



STATE OF NORTH DAKOTA  
**OFFICE OF ATTORNEY GENERAL**

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ATTORNEY GENERAL

**OPEN RECORDS AND MEETINGS OPINION**  
**2025-O-20**

DATE ISSUED: December 5, 2025

ISSUED TO: Ward County Sheriff's Department

**CITIZEN'S REQUEST FOR OPINION**

Leon Brown IV requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Ward County Sheriff's Department violated N.D.C.C. § 44-04-18 by denying a request to release records, claiming an exemption under N.D.C.C. § 12.1-34-02 regarding a victim or witness to a crime.

**FACTS PRESENTED**

On September 17, 2022, Leon Brown IV (Mr. Brown) requested that the Ward County Sheriff's Department (Department) provide him "all records, color photos, reports, etc., for the date range between 2018 to present" regarding an individual, H.M.W.<sup>1</sup> On September 20, 2022, Mr. Brown requested "[a]ll records, color photos, reports, etc. for the date range between May 2014 to present" regarding a separate individual, A.L.<sup>2</sup> On September 23, 2022, the Department initially responded that records pertaining to H.M.W. would be provided upon receipt of Mr. Brown's payment for a copy of the report.<sup>3</sup> On September 30, 2022, however, the Department issued two additional responses to Mr. Brown, denying his requests for records of both individuals, citing the exemption under N.D.C.C. § 12.1-34-02(11).<sup>4</sup> The Department's responses stated that the requests for records were denied because H.M.W. and A.L. are listed as victims or witnesses of a criminal matter involving Mr. Brown.<sup>5</sup> On October 7, 2022, Mr. Brown sent the Department a letter asserting that the denial of record requests for H.M.W. and A.L. was improper.<sup>6</sup> On October 26, 2022, the Department responded to Mr. Brown's letter and acknowledged that the

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<sup>1</sup> Letter from Leon Brown IV to Ward Cnty. Sheriff's Dep't (Sept. 17, 2022).

<sup>2</sup> Letter from Leon Brown IV to Ward Cnty. Sheriff's Dep't (Sept. 20, 2022).

<sup>3</sup> Letter from Christina Botteicher, Ward Cnty. Sheriff's Dep't, to Leon Brown IV (Sept. 23, 2022).

<sup>4</sup> "Records of a criminal justice agency as defined by section 44-04-18.7, a correctional facility as defined in section 12-44.1-01, and the department of corrections and rehabilitation containing the address, telephone number, place of employment, or other information that could be used to locate the victim or witness to a crime, are exempt." N.D.C.C. § 12.1-34-02(11).

<sup>5</sup> Letter from Christina Botteicher, Ward Cnty. Sheriff's Dep't, to Leon Brown IV (H.M.W.) (Sept. 30, 2022); Letter from Christina Botteicher, Ward Cnty. Sheriff's Dep't, to Leon Brown IV (A.L.) (Sept. 30, 2022).

<sup>6</sup> Letter from Leon Brown IV to Ward Cnty. Sheriff's Dep't (Oct. 7, 2022).

request for records related to H.M.W. “was inadvertently denied” and that his request for H.M.W.’s records “is approved.” The Department requested Mr. Brown send payment of \$12.00 for a copy of the report.<sup>7</sup> While the Department reversed its initial refusal to provide Mr. Brown the information he requested regarding H.M.W., it maintains that the records of A.L. are exempt under N.D.C.C. § 12.1-34-02(11).<sup>8</sup>

#### ISSUE

Whether the Ward County Sheriff’s Department violated N.D.C.C. § 44-04-18 by denying a request to release the records pertaining to a witness pursuant to the open records exemption provided for in N.D.C.C. § 12.1-34-02(11).

#### ANALYSIS

The inadvertent denial of records for H.M.W. has been rectified, so this analysis focuses solely on the Department’s denial of records pertaining to A.L. In its September 30, 2022, letter to Mr. Brown, the Department indicated that A.L. “is listed as a victim and/or witness in a criminal case involving [Mr. Brown],” and that his request for records pertaining to A.L. was therefore denied under “North Dakota Century Code (N.D.C.C.) § 12.1-34-02(11).”<sup>9</sup>

All records of a public entity are public records except as otherwise specifically provided by law.<sup>10</sup> A denial of a records request “must describe the legal authority for the denial.”<sup>11</sup> Here, the Department’s denial of Mr. Brown’s request specifically cites a subsection of N.D.C.C. § 12.1-34-02 titled “Fair treatment standards for victims and witnesses,” which provides:

Records of a criminal justice agency as defined by section 44-04-18.7,<sup>12</sup> a correctional facility as defined in section 12-44.1-01,<sup>13</sup> and the department of corrections and rehabilitation containing the address, telephone number, place of

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<sup>7</sup> Letter from Christina Botteicher, Ward Cnty. Sherriff’s Dep’t, to Leon Brown IV (Oct. 26, 2022).

<sup>8</sup> Letter from Major Larry Hubbard, Chief Deputy, Ward Cnty. Sheriff’s Dep’t, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Feb. 7, 2023).

<sup>9</sup> Letter from Christina Botteicher, Ward Cnty. Sheriff’s Dep’t, to Leon Brown IV (Sept. 30, 2022).

<sup>10</sup> N.D.C.C. § 44-04-18(1).

