.G. 2011-O-09
June 29, 2011

DENIAL OF RECORDS
PUBLIC ENTITY
TRADE SECRETS

Bank of North Dakota and the Industrial Commission did not violate N.D.C.C. § 44-04-18 by refusing to provide requestor with records regarding a loan because it contained "customer information" protected by state statutory law and federal law. BND customer information is confidential pursuant to N.D.C.C. § 6-09-35 and the Industrial Commission, as BND's governing body, is bound by the same law with the exception of certain loan information that is specifically authorized to be released by the Industrial Commission under N.D.C.C. § 6-08.1-02(7). Argument that information requested was not protected or prohibited from release under law. However, all information requested would have to be obtained from the loan documents and all information derived from the loan documents is defined as "customer information" under N.D.C.C. § 6-08.1-01 and cannot be released.

N.D.A.G. 2011-O-10
August 10, 2011

DENIAL OF RECORDS
PUBLIC ENTITY

Board violated N.D.C.C. § 44-04-18 when it failed to provide requested emails and minutes, without explanation, within a reasonable time.

N.D.A.G. 2011-O-11
August 24, 2011

DENIAL OF RECORDS
OPEN RECORDS, IN GENERAL

It is proper for public entity to deny an open record request made by an agent of a party to a lawsuit pursuant to N.D.C.C. § 44-04-18(6). Law firm must follow rules of discovery in order to obtain records related to lawsuit. The discovery process is the exclusive method of compelling a public entity to provide records to its adversary in a pending criminal or civil action or adversarial administrative proceedings.

N.D.A.G. 2011-O-12
August 30, 2011

COMPUTER RECORDS
FEES FOR ACCESS AND COPIES

Entity may only charge for specific charges authorized under the open records law when responding to a request for records and estimates must be based on legally chargeable fees. No law authorizes a charge of “transferring” emails to a new folder. However, entity may charge for review and redaction of confidential or exempt information protected by FERPA, if such excising takes longer than one hour.

2012

N.D.A.G. 2012-O-07
August 2, 2012

UNREASONABLY DELAY

In determining the reasonableness of a response, circumstances of a particular request are considered. Under most circumstances, one month delay in providing copies of requested records would be unreasonably, but in this situation and under the unique circumstances to a rural township, delay was reasonable.

N.D.A.G. 2012-O-08
August 2, 2012

FEES FOR ACCESS AND COPIES

Park’s executive director spent two and a half hours reading the minutes. Half an hour was spent preparing the minutes for redaction which required the information to be crossed out and then recopied in order to completely conceal the confidential information from view. Charges related to locating the records, minus the first hour of locating, were authorized by law. Also allowed to charge for review of the minutes for confidential information, minus the first hour. However, portion of fee attributable to time spent preparing the records for redaction was not authorized by law. Person cannot be charged for making additional copies during the process of redacting closed or confidential information or for time accrued counting documents. Time spent doing the ministerial task of duplicating the documents in order to conceal confidential information, cannot be computed as part of the time spent reviewing the records for confidential information.

N.D.A.G. 2012-O-09
December 4, 2012

DISCLOSURE OF CLOSED OR CONFIDENTIAL RECORDS POSSESSION
OF RECORDS

NDSU retained in its possession records with handwritten notes filed with the OMB’s Risk Management office. The incident report is exempt under N.D.C.C. § 32-12.2-11. The handwritten notices filed with and attached to the report that describe the specific incident are also exempt. NDSU does not have discretionary authority under N.D.C.C. § 32-12.2-11 to disclose the exempt records without the consent of Risk Management.

2013

N.D.A.G. 2013-L-01
January 23, 2013

TRANSPORATION, DEPARTMENT OF

Motor vehicle accident records generated pursuant to statute are open records, including identifying, personal information, for the operators and owners of the vehicles involved in the accident. Only the portion of the report that provides the law enforcement officer's opinion as to fault or responsibility of the accident is confidential.

