

TESTIMONY OF

Molly Herrington, Chief People Officer, Human Resource Management Services

Good Morning, Chairmen Klemin and committee members. My name is Molly Herrington, Chief People Officer and Director of Human Resource Management Services (HRMS) Division of the Office of Management and Budget (OMB). OMB opposes HB 1442, as introduced.

North Dakota law distinguishes between records that are automatically open to the public, records that are exempt and can be released at the discretion of the agency, and records that are confidential by law. It is our position that personnel records that are confidential by law, together with the requirement that a record of access be maintained on public employee personnel files, provides sufficient protection to public employees. An exempt record, by definition, is a record that can be released to anyone at the unfettered discretion of the agency. Providing criminal penalties to "possession" of a "document," terms that are not clearly defined, under circumstances where records are simply open to anyone at the discretion of the agency is problematic.

Although exempt records should only be released pursuant to a formal process and not simply because an employee had access to a record through job responsibilities, it is unclear at what point continued possession of a document is even proscribed. The way this bill is currently written, it is unclear as to whether an individual piece of data would qualify as a document. Would having a report that includes Employer Identification Numbers saved to a hard drive qualify as unlawful possession after the specific need for that information has ended? Would having an employee's personal phone number in a contact list be deemed unlawful? If this is the case, information that is naturally obtained over the course of working with an individual could qualify as holding exempt records from personnel files after "official duties" have concluded.

Lastly, this bill appears to be extremely punitive for situations that may be unintentional or minor. Exempt information could be readily requested through the current open records process. An employee that releases an exempt record outside of the agency process for handling open records can be addressed through discipline, including termination. Given that a record of access must be maintained on each public employee's personnel file, the ability of an employee to reproduce exempt records for a non-work-related reason is sufficiently constrained.

Thank you for your consideration of these concerns. Chairman Klemin and committee members, this concludes my testimony. I would be happy to answer any questions.