

Sixty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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,  
20 unless the individual is a victim of a crime seeking information contained in a criminal  
21 record related to the crime, including an individual who self-identifies as a victim. A  
22 request made by an individual who does not supply the individual's name, address,  
23 and contact information is invalid and must be disregarded by the agency to whom the  
24 request was directed. Upon request for a copy of specific public records, ~~any~~ entity

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

- 30 3. Automation of public records must not erode the right of access to those records. As  
31 ~~each~~ a public entity increases ~~its~~ the entity's use of and dependence on electronic

1 recordkeeping, each agency must provide reasonable public access to records  
2 electronically maintained and must ensure that exempt or confidential records are not  
3 disclosed except as otherwise permitted by law. A public entity may not enter into a  
4 contract for the creation or maintenance of a public records database if ~~that~~the  
5 contract impairs the ability of the public to inspect or copy the public records of the  
6 agency, including public records online or stored in an electronic recordkeeping  
7 system used by the agency. An electronic copy of a record must be provided upon  
8 request at no cost, other than costs allowed in subsection 2, except if the nature or  
9 volume of the public records requested to be accessed or provided requires extensive  
10 use of information technology resources, the agency may charge no more than the  
11 actual cost incurred for the extensive use of information technology resources incurred  
12 by the public entity. "Extensive" is defined as a request for copies of electronic records  
13 which take more than one hour of information technology resources to produce.

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

- 1       5. A state-level public entity as defined in subdivision a of subsection 13 of section  
2       44-04-17.1 or a political subdivision as defined in subsection 11 of section 44-04-17.1,  
3       may establish procedures for providing access from an outside location to anya  
4       computer database or electronically filed or stored information maintained by that  
5       entity. The procedures must address the measures that are necessary to maintain the  
6       confidentiality of information protected by federal or state law. Except for access  
7       provided to another state-level public entity or political subdivision, the state or political  
8       subdivision may charge a reasonable fee for providing that outside access. If the  
9       original information is keyed, entered, provided, compiled, or submitted by anya  
10      political subdivision, the fees must be shared by the state and the political subdivision  
11      based on their proportional costs to make the data available.
- 12      6. AnyA request under this section for records in the possession of a public entity by a  
13      party to a criminal or civil action, adjudicative proceeding as defined in subsection 1 of  
14      section 28-32-01, or arbitration in which the public entity is a party, or by an agent of  
15      the party, must comply with applicable discovery rules or orders and be made to the  
16      attorney representing that entity in the criminal or civil action, adjudicative proceeding,  
17      or arbitration. The public entity may deny a request from a party or an agent of a party  
18      under this subsection if the request seeks records that are privileged under applicable  
19      discovery rules.
- 20      7. A denial of a request for records made under this section must describe the legal  
21      authority for the denial, or a statement that a record does not exist, and must be in  
22      writing if requested.
- 23      8. This section is violated ~~when~~if a person's right to review or receive a copy of a record  
24      that is not exempt or confidential is denied or unreasonably delayed or ~~when~~if a fee is  
25      charged in excess of the amount authorized in subsections 2 and 3.
- 26      9. It is not an unreasonable delay or a denial of access under this section to withhold  
27      from the public a record that is prepared at the express direction of, and for  
28      presentation to, a governing body until the record is mailed or otherwise provided to a  
29      member of the body or until the next meeting of the body, whichever occurs first. It  
30      also is not an unreasonable delay or a denial of access to withhold from the public a  
31      working paper or preliminary draft until a final draft is completed, the record is

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