







Who can request records and how can records be requested? ..... 19  
Should I release a record that contains some confidential information? ..... 19  
Does the district have to comply with requests for electronic records? .....20  
Can the district charge any fees when fulfilling a records release request? .....20  
How long does the school have to fulfill a records release request? .....20  
How long do records need to be retained? ..... 20  
What is the process for destroying records? .....21  
What is the process for a security or data breach of records? ..... 21  
Additional Resources .....22

## DISCLAIMER

The primary purpose of this publication is to provide information. The following pages serve as guidelines only. Nothing contained herein should be regarded as legal advice or interpreted as a replacement for competent legal and other such consultation.



## CHAPTER ONE: OPEN MEETINGS

### WHAT IS CONSIDERED A MEETING?

A meeting means a formal or informal gathering or work session, whether in person or through electronic means, of a quorum of the members of a governing body<sup>1</sup> of a public entity regarding public business. All meetings of public entities (including public school boards) must comply with North Dakota's open meeting laws. These laws, primarily contained in NDCC chapter 44-04, require that quorum of a governing body hold all meetings in public, with limited exceptions (NOTE: the majority of these exceptions are addressed in response to the next question in this chapter and by Chapter 2 of this manual).

### ARE THE FOLLOWING MEETINGS SUBJECT TO THE OPEN MEETINGS LAW?

- **Attendance at meetings of any national, regional or state association: No.** Such gatherings are excluded from open meeting requirements by [NDCC 44-04-17.1](#).
- **A meeting held for fact gathering purposes: Yes.** The ND Attorney General has determined that "A gathering of a quorum of the members of a governing body of a public entity to discuss or receive information regarding the business of the public entity is a "meeting," even if the members merely listen and do not interact or participate in the discussion and even if no decision is being made." ([N.D.A.G. 2008-O-11](#); [N.D.A.G. 2007-O-02](#)).
- **Board retreats: Yes.** North Dakota law includes work sessions (retreats) in its definition of a meeting. ([NDCC 44-04-17.1](#)).
- **Chance or social gatherings of a quorum: No.** Such gatherings are excluded from open meetings requirements by [NDCC 44-04-17.1](#). However, once any public business is discussed, the gathering becomes a meeting subject to the open meetings requirements.

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<sup>1</sup> Or less than a quorum if members attend one or more smaller gatherings, collectively constitute a quorum, and the gathering is held for the purpose of avoiding the open meeting requirement



- **Committee meetings:** **Yes**, if a committee (a group composed of more than one person is delegated authority by a governing body (e.g., a school board), then the committee's meetings are subject to the open meetings law ([ND AG Open Meetings Manual](#), p. 9-10). The ND Attorney General has ruled that a school superintendent's cabinet meetings (meetings with principals) are not subject to the open meeting law if the cabinet is not created by a school board and not delegated authority by a school board ([N.D.A.G. 98-0-02](#)).
- **Emergency operations during a disaster or emergency:** **No**, if the following is true:
  - o The situation is formally declared a disaster/emergency under state law or local ordinance; and,
  - o Board members are not discussing public business as the full governing body or as a task force or working group.
- **Interviews:** **Depends**. See above regarding committee meetings. If the board has delegated authority to interview to one person, open meetings requirements **do not** apply. If the board has delegated interview authority to two or more people, open meeting laws **do** apply ([ND AG Open Meetings Manual](#), p. 9-10).
- **Negotiations sessions:** **Yes**. A Board can go into executive session (a closed meeting) to discuss negotiations strategy if doing so is necessary to protect the financial interest/bargaining position of the school district ([NDCC 44-04-19.1 \(9\)](#)). Negotiation sessions between board negotiators and teacher representatives are subject to the open meetings law. However, board negotiators may meet in executive session to discuss negotiation strategy ([NDCC 15.1-16-22](#)).





