

Office of Attorney General
OPEN RECORDS GUIDE

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North Dakota's laws state that all government records and meetings must be open to the public unless otherwise authorized by a specific law. The basic laws are found in North Dakota Century Code, beginning at §44-04-17.1. The public has the right to know how government functions are performed and how public funds are spent.

DEFINITION OF RECORD

“Record” includes *all recorded information regardless of physical form (e.g. paper, e-mail, computer file, photograph, audiotape or recording, video, text message, etc.) that has a connection with how public funds are spent or with the public entity's performance of its governmental functions or its public business, regardless of format or location.*

Minutes, memos, reports, outlines, notes, employee salary and job performance records, contracts, telephone records, and travel vouchers are all **OPEN** records and **must** be provided upon request.

REQUESTS FOR RECORDS

Anyone has the right to view or get a copy of public records, regardless of the reason or where they live. A request for public records can be made in any available medium. Generally, a public entity cannot ask why the records are requested, ask for identification, or require a request be made in writing (or in person). However, a request must reasonably identify existing records. If a request is unclear, the entity may require written clarification but cannot ask the requester's motive or identity. The entity can delay taking action until receiving written clarification.

- A request for *information* is not a request for records. A public entity does not have to respond to questions about its decisions, duties, functions or operations or to explain the content of its records.

The public entity must respond to a record request within a *reasonable* time, by either providing the record or explaining the legal authority for denying all or part of the request. What is “reasonable” depends on a number of factors, including the scope and type of records requested.

A public entity may only deny access to or a copy of a record for which there is a specific statute closing all or part of the information. A statute may declare certain records to be exempt or confidential.

If a record is **exempt**, a public entity has discretion to release or withhold it. If a record is **confidential**, it either cannot be released or the confidential information within the record first must be redacted.

ALLOWABLE CHARGES

Access to public records is generally free. An entity may charge up to 25¢ a page (standard letter or legal size paper). For other types of records, the entity may charge the **actual cost** for copying, including labor, materials and equipment.

The first hour of *locating* requested records (including electronic records) is free. After the first hour, the entity may charge \$25/hr for locating records and a separate \$25/hr (after the 1st hour) for *redacting* any exempt or confidential information. If providing electronic records takes more than one hour, in addition to charges for locating and redacting, the entity may charge the *actual cost* incurred for use of technology resources. *The entity can require full payment of any estimated costs before starting to make copies or releasing records.*

- An entity does not have to convert its records to another format, create or compile records that do not exist, or obtain records originating from another public entity that it does not have in its possession.

If requested records are available on an entity's website or online, an entity can direct the requester to where the record can be accessed and does not have to provide a copy unless a requester is not reasonably able to access the internet.

A public entity may allow the use of personal devices to duplicate records but can impose reasonable procedures or conditions to protect the integrity of its records.

DENIAL

If a request for records is denied, the entity must explain what specific federal or state law makes all or part of the record closed. If asked, the entity must put the reason for the denial in writing. The denial must state if the requested record does not exist.

- It is not a violation if a public entity declines to provide an exempt record, or if the reason a public entity cannot provide a record is that it does not exist, even if the requester believes the record *should* exist.

REFUSAL

If repeated requests for records disrupt other essential functions, a public entity may refuse to provide access to or copies of its records to that requester but must put its reasons for doing so in writing. A requester may seek an opinion from the Attorney General on whether the entity's refusal was proper.

OPINION REQUESTS

A request for an opinion must be submitted to the Office of Attorney General within 30 days of the alleged open record violation or refusal, regardless of when the requester became aware of the violation.