N.D.A.G. 2013-O-08
May 4, 2013

DENIAL OF RECORDS SCHOOLS

Record request for student discipline records after highly publicized event. NDSU determined the records would be easily traceable to the specific students, even if all personally identifiable information was redacted. NDSU properly denied the request under FERPA. NDUS failed to provide adequate legal reasoning for denial of the request.

N.D.A.G. 2013-O-09
June 12, 2013

LAW ENFORCEMENT

Superintendent knew at the time the meeting notice was prepared that he planned on suggesting an executive session to discuss a background check. Mere reference to "personnel matters" or a "background check" is insufficient to identify the legal authority to close a meeting. There is a difference between a "criminal history record check" performed by the Bureau of Criminal Investigation through searching confidential law enforcement databases, and is confidential, and a background check that searches publically available records. Only criminal history record checks are confidential records that are proper for executive session.

N.D.A.G. 2013-O-10
June 25, 2013

PUBLIC ENTITY

Foundation that is completely dependent on NDUS for its operation and administration, and NDUS's unrestricted use of and access to Foundation's funds, render the Foundation a public entity because it expends and is supported by NDUS's public funds. The Foundation's records also relate to NDUS's public business.

N.D.A.G. 2013-O-14
August 28, 2013

UNREASONABLE DELAY

The Commission violated open records law when it took two months to provide records, even though the records were not in the entity's possession and allegedly not subject to open records law, because the Commission did not give this reasoning to the requestor but instead obtained the records from a third party. The Commission provided meeting minutes within a reasonable time when factoring in the time it took to sort through a requestor's multiple requests and to prepare the minutes. Finally, when a quorum of the Commission attended another group's meeting where public business was discussed, a "meeting" occurred subject to open meeting laws.

N.D.A.G. 2013-O-15
September 5, 2013

UNREASONABLE DELAY

The Lincoln Police Department did not unreasonably delay responding to a records request when taking into account the other responsibilities of the sole police officer who had access to the records and the need to consult with the Department's attorney on whether the requested records were open.

N.D.A.G. 2013-O-16
November 8, 2013

PUBLIC EMPLOYEES

JSDC is a public entity because it receives public funds and because it is an agent of Jamestown and Stutsman County performing a governmental function of promoting economic development. JSDC violated open meetings law by taking final action in executive session and by closing a meeting to discuss personnel issues not exempt or confidential under law. JSDC violated open records law by not providing a response to a request for personnel records.

N.D.A.G. 2013-O-17
November 8, 2013

UNREASONABLE DELAY

Several reasons were given for a city auditor's delay in providing requested records but none that justify the three month delay. Being unfamiliar with a city employee's obligation under open records law does not excuse the delay. Motive and identity of the person requesting the record are generally irrelevant. If the auditor was unclear on what records were requested, she should have contacted the requestor for clarification in a timely manner.

N.D.A.G. 2013-O-18
November 22, 2013

COMPUTER RECORDS

POSSESSION OF RECORDS

Opinions issued by the Attorney General's office are based on the facts of the public entity. Here, however, this office was given conflicting facts, theories, and opinions, on what emails were in the possession of NDSU at the time of the open records request. This office is unable to determine how emails were placed in a "Recoverable Items" folder because NDUS failed to obtain a recovery back-up tape from Microsoft. NDUS failed to provide copies of the recovered emails it obtained from a "Recoverable Items" folder which resulted in a violation of open records law when these items were not immediately searched. Redactions made to emails were proper.

N.D.A.G. 2013-O-19
December 23, 2013

PUBLIC ENTITY

NDSU Research Park Ventures, LLC, as a designated Renaissance Fund Organization, is a public entity subject to open record and meetings law because it was created by state statute to perform the governmental functions of raising funds to finance and encourage expansion of business in the state of North Dakota for projects in Fargo's approved renaissance zone. As such, any record in the Park Venture's possession relating to its role as a Renaissance Fund Organization is a public record unless otherwise provided by law.

