



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

www.attorneygeneral.nd.gov  
(701) 328-2210

**Drew H. Wrigley**  
ATTORNEY GENERAL

**OPEN RECORDS AND MEETINGS OPINION**  
**2026-O-09**

DATE ISSUED: April 27, 2026

ISSUED TO: Office of the State Tax Commissioner

**CITIZEN'S REQUEST FOR OPINION**

Jon Vannett requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Office of the State Tax Commissioner violated N.D.C.C. § 44-04-18 by refusing to disclose whether specific businesses have sales and use tax permits.

**FACTS PRESENTED**

On May 21, 2024, Mr. Vannett submitted a webform inquiry to the North Dakota Office of State Tax Commissioner (State Tax Commissioner) asking whether three named businesses have North Dakota sales and use tax permits.<sup>1</sup> On May 22, 2024, the State Tax Commissioner denied the request, stating the requested information was protected from disclosure because the information was confidential taxpayer information under N.D.C.C. § 57-39.2-23(1)(a).<sup>2</sup>

**ISSUE**

Whether the State Tax Commissioner violated N.D.C.C. § 44-04-18 by refusing to disclose whether specific businesses had sales and use tax permits.

**ANALYSIS**

“Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours.”<sup>3</sup> A “‘confidential record’ means all or part of a record or meeting that is either expressly declared confidential or is prohibited from being open to the public.”<sup>4</sup> A “record” is defined as “recorded information of any kind . . . which is in the possession or custody of a public entity or its agent and which has

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<sup>1</sup> Letter from Charles Dendy, Gen. Couns., N.D. Off. of State Tax Comm’r, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Aug. 7, 2024).

<sup>2</sup> Letter from Matthew Danielson, Spec. Assistant Att’y Gen., N.D. Off. of State Tax Comm’r, to Jon Vannett (May 22, 2024).

<sup>3</sup> N.D.C.C. § 44-04-18(1).

<sup>4</sup> N.D.C.C. § 44-04-17.1(3).

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been received or prepared for use in connection with public business or contains information relating to public business.”<sup>5</sup>

In this case, Mr. Vannett did not request a specific document but asked for information about three businesses. The open records law requires public entities to provide access to existing records, not to answer questions.<sup>6</sup> The State Tax Commissioner explained that, while Mr. Vannett’s inquiry is not a proper open records request, even if it were considered a request for records, any responsive information is confidential under N.D.C.C. § 57-39.2-23(1)(a) and not subject to disclosure.

Section 57-39.2-23(1)(a), N.D.C.C., provides, in relevant part “[t]he commissioner or an individual having an administrative duty under this chapter may not divulge or make known in any manner whatever the business affairs, operations, or information obtained from any person under any reporting requirement of this chapter[.]”<sup>7</sup>

Confirming whether a specific business holds a sales and use tax permit would necessarily reveal the business’s affairs and operations within the meaning of N.D.C.C. § 57-39.2-23(1)(a). A prior opinion interpreting this statute concluded that the Tax Commissioner may not release information that reveals a taxpayer’s business affairs or operations, including the identity of businesses engaged in sales-tax-related activity.<sup>8</sup> Consistent with that interpretation, the existence or nonexistence of a permit inherently communicates whether a business is engaged in taxable transactions in North Dakota, whether it is required to collect and remit tax, and whether its activity meets the state’s physical presence threshold.<sup>9</sup> Because permit status reflects these protected aspects of a business’s affairs and operations, it is confidential taxpayer information and may not be disclosed.

Section 57-39.2-23, N.D.C.C., contains only a few narrow exceptions, none of which permits disclosure of the specific sales tax information to Mr. Vannett.<sup>10</sup>

The State Tax Commissioner has a statutory duty to maintain the confidentiality of the requested tax information under N.D.C.C. § 57-39.2-23. Accordingly, it is my opinion that the State Tax Commissioner did not violate the open records law by refusing to answer the requester’s questions.

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<sup>5</sup> N.D.C.C. § 44-04-17.1(16).

<sup>6</sup> N.D.C.C. § 44-04-18(2); N.D.A.G. 2018-O-23 (“Requests for information or questions posed by a requestor are not considered a request for a record[.]”).

<sup>7</sup> N.D.C.C. § 57-39.2-23(1)(a).

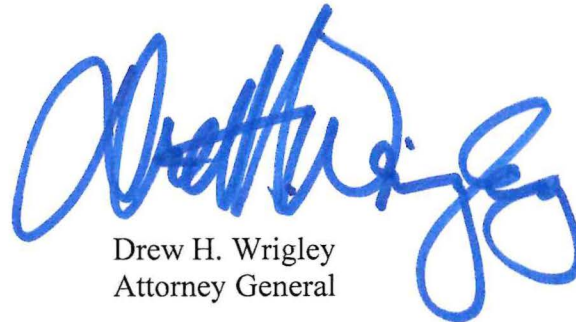
<sup>8</sup> N.D.A.G. 2003-O-11.

<sup>9</sup> Letter from Charles Dendy, Gen. Couns., N.D. Off. of State Tax Comm’r, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Aug. 7, 2024).

<sup>10</sup> Any decision to include the public as an exception under this statute is reserved to the Legislative Assembly.

CONCLUSION

The State Tax Commissioner did not violate the open records law by refusing to disclose whether specific businesses held sales and use tax permits. The information requested is confidential under N.D.C.C. § 57-39.2-23(1)(a).



Drew H. Wrigley  
Attorney General

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cc: Jon Vannet