

Introduced by

Senators Paulson, Burckhard, Castaneda

Representatives Fisher, D. Johnston, Louser

1 A BILL for an Act to amend and reenact section 44-04-18.1 of the North Dakota Century Code,  
2 relating to an exemption from open records for employee performance and discipline records  
3 contained in personnel records.

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

5 **SECTION 1. AMENDMENT.** Section 44-04-18.1 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **44-04-18.1. Public employee personal, medical, and employee assistance records -**  
8 **Confidentiality - Personal information maintained by state entities - Exempt.**

- 9 1. Any record of a public employee's medical treatment or use of an employee  
10 assistance program is not to become part of that employee's personnel record and is  
11 confidential and, except as otherwise authorized by law, may not be used or disclosed  
12 without the written authorization of the employee. As used in this section, the term  
13 "public employee" includes any individual who has applied for employment, is  
14 employed, or has been employed by a public entity.
- 15 2. Except as otherwise specifically provided by law, personal information regarding a  
16 public employee contained in an employee's personnel record or given to the state or  
17 a political subdivision by the employee in the course of employment is exempt. As  
18 used in this section, "personal information" means a person's month and day of birth;  
19 home address; home telephone number or personal cell phone number; photograph;  
20 medical information; motor vehicle operator's identification number; public employee  
21 identification number; payroll deduction information; the name, address, telephone  
22 number, and date of birth of any dependent or emergency contact; any credit, debit, or  
23 electronic fund transfer card number; and any account number at a bank or other  
24 financial institution. Information regarding the type of leave taken by an employee is

- 1 exempt, although the amount of leave taken or accrued, and the dates of the leave  
2 taken, is public record. Information regarding leave applied for but not yet taken is  
3 exempt until the leave is taken. Performance and discipline records are exempt for  
4 three years or until termination of employment, whichever occurs first, unless the  
5 records are part of an internal investigation under subsection 6 or requested by a law  
6 enforcement agency as part of a hiring process.
- 7 3. Nonconfidential information contained in a personnel record of an employee of a  
8 public entity as defined in subdivision c of subsection 13 of section 44-04-17.1 is  
9 exempt.
- 10 4. Except as otherwise specifically provided by law, personal information regarding a  
11 licensee maintained by an occupational or professional board, association, state  
12 agency, or commission created by law is exempt. As used in this section, "licensee"  
13 means an individual who has applied for, holds, or has held in the past an  
14 occupational or professional license, certificate, credential, permit, or registration  
15 issued by a state occupational or professional board, association, agency, or  
16 commission.
- 17 5. Information relating directly to persons engaged in an organized public safety peer  
18 counseling or a public safety peer debriefing is exempt.
- 19 6. Records relating to a public entity's internal investigation of a complaint against a  
20 public entity or employee for misconduct are exempt until the investigation of the  
21 complaint is complete, but no longer than ~~seventy-five~~one hundred and eighty  
22 calendar days from the date of the complaint.