2014

N.D.A.G. 2014-O-02
February 3, 2014

TRADE SECRETS

The North Dakota Mill and Elevator Association's denial of a request for its customer information, including its customer list and transaction information was proper because such information is confidential "commercial information" that would cause substantial competitive injury to the Association if disclosed.

N.D.A.G. 2014-O-04
April 24, 2014

PUBLIC ENTITY

Foundations affiliated with state universities are public entities subject to open records law when they perform governmental functions on behalf of the universities, including the functions of promoting and aiding the university, fundraising for the university, and keeping records of such activities. The DSU Foundation performed governmental functions on behalf of DSU and was therefore subject to open records law. The DSU Foundation's insufficient legal reasoning for denying requested records violated the open records law.

N.D.A.G. 2014-O-06
July 14, 2014

UNREASONABLE DELAY

Although a request for records of the Industrial Commission came at an inopportune time and required a detailed review of the records to assure no confidential information was released, a nearly two month delay for meeting minutes was unreasonable.

N.D.A.G. 2014-O-07
July 28, 2014

DENIAL OF RECORDS

NON-GOVERNMENT ORGANIZATIONS

The NDSU Development Foundation's sole purpose is to support and assist its affiliated university and therefore records related to its expenditures for resources are subject to open records law. The Foundations continual denial to produce public records on insufficient legal grounds was a violation of open records law.

N.D.A.G. 2014-O-10
August 22, 2014

COMPUTER RECORDS

A public employee's private email account, set up at the employee's discretion and not at the request of the employer, is still subject to open records law when it is used to generate or receive emails containing "public business." It was a violation of the open records law when all emails responsive to an open records request were not produced.

N.D.A.G. 2014-O-14
September 22, 2014

MSU and NDUS violated open records law when it failed to do an analysis on whether "personally identifiable information" could adequately be redacted from education records in compliance with FERPA before denying a request for records.

N.D.A.G. 2014-O-15
September 30, 2014

LAW ENFORCEMENT

It was within the discretion of the Grand Forks Police Department to deny a request for 911 transcripts because at the time of the request the information in the transcripts contained exempt active criminal intelligence and investigative information.

N.D.A.G. 2014-O-16 October 6, 2014	<p>LAW ENFORCEMENT</p> <p>It was not a violation of open records law when the police department declined to disclose the identity of a victim because, at the time of the request, the information was exempt active criminal intelligence and investigative information under N.D.C.C. § 44-04-18.7.</p>
N.D.A.G. 2014-O-17 November 5, 2014	<p>FEES FOR ACCESS AND COPIES</p> <p>The City of Mandan did not violate open records law when it combined the time it spent responding to several emails received within a short time frame regarding the same subject matter, treating the emails as one request in computing the time it took to locate the records.</p>
N.D.A.G. 2014-O-18 November 5, 2014	<p>FEES FOR ACCESS AND COPIES</p> <p>The City of Minot violated the open records law when it charge for time spent gathering, copying, organizing, forwarding, scanning, and printing requested records; saving records to a zip drive; and corresponding with others about the record requests. It was a further violation to charge \$.25 per page for initially printing responsive records which were thereafter rescanned and forwarded to counsel for review.</p>
N.D.A.G. 2014-O-20 November 21, 2014	<p>POSSESSION OF RECORDS</p> <p>RECORDS, DEFINED</p> <p>The Tax Department did not have immediate access to records contained on a personal device of a public employee who was on a leave of absence and unable to be reached. The Tax Department did not violate open records law when it produced all records in its possession at the time of the request, and supplemented its response when other responsive records became available.</p>
N.D.A.G. 2014-O-21 November 21, 2014	<p>Although an inadvertent mistake, the Mandan Police Department violated open records law when it failed to provide a copy of a requested record within a reasonable time.</p>
N.D.A.G. 2014-O-22 November 26, 2014	<p>The Sheriff's Department went above and beyond the legal requirements of the open records law by attempting to work with the requestor and giving information and it was not a violation of the open records law when it did not produce records that did not exist.</p>
N.D.A.G. 2014-O-24 December 26, 2014	<p>PUBLIC ENTITY</p> <p>Bis-Man Transit (BMT) contracted with Taxi 9000 to perform the actual transit services on BMT's behalf. BMT's delegation of its public duty to Taxi 9000, and Taxi 9000 performing such functions on behalf of and in place of BMT, render Taxi 9000 an "agent" of BMT, subject to open records law. It was therefore a violation of BMT to deny a request for records in the possession of its agent, Taxi 9000.</p>
N.D.A.G. 2014-O-25 December 31, 2014	<p>Although it was clear the City of Mandan attempted to work diligently with a prolific and persistent requestor to fulfill its duties under the open records law, the two-week delay to produce one record was unreasonable.</p>