## WHAT ARE THE TYPES OF MEETINGS?

- **Annual meeting:** Each school board must hold an initial meeting during the month of July following the annual election. The president of the school board shall select a meeting date that is convenient to the other board members and shall provide board members with written notice of the meeting. ([NDCC 15.1-09-30](#))
- **Regular meeting:** Schedule set by agreement of the board. ND law requires that, following the annual meeting, and once during each month thereafter, a board shall hold a regular meeting for the transaction of business. The board of any school district having only one-room and two-room schools may meet as often as the board deems necessary, but not less than four times in each year. ([NDCC 15.1-09-30](#))
- **Special meetings:** Special meetings may be called by the president or by any two members of the board. Written notice of a special meeting must be given to each member of the board ([NDCC 15.1-09-30](#)) and any member of the public that has requested notice of board meetings ([NDCC 44-04-20\(5\)](#)). Also notice must be provided to the district's official newspaper and any members of the news media that have requested notice of special meetings ([NDCC 44-04-20\(6\)](#)).
- **Co-op meetings:** A board of a school district operating under an academic cooperative agreement approved by the Superintendent of Public Instruction may participate in multi-board meetings in addition to, instead of, or in conjunction with the regular board meetings required by NDCC 15.1-09-30. Multi-board meetings must be for the purpose of pursuing joint academic or cooperative activities and must be held at the times and location agreed to by the presidents of the participating boards. ([NDCC 15.1-09-30](#)) The meetings are subject to the open meetings requirements.





## HOW AND WHEN DO I NOTIFY BOARD MEMBERS AND THE PUBLIC OF A MEETING?

The meeting notice requirements apply to all meetings of the governing body of a public entity, including any committee or subcommittee meetings. Prior written notice is required for all meetings of a public entity. The notice must include the date, time and location of the meeting and the agenda topics expected to be discussed, along with notice of any executive sessions expected to be held. It is not necessary to have a speakerphone or monitor available in a physical location if a meeting is held solely electronically. Instead, all information necessary to join the meeting must be included in the notice.

Under the general open meetings law, there is no minimum advance notice period for public meetings. Instead, **at the same time** the members of the governing body are notified of the meeting, the meeting notice must be:

1. Posted at the entity's main location, and at the location of the meeting (if it is not held at the entity's main location); and
2. Posted on the entity's official website **OR** filed with the county auditor; and,
3. Given to anyone who has requested it.

For emergency or special meetings, the entity also must send a copy of the meeting notice to the official newspaper. **Generally, there is no requirement that a meeting notice be published.**

As soon as an agenda is prepared and given to the governing body, it must be posted and provided to the public in the same manner as the meeting notice.





## CAN A MEETING AGENDA BE AMENDED AT THE MEETING?

For **regular meetings**, generally **yes**. However, a notice of a regular meeting, “if practicable,” should include all topics the governing body expects to consider at the time the notice is prepared. The ND Attorney General has previously explained that “if practicable” means that if the governing body expects to discuss a topic when the notice is prepared, it is required to be included in the notice. The broad flexibility for regular meeting agendas does not relieve a governing body of the obligation in NDCC 44-04-20 to include in the notice the topics it knows ahead of time it will consider during the meeting.

For **special meetings**, **no**. It is a violation of the open meetings law to consider or discuss topics not listed on the agenda of the special meeting. See [NDCC 44-04-20](#).

## WHAT INFORMATION MUST BE INCLUDED IN MEETING MINUTES?

The minutes of meetings are public records and must be provided to anyone upon request. Draft minutes should be made available to the public even if the minutes have not been approved by the governing body. Minutes must include, at a minimum:

1. The names of the members attending the meeting;
2. The date and time of the meeting was called to order and adjourned;
3. A list of topics discussed regarding public business;
4. A description of each motion made at the meeting and whether the motion was seconded;
5. The results of every vote taken at the meeting; and,
6. The vote of each member on recorded roll call vote.

**This requirement applies to all governing bodies, including committees and subcommittees.**





## **WHEN DO MINUTES NEED TO BE PUBLISHED IN THE NEWSPAPER?**

A record of school board proceedings (i.e., meeting minutes) must be published in the district's official newspaper if a majority of electors voting on the question at an election approve the publication. ([NDCC 15.1-09-31](#)). If approved by a majority of electors, the school district business manager must provide for publication of the school board proceedings, including an itemized list of obligations approved for payment. If appropriate, the business manager must require that the newspaper publishing the board proceedings indicate that the published proceedings are subject to review and revision by the board. The business manager must ensure that the proceedings are published within a reasonable time after each board meeting. A vote to approve the publication is effective for a period of two years or until disapproved at a succeeding school district election. Once each year, minutes must contain a list of each district employee's salary or hourly rate ([N.D.A.G. 67-196](#)).

