

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1198

Introduced by

Representatives Lefor, Steiner

Senator Rummel

1 A BILL for an Act to amend and reenact section 44-04-18 of the North Dakota Century Code,
2 relating to requiring an individual who requests an open record to provide the individual's name
3 and contact information.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 44-04-18 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **44-04-18. Access to public records - Electronically stored information.**

- 8 1. Except as otherwise specifically provided by law, all records of a public entity are
9 public records, open and accessible for inspection during reasonable office hours. As
10 used in this subsection, "reasonable office hours" includes all regular office hours of a
11 public entity. If a public entity does not have regular office hours, the name and
12 telephone number of a contact person authorized to provide access to the public
13 entity's records must be posted on the door of the office of the public entity, if any.
14 Otherwise, the information regarding the contact person must be filed with the
15 secretary of state for state-level entities, for public entities defined in subdivision c of
16 subsection 13 of section 44-04-17.1, the city auditor or designee of the city for
17 city-level entities, or the county auditor or designee of the county for other entities.
- 18 2. A valid request for a copy of a specific public record must be made by an identified
19 individual who provides the individual's name, address, and contact information. A
20 request made by an individual who does not supply the individual's name, address,
21 and contact information is invalid and must be disregarded by the agency to whom the
22 request was directed. Upon request for a copy of specific public records, ~~any~~an entity
23 subject to subsection 1 shall furnish the requester one copy of the public records
24 requested. An initial request need not be made in person or in writing, and the copy

1 must be mailed upon request. A public entity may require written clarification of the
2 request to determine what records are being requested, but may not ask for the motive
3 or reason for requesting the records ~~or for the identity of the person requesting public~~
4 ~~records~~. A public entity may charge up to twenty-five cents per impression of a paper
5 copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated
6 copy of a size not more than eight and one-half by fourteen inches [19.05 by 35.56
7 centimeters]. For ~~any~~a copy of a record that is not a paper copy ~~as defined in this~~
8 ~~section~~, the public entity may charge a reasonable fee for making the copy. As used in
9 this section, "reasonable fee" means the actual cost to the public entity of making the
10 copy, including labor, materials, and equipment. The entity may charge for the actual
11 cost of postage to mail a copy of a record. An entity may require payment before
12 locating, redacting, making, or mailing the copy. The public entity may withhold
13 records pursuant to a request until ~~such time as~~ a requester provides payment for
14 ~~any~~an outstanding balance for prior requests. An entity may impose a fee not
15 exceeding twenty-five dollars per hour per request, excluding the initial hour, for
16 locating records, including electronic records, if locating the records requires more
17 than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour
18 per request, excluding the initial hour, for excising confidential or closed material under
19 section 44-04-18.10 from the records, including electronic records. If a public entity
20 receives five or more requests from the same requester within seven days, the public
21 entity may treat the requests as one request in computing the time it takes to locate
22 and excise the records. If the entity is not authorized to use the fees to cover the cost
23 of providing or mailing the copy, or both, or if a copy machine is not readily available,
24 the entity may make arrangements for the copy to be provided or mailed, or both, by
25 another entity, public or private, and the requester shall pay the fee to that other entity.
26 This subsection does not apply to copies of public records for which a different fee is
27 specifically provided by law.

- 28 3. Automation of public records must not erode the right of access to those records. As
29 ~~each~~a public entity increases ~~its~~the entity's use of and dependence on electronic
30 recordkeeping, each agency must provide reasonable public access to records
31 electronically maintained and must ensure ~~that~~ exempt or confidential records are not

disclosed except as otherwise permitted by law. A public entity may not enter into a contract for the creation or maintenance of a public records database if ~~that~~the contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency. An electronic copy of a record must be provided upon request at no cost, other than costs allowed in subsection 2, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic records which take more than one hour of information technology resources to produce.

4. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through ~~any~~an other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of ~~any~~ closed or confidential information contained in that file. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization. This section does not require a public entity to provide a requester with access to a computer terminal or mobile device. A public entity is not required to provide a copy of a record that is available to the requester on the public entity's website or on the internet. The public entity shall notify the requester the record is available online and direct the requester to the website where the record can be accessed. If the requester does not have reasonable access to the internet due to lack of computer, lack of internet availability, or inability to use a computer or the internet, the public entity shall produce paper copies for the requester, but may charge the applicable fees under this section.

5. A state-level public entity as defined in subdivision a of subsection 13 of section 44-04-17.1 or a political subdivision as defined in subsection 11 of section 44-04-17.1, may establish procedures for providing access from an outside location to ~~any~~a

1 computer database or electronically filed or stored information maintained by that
2 entity. The procedures must address the measures that are necessary to maintain the
3 confidentiality of information protected by federal or state law. Except for access
4 provided to another state-level public entity or political subdivision, the state or political
5 subdivision may charge a reasonable fee for providing that outside access. If the
6 original information is keyed, entered, provided, compiled, or submitted by any
7 political subdivision, the fees must be shared by the state and the political subdivision
8 based on their proportional costs to make the data available.

9 6. Any request under this section for records in the possession of a public entity by a
10 party to a criminal or civil action, adjudicative proceeding as defined in subsection 1 of
11 section 28-32-01, or arbitration in which the public entity is a party, or by an agent of
12 the party, must comply with applicable discovery rules or orders and be made to the
13 attorney representing that entity in the criminal or civil action, adjudicative proceeding,
14 or arbitration. The public entity may deny a request from a party or an agent of a party
15 under this subsection if the request seeks records that are privileged under applicable
16 discovery rules.

17 7. A denial of a request for records made under this section must describe the legal
18 authority for the denial, or a statement that a record does not exist, and must be in
19 writing if requested.

20 8. This section is violated ~~when~~if a person's right to review or receive a copy of a record
21 that is not exempt or confidential is denied or unreasonably delayed or ~~when~~if a fee is
22 charged in excess of the amount authorized in subsections 2 and 3.

23 9. It is not an unreasonable delay or a denial of access under this section to withhold
24 from the public a record that is prepared at the express direction of, and for
25 presentation to, a governing body until the record is mailed or otherwise provided to a
26 member of the body or until the next meeting of the body, whichever occurs first. It
27 also is not an unreasonable delay or a denial of access to withhold from the public a
28 working paper or preliminary draft until a final draft is completed, the record is
29 distributed to a member of a governing body or discussed by the body at an open
30 meeting, or work is discontinued on the draft but no final version has been prepared,
31 whichever occurs first.

- 1 10. For public entities headed by a single individual, it is not an unreasonable delay or a
2 denial of access to withhold from the public a working paper or preliminary draft until a
3 final draft is completed, or work is discontinued on the draft but no final version has
4 been prepared, whichever occurs first. A working paper or preliminary draft shall be
5 deemed completed if it can reasonably be concluded, upon a good-faith review, that all
6 substantive work on it has been completed.
- 7 11. A disclosure of a requested record under this section is not a waiver of ~~any~~a copyright
8 held by the public entity in the requested record or of ~~any~~an applicable evidentiary
9 privilege.
- 10 12. A public entity may allow an individual to utilize the individual's own personal
11 ~~devices~~device for duplication of records and, if so, shall establish reasonable
12 procedures to protect the integrity of the records as long as the procedures are not
13 used to prevent access to the records.
- 14 13. If repeated requests for records disrupt other essential functions of the public entity,
15 the public entity may refuse to permit inspection of the records, or provide copies of
16 the records. A public entity refusing to provide access or copies of public records
17 under this section shall state in writing the reasons supporting the refusal and provide
18 the reasoning to the requester. The requester may seek an attorney general's opinion
19 under section 44-04-21.1, on whether the public entity's decision was proper.