2015

N.D.A.G. 2015-O-05
April 6, 2015

PUBLIC ENTITY

Public funds in the form of membership dues, conference registration fees, and grants were exchanged for fair market value of services and therefore the NDCEL is not considered a “public entity” subject to open record laws.

N.D.A.G. 2015-O-07
April 20, 2015

PRELIMINARY DRAFTS AND WORKING PAPERS

A preliminary study became an open record when it was presented to the subcommittee at an open meeting and it was a violation of open records law when the record was withheld until it was updated and corrected to include additional information.

N.D.A.G. 2015-O-08
April 28, 2015

PRELIMINARY DRAFTS AND WORKING PAPERS

The Oberon Public School Board violated open meetings law when it asked two teachers to leave the room when discussions did not relate to any actual salary negotiations or any other exempt or confidential information that would provide statutory authority for closing the meeting to the public. It was not a violation of open records law when Oberon Public School did not provide meeting minutes that were not yet prepared, however, disclosure of draft minutes may not be conditioned upon approval of a governing body and notes utilized to prepare such minutes are open records.

N.D.A.G. 2015-O-11
August 6, 2015

ATTORNEY WORK PRODUCT

School District’s response to a request for attorney billing statements violated open records law because the records were redacted without doing a proper analysis to determine whether they contain “attorney work product” as defined by N.D.C.C. § 44-04-19.1(6).

N.D.A.G. 2015-O-14
August 14, 2015

DENIAL OF RECORDS

The North Dakota State Board of Dental Examiners violated open records law when it denied a request for a record because the record was in the possession of its “agent.”

N.D.A.G. 2015-O-16
October 19, 2015

OPEN RECORDS, IN GENERAL PERSONAL INFORMATION

Stark County violated open records law when it required a requestor to provide an available medium before it would release a public record and when it failed to produce copies of public records.

N.D.A.G. 2015-O-17
October 19, 2015

DENIAL OF RECORDS

It was a violation of open records law when a public entity failed to provide an explanation within a reasonable time that records were not being provided because they did not exist.

2016

N.D.A.G. 2016-O-03
January 25, 2016

TRADE SECRETS

The North Dakota State University Alumni Association and Development Foundation violated open records law when it refused to provide records relating to applicants whose information and qualifications were included in a blind review for consideration of employment for the President/CEO position of the public entities.

N.D.A.G. 2016-O-08
April 25, 2016

OPEN RECORDS, IN GENERAL UNREASONABLE DELAY

The City of Golva violated open records law when it required a request be made in writing and when it unreasonably delayed responding to a request for the city's budget and tax levy records because it did not receive the request due to the city's failure to regularly check its active email account.

N.D.A.G. 2016-O-10
May 2, 2016

NDUS responded to a records request within a reasonable time for a request that failed to identify a specific record and therefore required an extensive search and the balancing of the workload of the only staff member who had access to the emails and accounts that needed to be searched for responsive records.