## **DOES THE PUBLICATION REQUIREMENT APPLY TO COMMITTEE MEETING MINUTES?**

If a majority of electors voting on the question approve publication of a record of board proceedings, NDSBA recommends publication of board authorized committee meeting minutes.

## **HOW IS THE PUBLIC PROVIDED ACCESS TO THE MEETING?**

ND law requires that all meetings of a public entity be open to the public. It is a violation of ND law when any person is denied access to a meeting, unless such refusal, implicitly or explicitly communicated, is due to a lack of physical space in the meeting room for persons seeking access or lack of electronic capacity to all public viewing of the meeting through electronic means. If the meeting is held in person, the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting. If the meeting is held by electronic means, the electronic capacity must accommodate the number of persons reasonably expected to attend the meeting remotely.





## WHAT IS THE PUBLIC'S ROLE AT AN OPEN MEETING?

Open meetings are meetings held in public but are not public meetings. In other words, unless a board has given the public authority to speak (through policy or board action), the public **generally** does not have this right (See [N.D.A.G. 98-F-11](#)). The only exception to this is when law mandates that a board hold a public hearing (e.g., [NDCC 57-15-02.1](#)). NDSBA has developed sample policy BCBA, Public Participation at Board Meetings.

Contact the NDSBA to inquire about this policy.

## CAN AN INDIVIDUAL RECORD AT A BOARD MEETING?

**Yes.** [NDCC 44-04-19](#) states, "The right of a person to attend a meeting under this section includes the right to photograph, to record on audiotape or videotape and to broadcast live on radio or television the portion of the meeting that is not held in executive session, provided that there is no active interference with the conduct of the meeting." The law goes on to say, "the governing body may impose reasonable limitations on the recording activity to minimize the possibility of disruption of the meeting." This means that a board can establish reasonable rules on where camera and audio recording equipment is placed in the meeting room and establish reasonable prohibitions to prevent disruptive behavior by recording the meeting. NDSBA has developed sample policy BCBB, News Coverage of Board Meeting with such rules and prohibitions.

Contact the NDSBA to inquire about this policy.





## CHAPTER TWO: CLOSED MEETINGS

### WHAT IS AN EXECUTIVE SESSION?

North Dakota law defines this simply as a closed or confidential meeting ([NDCC 44-04-17.1](#)). The law makes a distinction between a closed and confidential meeting.

A **closed meeting** is “all or part of an exempt meeting that a public entity in its discretion has not opened to the public, although any person necessary to carry out or further the purpose of a closed meeting may be admitted.” This last part of the definition is key. It allows a board the authority to determine who should participate in the executive session.

On the other hand, a **confidential meeting** is defined as “all or part of a record or meeting that is either expressly declared confidential or is prohibited from being open to the public.” Typically, the law defines or determines who can be in attendance at a confidential meeting.

### WHEN CAN A BOARD MEET IN EXECUTIVE SESSION?

It is important to remember that a board may only go into executive session if specific legal authority exists to do so. The remainder of the meeting must be open to the public. The legal reasons for an executive session are:

#### **Applicant Consideration:** [NDCC 44-04-18.27](#)

The board of a school district may enter into executive session to review and discuss exempt applications for a vacant position prior to the board designating three or more qualified applicants as finalists for the position. If the school board receives applications from fewer than three applicants who meet the minimum qualifications, the applications and records related to the applications are open to the public.

#### **Attorney Consultation:** [NDCC 44-04-19.1\(2\)](#)

That portion of a meeting of a governing body during which an attorney consultation occurs may be closed by the governing body under section [44-04-19.2](#).





**Discharge Hearing:** [NDCC 15.1-15-08\(3\)](#)

Unless otherwise agreed to by the board and the individual, a discharge hearing held in accordance with the provisions of NDCC chapters 15.1-14 or 15.1-15 must be closed, except for the parties, their legal representatives, witnesses, three invitees requested by the individual, and three invitees requested by the board.