<sup>11</sup> N.D.C.C. § 44-04-18(7).

<sup>12</sup> “‘Criminal justice agency’ means any law enforcement agency or prosecutor [and] . . . includes any other unit of government charged by law with criminal law enforcement duties or having custody of criminal intelligence or investigative information[.]” N.D.C.C. § 44-04-18.7(4).

<sup>13</sup> “‘Correctional facility’ means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law.” N.D.C.C. § 12-44.1-01(4).

employment, or other information that could be used to locate the victim or witness to a crime, are exempt.<sup>14</sup>

The Ward County Sheriff's Department meets the definition of "criminal justice agency" under N.D.C.C. § 44-04-18.7. Records of the agency that could be used to locate the victim or witness to a crime are exempt and "may be open in the discretion of the public entity."<sup>15</sup> The protections afforded under N.D.C.C. § 12.1-34-02(11) apply to records containing an address, telephone number, or place of employment, and more broadly to "*other information that could be used to locate the victim or witness to a crime.*"<sup>16</sup>

This office also recognizes that public safety considerations dictate that law enforcement records be afforded "expansive exemptions" from open records law:

Some of the most expansive exemptions from the open records law involve law enforcement records. The policy behind the exemptions for certain law enforcement and police records is an attempt to balance the public's general right to know public information with a public policy that the state's efficient operation of law enforcement agencies is necessary and vital for the protection of the health and welfare of its citizens.<sup>17</sup>

For decades, the clear public policy of North Dakota has been, and continues to be, to ensure the protection of victims and witnesses. N.D.C.C. § 12.1-34-02(11) is read broadly in that context and subject to the discretion of the public entity holding such victim and witness records.<sup>18</sup>

The law provides that "if confidential or closed information is contained in an open record, a public entity shall permit inspection and receipt of copies of the information that is not confidential or closed, *but shall delete, excise, or otherwise withhold the confidential or closed information.*"<sup>19</sup> While N.D.C.C. § 12.1-34-02(11) makes clear that "[r]ecords . . . containing the address, telephone number, place of employment, or other information that could be used to locate the victim or witness to a crime, are exempt[,]" such records may be redacted in the discretion of the Department, thereby helping to ensure the safety of the victim or witness. Inherent in North Dakota's public records laws is the capacity of an agency to redact information from records that is confidential or closed.<sup>20</sup> Once those permitted redactions are made, the

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<sup>14</sup> N.D.C.C. § 12.1-34-02(11).

<sup>15</sup> N.D.C.C. § 44-04-17.1(5).

<sup>16</sup> N.D.C.C. § 12.1-34-02(11) (emphasis added).

<sup>17</sup> N.D.A.G. 2005-0-13, *citing* N.D.A.G. 79-201; N.D.A.G. Letter to McLean (Jan. 27, 1986); *Downs v. Austin*, 522 So. 2nd 931, 933 (TX 1989).

<sup>18</sup> N.D.C.C. § 44-04-17.1(5).

<sup>19</sup> N.D.C.C. § 44-04-18.10(2) (emphasis added).

<sup>20</sup> *See* N.D.C.C. § 44-04-18(2) (indicating an agency may redact "confidential or closed material" under section 44-04-18.10 prior to releasing a record). *See also* N.D.C.C. § 44-04-18.10(1) ("A public entity may not deny a request for an open record on the ground that the record also contains confidential or closed information."); N.D.C.C. § 44-04-18.10(2) ("[I]f

remaining portions of the record must be provided, absent other exemptions in North Dakota law.

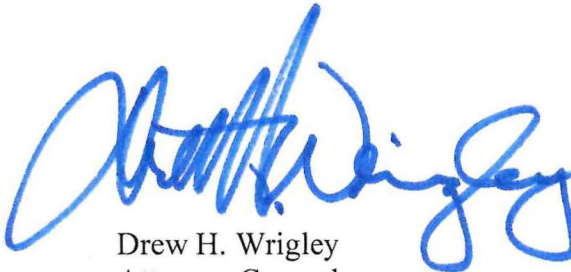
#### CONCLUSION

The Department violated N.D.C.C. § 44-04-18 by denying Mr. Brown's request without redacting any confidential or exempt records. By exercising proper discretion as to what information is redacted, the Department may meet its obligations under N.D.C.C. § 44-04-18, without defeating the purpose and focus of N.D.C.C. § 12.1-34-02(11) for the protection of victims and witnesses.

#### STEPS NEEDED TO REMEDY VIOLATION

The records requested by Mr. Brown in this matter must be redacted at the discretion of the Department pursuant to N.D.C.C. § 44-04-18 to exclude information exempted under N.D.C.C. § 12.1-34-02(11), then provided to Mr. Brown at no expense.

While I have every reason to expect the Department will remedy this situation, failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.<sup>21</sup> Failure to take these corrective measures may also result in personal liability for the person or persons responsible for the noncompliance.<sup>22</sup>



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cc: Leon Brown IV

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confidential or closed information is contained in an open record, a public entity shall permit inspection and receipt of copies of the information that is not confidential or closed, *but shall delete, excise, or otherwise withhold the confidential or closed information.*") (emphasis added).

<sup>21</sup> N.D.C.C. § 44-04-21.1(2).

<sup>22</sup> *Id.*