N.D.A.G. 2016-O-17
August 11, 2016

OPEN MEETINGS, IN GENERAL

It was a violation of open records law when the Board unreasonably delayed access to draft meeting minutes.

N.D.A.G. 2016-O-20
September 23, 2016

FEES FOR ACCESS AND COPIES

The City correctly charged for the time it spent locating and making copies of the requested records which were incurred before the requestor amended the request.

2017

N.D.A.G. 2017-O-01
March 10, 2017

POSSESSION OF RECORDS TRADE SECRETS

Preliminary designs in the hands of UND's agent were subject to open records law, however, the designs were protected as proprietary and trade secret information, the release of which would cause substantial competitive injury to the agent.

N.D.A.G. 2017-O-05
August 23, 2017

LAW ENFORCEMENT

A request for video and photographs taken by law enforcement were properly withheld as active criminal intelligence and investigative information.

N.D.A.G. 2017-O-06
August 23, 2017

MINUTES

UNREASONABLE DELAY

It was a violation of open records law for a 25 day response that no records existed when the entity delayed the response in order to bring to the full Board at its next meeting to discuss and approve and in copying several meeting minutes to prove that no such records existed.

N.D.A.G. 2017-O-07
August 25, 2017

PUBLIC ENTITY

A student organization that is an “agent” of a public university and is supported by public funds is considered a “public entity” subject to the open records law.

N.D.A.G. 2017-O-09
November 1, 2017

UNREASONABLE DELAY

The Office of Attorney General responded to a record request the same day it received the request and this was not an unreasonable delay.

N.D.A.G. 2017-O-10
November 3, 2017

Three weeks to respond that no records existed was an unreasonable delay.

2018

N.D.A.G. 2018-O-01
January 30, 2018

FEES FOR ACCESS AND COPIES

The Sheriff’s Department did not charge excessive fees when it relied on specific authority under N.D.C.C. § 11-15-07 to charge two dollars for a paper copy of a record.

N.D.A.G. 2018-O-02
February 9, 2018

FEES FOR ACCESS AND COPIES

The Mandan Progress Organization was authorized to require payment of estimated charges associated with responding to a records request before producing any records.

N.D.A.G. 2018-O-03
February 9, 2018

DENIAL OF RECORDS

FEES FOR ACCESS AND COPIES

The City of Bismarck was allowed to withhold records which contained active criminal intelligence and investigative information. The City was also authorized to estimate charges associated with responding to a records request in compliance with N.D.C.C. § 44-04-18 and ask for payment before it proceeded with the request

N.D.A.G. 2018-O-13
July 16, 2018

DENIAL OF RECORDS

The City violated open records law when it failed to inform the requestor that records did not exist.

N.D.A.G. 2018-O-21
December 10, 2018

UNREASONABLE DELAY

An unintentional misinterpretation of an open record request resulted in an unreasonable delay in responding.

N.D.A.G. 2018-O-23
December 10, 2018

OPEN RECORDS, IN GENERAL
UNREASONABLE DELAY

The DCIL's response to a vague request that did not identify a specific record was proper. However, the two week delay in responding that no records existed was unreasonable.

N.D.A.G. 2018-O-24
December 10, 2018

City of Mandan did not violate open records law when it promptly responded to a request received.

N.D.A.G. 2018-O-27
December 20, 2018

City of Mandan did not violate open records law when it promptly responded to a request received.

2019

2019-O-01
April 4, 2019

LAW ENFORCEMENT

The entities properly withheld reports of death after contacting law enforcement agencies investigating the case who made the determination that the records contain active criminal intelligence and investigative information.

2019-O-02
April 11, 2019

UNREASONABLE DELAY

Violation of open records law when the City failed to do any work on responding to a record request for eight days with no communication to the requestor.

2019-O-04
April 12, 2019

No violation occurred when the Commissioner did not respond to a records request because he did not receive the request.