**Closed or Confidential records:** [NDCC 44-04-19.2\(1\)](#)

A governing body may hold an executive session to consider or discuss closed or confidential records.

**Nonrenewal of Probationary Teacher:** [NDCC 5.1-15-02\(1-2\)](#)

If the board of a school district contemplates not renewing the contract of an individual employed as a probationary teacher, the board shall review the individual's evaluations required by section 15.1-15-01 and meet with the individual in an executive session to discuss the reasons for the contemplated nonrenewal.

The individual employed as a probationary teacher may be accompanied in the executive session by two representatives selected by the individual for the purpose of speaking on behalf of the individual and by the individual's spouse or one other family member.

**Nonrenewal of Principal - Employed for less than two years:** [NDCC 15.1-15-05.1\(1\)](#)

If the board of a school district elects not to renew the contract of a principal, an assistant superintendent, or an associate superintendent, who has been employed by the board in that position for less than two years, the board shall provide written notice of the nonrenewal to the individual before May 1st. At the request of the individual, the board shall meet with the individual, in executive session, to convey the reasons for the nonrenewal.

**Nonrenewal Hearing:** [NDCC 15.1-15-06\(6\)](#)

Unless otherwise agreed to by the board of the school district and the individual subject to the nonrenewal, the hearing must be conducted as an executive session of the board, except that:

- a. The board may invite to the hearing any two representatives, the school district business manager, and the school district superintendent.; and
- b. The individual may invite to the hearing any two representatives, and the individual's spouse or one other family member.



**Negotiations Caucus:** [NDCC 15.1-16-22](#)

The board of a school district, or any authorized subcommittee of the board, may hold an executive session under section [44-04-19.2](#) to discuss negotiating strategies or to provide to its representative negotiating instructions, which are applicable to anticipated or pending: 1. Litigation; 2. Adversarial administrative proceedings; or 3. Contracts.

**Negotiations Strategy:** [NDCC 44-04-19.1\(9\)](#)

A governing body may hold an executive session under section [44-04-19.2](#) to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding litigation, adversarial administrative proceedings, or contracts, which are currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future. An executive session for this purpose may be held only when an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the public entity.

**Security Plans:** [NDCC 44-04-26](#)

Those portions of a meeting, which would reveal a security system plan, a public health or security plan, or a portion of any such plan, made exempt by section [44-04-24](#) or [44-04-25](#), are exempt from section [44-04-19](#) and section 5 of article XI of the Constitution of North Dakota.

**Student Records:** [NDCC 44-04-19.2\(1\)](#)

A governing body may hold an executive session to consider or discuss closed or confidential records.

- [N.D.A.G. 2000-0-04](#): A discussion of the content of “education records” which are confidential under FERPA must be held in an executive session rather than in an open meeting. [NDCC 44-04-19.2\(1\)](#); [N.D.A.G. 98-0-06](#); [N.D.A.G. 94-F-28](#).

It is important to note that this exception applies only to the discussion of records, and not to all discussions regarding students.

- [N.D.A.G. 94-F-28](#): It is my opinion that if a hearing held by a public school board will create or discuss records that are confidential under [20 U.S.C. 1232g](#), the hearing must be closed to the public unless the student’s parent or guardian consents in writing to the hearing being open.



**Suspending a licensed employee during discharge proceeding:** [NDCC 15.1-15-10\(1-2\)](#)

1. The board of a school district may suspend an individual employed as a teacher, a principal, or as an assistant or associate superintendent if, by unanimous vote, the board determines that suspension is appropriate during the period in which a discharge for cause is pursued.
2. The board shall address the matter of the individual's suspension in an executive session, unless both the board and the individual agree that the matter may be addressed in the presence of others or at an open meeting of the board.

**WHAT IS THE PROCEDURE FOR AN EXECUTIVE SESSION?**

Only the portions of a public meeting that are specifically confidential or exempt from the open meetings law, or during which confidential or exempt records are discussed, may be closed to the public and held in executive session. The remainder of the meeting must be open to the public.

Although certain statutes may apply to particular meetings or entities, state law specifies the following general procedure for holding an executive session.

1. The governing body first convenes in an open session and, unless a confidential meeting is required by law, passes a motion to hold an executive session;
2. The governing body announces during the open portion of the meeting the topics to be discussed or considered during the executive session and the legal authority for holding an executive session on those topics;
3. The executive session is recorded electronically;
4. The topics discussed or considered during the executive session are limited to those for which an executive session is authorized by law and that have been announced (as explained in #2 above); and,
5. Final action concerning the topics discussed or considered during the executive session must be taken during the open portion of the meeting.

Under these provisions, a governing body's authority to hold an executive session may be invoked only during a properly noticed open meeting, and not during a separate meeting for which public notice is not provided. To close a portion of the meeting, the governing body may either excuse the public or reconvene in another location.



Final action on the topics considered in the executive session must be taken during the open portion of the meeting. All substantive votes must be recorded by roll call.

The North Dakota Attorney General's Office has developed a sample form to help boards comply with the above requirements. Contact NDSBA to request this form.

### **WHAT IF AN EXECUTIVE SESSION IS REQUIRED BY LAW?**

A vote to go into executive session is not necessary if a confidential meeting is required or if the governing body is closing the meeting to discuss confidential records.

### **WHAT ARE THE DOCUMENTATION REQUIREMENTS FOR AN EXECUTIVE SESSION?**

Executive sessions must be electronically recorded. NDSBA recommends that the tapes are then placed in a sealed envelope, marked confidential, and stored in a secure area. For tracking purposes, districts may complete a form indicating that an executive session tape is on file. This form should be placed in the appropriate corresponding student or personnel folder. NDSBA has developed such a form. NDSBA has also developed sample exhibit, FGA-E4, notice of Executive Session Tape on File. Contact the NDSBA to inquire about this form or exhibit.

The minutes of an open meeting during which an executive session is held must indicate the names of the members attending the executive session, the date and time the executive session was called to order and adjourned, a summary of the general topics that were discussed or considered that does not disclose any closed or confidential information, and the legal authority for holding the executive session. ([NDCC 44-04-19.2\(4\)](#)).

Recordings must be disclosed pursuant to court order under subsection 2 of section [44-04-18.11](#) or to the attorney general for the purpose of administrative review under section [44-04-21.1](#). The attorney general may not disclose to the public any recording received and must return the recording to the Board upon completion of the administrative review. The recording may be disclosed upon majority vote of the Board unless the executive session was required to be confidential. Disclosure of the recording by a public servant except as otherwise specifically provided by law is a violation of section [12.1-13-01](#).

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All recordings of executive sessions of executive must be retained for a minimum of six months after the executive session that is the subject of the recording. ([NDCC 44-04-19.2\(5\)](#))

## **CAN EXECUTIVE SESSION TAPES BE RELEASED?**

Generally, **no**. However, there are a few exceptions ([NDCC 44-04-19.2\(5\)](#)).

1. The recording must be disclosed pursuant to court order under subsection 2 of section [44-04-18.11](#) or to the Attorney General for the purpose of administrative review under section [44-04-21.1](#).
2. The Attorney General may not disclose to the public any recording received and must return the recording to the governing body upon completion of the administrative review.
3. The recording may be disclosed upon majority vote of the governing body **unless the executive session was required to be confidential**.
4. The executive session was held for purposes of nonrenewal, discharge, or student expulsion, and the subject of the hearing (i.e., teacher or student) requests a copy of the recording.

Disclosure of the recording by a public servant except as provided in law is a violation of section [12.1-13-01](#).



## CHAPTER THREE: RECORDS

### WHAT IS A RECORD?

“Record” means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business. (This applies to emails and their attachments, voicemails, text and instant messaging such as social media postings, videos, call logs, spreadsheets, word processing documents, information stored in databases, etc.) “Record” does not include unrecorded thought processes or mental impressions but does include preliminary drafts and working papers.