2019-O-06
April 16, 2019

PUBLIC EMPLOYEES

The entities properly denied a request for records pursuant to N.D.C.C. § 44-04-18(6), instead requiring the requestor to utilize the discovery process to obtain the records, as the lawsuit involved employees of public entities acting under "color of law."

2019-O-07
May 3, 2019

The two month delay in responding that no records existed was unreasonable.

2019-O-09
May 24, 2019

UNREASONABLE DELAY

The Industrial Commission properly withheld records under a law granting it exclusive authority to designate certain materials as confidential. The Industrial Commission also responded to a request for records within a reasonable time when it needed to hold a meeting to address the status of the records and claim of confidentiality.

2019-O-13 July
18, 2019

POSSESSION OF RECORDS

The records requested were not in the possession of the school district or its agent and therefore it was proper to deny the record request.

2019-O-14 July
18, 2019

Although not intentional, the two month delay to respond that no records existed was unreasonable.

2019-O-15 July 19, 2019	DENIAL OF RECORDS It was a violation of the open records law when the school district did not inform the requestor of the reason for withholding a record and unreasonably delayed access to the record for almost two months.
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2019-O-20 October 17, 2019	EXECUTIVE SESSION, RECORDS AND MINUTES The board properly denied a request for executive session recordings.
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2020

2020-O-01 February 6, 2020	DENIAL OF RECORDS The board violated open records law when it failed to redact out protected attorney work product and turn over the remaining open portions of the record to the requestor.
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2020-O-02 April 29, 2020	OPEN RECORDS, IN GENERAL The school violated open records law when it threw away records subject to a pending records request.
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2020-O-07 July 15, 2020	The City violated open records law when it redacted a requested record that did not contain information protected under open records law.
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2020-O-08 July 16, 2020	DENIAL OF RECORDS The Department of Health did not violate open records law when it denied releasing protected disease control records and information.
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2020-O-10 September 30, 2020	DENIAL OF RECORDS The police department violated the open records laws when it improperly redacted information – such as the breed, species, color and sex of dogs involved in two dog attack incidents – from the records provided.
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2021

2021-O-05 May 13, 2020	DENIAL OF RECORDS The city violated the open records law when it denied a request for interview notes as exempt attorney work product when they were not created exclusively for a legal action. The fact that an attorney made the notes does not automatically meet the elements of attorney work product.
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2021-O-09 September 3, 2021	DENIAL OF RECORDS A public entity has an obligation to provide requested records within a reasonable time and to communicate to the requester the reason for any delay in responding.
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2021-O-11 November 8, 2021	UNREASONABLE DELAY The city violated the open records laws when it failed to respond to a records request, until after being contacted by this office, and took over three months to only partially provide responsive records.
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2022

2022-O-01
January 19, 2022

UNREASONABLE DELAY

Stark County did not provide records within a reasonable time and failed to communicate the delay to the requester. The County did not specifically cite North Dakota Century code in its denial of records but did adequately describe the legal reason for the denial. The initial denial under N.D.C.C. Sec. 44-04-18.27 was based on the entity's understanding of the facts at that time; when more information was available the public entity provided the proper responsive records.

2022-O-05
May 19, 2022

EXECUTIVE SESSION, RECORDS AND MINUTES

The Board properly denied requests for the executive session recording containing discussion of protected records.

2022-O-12
September 29, 2022

UNREASONABLE DELAY

The requester asked the Board for meetings minutes. The Board provided them over a month later. The Board provided no explanation for the delay. Taking over a month to provide minutes, without extenuating circumstances, is an unreasonable delay; therefore, the Board violated the open records laws.

2022-O-15
October 17, 2022

DENIAL OF RECORDS

The township improperly denied records under the discovery exception of N.D.C.C 44-04-18(6) when the entry of final judgment of an order had occurred.

2023

2023-O-02
August 7, 2023

LAW ENFORCEMENT

The North Dakota Highway Patrol and State Radio improperly denied the Forum's request for a 911 transcript.