### WHICH RECORDS ARE OPEN?

**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. ([NDCC 44-04-18](#))

### WHICH RECORDS ARE CLOSED?

North Dakota law lists a number of records that are either **exempt** (can be released at the district’s discretion) or **confidential** (cannot be released unless a specific provision in law contains a mechanism for securing permission to release):

- Attorney work product and consultation is exempt ([NDCC 44-04-19.1](#)).
- Computer passwords and network security plans are confidential ([NDCC 44-04-27](#)).
- Criminal history background check records are confidential ([28 CFR 50.12b](#)).
- Electronic mail addresses or telephone numbers of individuals which are provided to a public entity for the purpose of, or in the course of, communicating with that public entity is exempt ([NDCC 44-04-18.21](#)).
- Executive session tapes, except as specified in chapter two of this publication, are confidential.



- If a complaint is filed concerning a school district employee and an administrative investigation is conducted, any record or document generated as part of the administrative investigation is confidential until the investigation is completed. The investigation and any determination of disciplinary action may not exceed sixty days from the date of the complaint is filed ([NDCC 15.1-07-25](#)).
- Lists of minors are exempt ([NDCC 44-04-18.13](#)).
- Medical condition of an individual, medical treatment provided to an individual, and the name of an individual who received medical treatment from a public entity during an emergency medical response is exempt ([NDCC 44-04-18.22](#)).
- Public employee's home address; home telephone number or personal cell phone number; photograph; medical information; motor vehicle operator's identification number; public employee identification number; payroll deduction information; the name, address, telephone number, and date of birth of any dependent or emergency contact; any credit, debit or electronic transfer card number; and any account number at a bank or other financial institution are exempt ([NDCC 44-04-18.1](#)).
- Public library, archive, or museum may designate a donated record as an exempt record if the donor if the record requests as a condition of the donation that that the record not be released to the public for a specific amount of time, which may not exceed twenty years beyond the death of the donor ([NDCC 44-04-18.23](#)).
- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, communications, or consultations ore portions of any such plan relating directly to the physical or electronic security of a public facility are exempt. This includes threat assessments; vulnerability and capability assessments conducted by a public entity, or any private entity; threat response plans; and emergency evacuation plans ([NDCC 44-04-24](#)).
- School law enforcement unit records related to students are confidential with certain exceptions as listed in law ([NDCC 15.1-19-14](#)).
- Social security numbers are confidential ([NDCC 44-04-28](#)).



- Student educational records (including medical records) are confidential with limited exceptions.
- Applications for public employment and related records which contain information that could reasonably be used to identify an applicant are exempt. Once finalists are designated, the application and related records of the finalists are open to the public. If, by the close of the application period for a vacant position, a public entity receives applications from fewer than three applicants who meet the minimum qualifications, the applications and records related to the applications are open to the public. ([NDCC 44-04-18.27](#))

## **WHO CAN REQUEST RECORDS AND HOW CAN RECORDS BE REQUESTED?**

Anyone can request access to open records; however, NDSBA strongly cautions board members against independently accessing or reviewing personnel records of licensed staff currently employed with the district unless directed by board policy or as part of a nonrenewal or discharge hearing. Board members serve as the “jury” during nonrenewal and discharge hearings and should consequently try to remain as objective and impartial as possible.

Advance notice of a request to inspect open records is not required and there is no requirement that a requester must live within the district, be a North Dakota resident, or a U.S. citizen. The motive and identity of the person requesting an open record are irrelevant. Generally, a public entity cannot ask a person to put the request in writing or fill out a form before providing public records. However, if, after the initial request, a public entity needs a request to be put in writing for clarification purposes, the public entity may require the requestor to do so.

## **SHOULD I RELEASE A RECORD THAT CONTAINS SOME CONFIDENTIAL INFORMATION?**

Public entities must release the **open portions** of the record, meaning that such entities must excise the closed/confidential portions of the record, and then provide the record to the requester. Public entities may impose a fee not exceeding \$25.00 per hour per request, excluding the initial hour, for excising confidential or closed material contained in the record ([NDCC 44-04-18](#)).





## **DOES THE DISTRICT HAVE TO COMPLY WITH REQUESTS FOR ELECTRONIC RECORDS?**

**Yes.** NDCC state, “Each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.” ([NDCC 44-04-18](#)).

The public entity may only deny an open records request if a law specifically provides that the record is either exempt or confidential, the record does not exist, or the entity does not have the record in its or its agent’s possession. A request may not be denied because it involves a substantial number of copies, the same individual makes multiple requests, or that the request would be “cost prohibitive” or put a “strain on personnel resources” to fulfill.

## **CAN THE DISTRICT CHARGE ANY FEES WHEN FULFILLING A RECORDS RELEASE REQUEST?**

In many cases, **yes**. The [North Dakota Attorney General's Open Records Manual](#) contains a comprehensive list of records request fees.

## **HOW LONG DOES THE SCHOOL HAVE TO FULFILL A RECORDS RELEASE REQUEST?**

North Dakota law does not contain an exact deadline. Access to an open record must be provided within a reasonable amount of time after a request has been made. The [North Dakota Attorney General's Open Records Manual](#) states, “Immediate access or copies are not always required, but the amount of time within which the public entity must respond to the request will usually be measured in hours or a few days rather than several days or weeks.” A public entity may take a reasonable amount of time to determine whether an exemption applies and may consult with legal counsel as needed.

## **HOW LONG DO RECORDS NEED TO BE RETAINED?**

This will vary depending on the record(s) involved. NDSBA has developed sample records retention guidelines (ABCD-E). Contact the NDSBA to inquire about this exhibit.



## WHAT IS THE PROCESS FOR DESTROYING RECORDS?

ND Law does not prescribe a specific process to destroy records of public entities. The school board of any school district desiring to destroy any documents should procure from the business manager of the school district a list of those documents each year. (NOTE: See NDSBA exhibit ABCD-E, Record Retention Schedule, for assistance). The list should contain a full statement and description of the documents to be destroyed. The school board should check the documents with the list. If the list is correct, the school board, by resolution, should order the document destroyed and, in the resolution, should provide the manner of destruction. We recommend this list be filed in the office of the business manager of the school district and retained as a permanent record. NDSBA has developed sample exhibit, ABCD-E2, Resolution for Record Destruction. Contact NDSBA to inquire about this exhibit.

## WHAT IS THE PROCESS FOR A SECURITY OR DATA BREACH OF RECORDS?

A breach is unauthorized access or acquisition of computerized data that has not been secured by encryption or other methods or technology that renders electronic files, media, or databases unreadable or unusable. Good-faith acquisitions of personal information by an employee or agent of the employee is not a breach of security of the system if the personal information is not used or subject to further unauthorized disclosure.

*Private information* is information protected under federal laws such as, but not limited to, the Family Educational Rights and Privacy Act (FERPA), information defined as confidential or exempt in NDCC Ch. 44-04, and data defined as “personal information” in NDCC 51-30-01(4). Private information does not include publicly available information that is lawfully made available to the general public pursuant to state or federal law or regulation

Any identified or suspected cybersecurity incident that affects the confidentiality, integrity, or availability of information systems, data, or services must be reported immediately to the school district superintendent. The district must notify state residents affected by a breach and any state agencies as required by law. NDSBA has developed policy ICD regarding data protections and security breaches. Contact NDSBA to inquire about this policy.





## **ADDITIONAL RESOURCES**

<https://www.ag.nd.gov/Brochures/FactSheet/OR-OMGuide.pdf>

<https://attorneygeneral.nd.gov/sites/ag/files/documents/OpenMeetingsManual.pdf>

<https://attorneygeneral.nd.gov/sites/ag/files/documents/OR-Guide.pdf>

<https://attorneygeneral.nd.gov/sites/ag/files/documents/OpenRecordsManual.pdf>





The North Dakota School Boards Association is a leading advocate for public education. NDSBA is governed by a board of seven local school board members elected by their peers. Staff members have many years of experience in school-related work and, by working cooperatively with school board members around the state, combine to form an effective voice for public education. NDSBA exists to serve the needs of school leaders in areas of board training, information, and presentations.

Visit NDSBA's website [www.ndsba.org](http://www.ndsba.org) where you can find information about:

- Business Manager Certification Program
- Legal Services
- NDSBA Legal Direct
- Policy Services
- Superintendent Search
- NDUC Group Account
- NDSBA conventions and seminars
- NDSBA publications
- NDSBA's monthly Bulletin
- Legislative advocacy
- Other helpful resources

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