2023-O-04
September 28, 2023

OPEN RECORDS, IN GENERAL

When extensive records are requested, communication with the requester is required to avoid an unnecessary delay. The entity may ask the requester to specify or narrow their requests, but the entity must keep the requester apprised of the time required to provide the requested records. Lack of communication for a period of weeks constitutes an unreasonable delay.

2023-O-06
November 20, 2023

UNREASONABLE DELAY

North Dakota Board of Chiropractors' delay of twenty-one days was reasonable due to the circumstances surrounding the records requested. The records requested were exempt and the board had not delegated any authority to the executive director to exempt records. This required a special meeting by the board to determine whether to protect or provide the exempt records requested.

2023-O-07
November 20, 2023

RECORD, DEFINED
The personal water bill of a Morton County State's was not a record that could be supplied by the Morton County State's Attorney's Office, as those records were in possession of the office and were not prepared in connection with or related to public business.

2023-O-08
November 20, 2023

OPEN RECORDS, IN GENERAL
Opinion states that emails requesting records that have not been received due to spam and malicious email protections, are not violations of the open records laws.

2023-O-09
December 27, 2023

POSSESSION OF RECORDS
Open records laws do not require an entity to create or produce a record that does not exist; however, the entity must inform the requester, in a reasonable time, that the record does not exist.

2024

2024-O-01
January 3, 2024

OPEN RECORDS, IN GENERAL
Not responding to a request for records is a violation of open records laws.

2024-O-02
January 3, 2024

RECORD, DEFINED
The records protections provided in N.D.C.C. § 43-06-14.1(7) apply specifically to peer review committee records or records in possession of the board that relate to a peer review committee or anticipation of creating a peer review committee. Without the peer review committee, the board may release requested records without violating N.D.C.C. § 43-06-14.1(7); however, redactions of exempt or protected records must still take place.

2024-O-03
January 3, 2024

RECORD, DEFINED
The records protections provided in N.D.C.C. § 43-06-14.1(7) apply specifically to peer review committee records or records in possession of the board that relate to a peer review committee or anticipation of creating a peer review committee. Without the peer review committee, the board may release requested records without violating N.D.C.C. § 43-06-14.1(7); however, redactions of exempt or protected records must still take place.

2024-O-06
September 11, 2024

PUBLIC ENTITY
A "public entity" who receives or expends public funds is subject to open record laws.

2024-O-07
September 11, 2024

POSSESSION OF RECORD
An entity is not required to create or compile a record that does not exist.

2024-O-08
September 11, 2024

POSSESSION OF RECORDS
Public entities are only responsible for providing records that exist and that they have in their possession.

2024-O-10
November 12, 2025

DENIAL OF RECORDS
Generally, an entity's denial of records based on unpaid fees is nullified once the requestor has paid the fees.

2025

2025-O-04
March 6, 2025

UNREASONABLE DELAY

The entity violated open records law by failing to respond to a records request within a reasonable time—taking over a month to provide requested meeting minutes without adequate justification

2025-O-06
March 7, 2025

UNREASONABLE DELAY

The entity complied with notice requirements for its meeting. However, it violated open records law by failing to provide requested records within a reasonable time, with delays ranging from nine days to nearly seven weeks without adequate justification.

2025-O-07
March 7, 2025

REASONABLE FEE

The entity violated open records law by charging fees not permitted, including costs for mileage, travel time, initial record search time, and tasks not covered by law.

2025-O-08
March 7, 2025

UNREASONABLE DELAY

The entity violated open records law by failing to respond to a records request within a reasonable time, allowing over two months to pass before issuing a response—an unreasonable delay, even if unintentional.

2025-O-09
June 10, 2025

UNREASONABLE DELAY

The entity violated North Dakota law by failing to properly notify required parties of a special meeting and by not responding to a records request in a timely manner.