

2023 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1198

2023 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1198
1/26/2023

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| Relating to requiring an individual who requests an open record to provide the individual's name and contact information. |
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Chairman Schauer called the meeting to order at 2:29 PM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, Mary Schneider. All present.

Discussion Topics:

- Requests for public records
- Use of public records
- Court of public opinion
- Freedom of access to information

Representative Lefor introduced HB 1198 with supportive testimony and proposed an amendment (#17204).

Jack McDonald, on behalf of the North Dakota Newspaper's Association, testimony in opposition to bill. (#17087)

Michael Coachman, North Dakota citizen, spoke in opposition to bill.

Additional written testimony:

- Michael Hayden, (#16235, #17060)
- Eric Grabowsky (#17006, #17007)

Chairman Schauer adjourned the meeting at 3:10 PM .

Phillip Jacobs, Committee Clerk By: Leah Kuball

2023 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1198
1/27/2023

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| Relating to requiring an individual who requests an open record to provide the individual's name and contact information. |
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Chairman Schauer called the meeting to order at 9:08 AM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, Mary Schneider. All present.

Discussion Topics:

- Committee work
- Amendments
- Open records policy

Representative Johnson explained the amendment to HB 1198. (Pg. 1, Line 19 after the word "information" to sum up language and say you can access records, but only the records that are criminal in nature)

Chairman Schauer adjourned the meeting at 9:14 AM.

Phillip Jacobs, Committee Clerk By: Leah Kuball

2023 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1198
2/2/2023

Relating to requiring an individual who requests an open record to provide the individual's name and contact information.

Chairman Schauer called the meeting to order at 11:12 AM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, Mary Schneider. All present.

Discussion Topics:

- Committee work
- Amendments

Chairman Schauer called for a discussion on HB 1198.

Rep. Steiner moved to amend HB 1198 (#26858) (23.0622.01002).

Seconded by Rep. Johnson.

Roll Call Vote:

| Representatives | Vote |
|---------------------------------|------|
| Representative Austen Schauer | Y |
| Representative Bernie Satrom | Y |
| Representative Landon Bahl | Y |
| Representative Claire Cory | Y |
| Representative Jeff A. Hoverson | N |
| Representative Jorin Johnson | Y |
| Representative Karen Karls | Y |
| Representative Scott Louser | Y |
| Representative Carrie McLeod | Y |
| Representative Karen M. Rohr | Y |
| Representative Mary Schneider | N |
| Representative Vicky Steiner | Y |
| Representative Steve Vetter | N |

Motion carries 10 - 3 – 0.

Rep. Louser moved a do not pass on HB 1198 as amended.

Seconded by Rep. Bahl.

Roll Call Vote:

| Representatives | Vote |
|---------------------------------|-------------|
| Representative Austen Schauer | Y |
| Representative Bernie Satrom | Y |
| Representative Landon Bahl | Y |
| Representative Claire Cory | Y |
| Representative Jeff A. Hoverson | Y |
| Representative Jorin Johnson | Y |
| Representative Karen Karls | N |
| Representative Scott Louser | Y |
| Representative Carrie McLeod | Y |
| Representative Karen M. Rohr | Y |
| Representative Mary Schneider | Y |
| Representative Vicky Steiner | N |
| Representative Steve Vetter | Y |

Motion carries 11-2-0.

Carried by Rep. Schneider.

Chairman Schauer adjourned the meeting at 11:22 AM.

Phillip Jacobs, Committee Clerk

DL
2-2-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1198

Page 1, line 19, after "information" insert ", unless the individual is a victim of a crime seeking information contained in a criminal record related to the crime, including an individual who self-identifies as a victim"

Renumber accordingly



REPORT OF STANDING COMMITTEE

HB 1198: Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1198 was placed on the Sixth order on the calendar.

Page 1, line 19, after "information" insert ", unless the individual is a victim of a crime seeking information contained in a criminal record related to the crime, including an individual who self-identifies as a victim"

Renumber accordingly

TESTIMONY

HB 1198

January 24, 2023

Dear Chairman and Members of the Government and Veteran Affairs Committee:

My name is Michael Hayen and I reside in Napoleon, North Dakota (Logan County). I would like to express my opposition to proposed House Bill 1198 and would like for you to consider the same.

Recent new articles and opinion editorials across the state have highlighted the potential consequences of this proposed law change. I have attached copies of articles as they address valid, reasonable points. I would like to share with you my opinion and experiences with the current open records law.

Most government agencies and employees are willing to provide data in response to open records requests. However, some government agencies and employees "take it personal and make it personal" when an open records request is made. Motives are questioned with, "what do you want it for?" Agencies/employees attempt to create financial barriers in releasing information such as requiring a significant number of paid hours to review requested materials for preparation and redactions. Employees have acted and spoken defensively and protectively when presented with a request.

An open records request made with my name on it was met with hostility and contempt from an employee of the government agency. The employee made it personal and responded with unprofessional comments. My family and I are concerned about retaliation.

I know numerous citizens who refuse to request information for the sole reason of the retaliation they may face. This may not be a big issue in larger communities but in smaller communities it is. In my experiences there is a perception that if you dissent with local government and request information it will be held against you.

I oppose House Bill 1196 and urge the committee to consider the negative effects on government transparency by discouraging citizens from making opens records requests.

Thank you for your time and consideration in this matter.



Michael Hayen

Fargo Forum

North Dakota bill would require name, address for open records requests

One lawmaker claims the anonymous aspect of open records law is being abused, but a sunshine law advocate said the bill could lead to abuse by government agencies.

By April Baumgarten
January 12, 2023 02:27 PM

BISMARCK — A North Dakota bill would require residents who want to request public documents to give their name, address and contact information to government agencies if they want the records.

Rep. Mike Lefor, R-Dickinson, introduced House Bill 1198 on Monday, Jan. 9. If passed, government entities could ignore records requests if a person who asks for documents doesn't provide a valid name, address or contact information.

"If you can do things anonymously, it makes me wonder why," Lefor said. "Why wouldn't you declare what your name and address and so forth is?"

With some exceptions, government records in North Dakota are public, meaning anyone can view or request copies of those documents. North Dakota law prohibits a public entity from asking for a person's identification.

Government agencies also cannot ask why a record is being requested, and the request doesn't have to be put in writing or made in person.

Forcing people to attach a name to a public records request destroys the basic purposes of open records laws in North Dakota, said Jack McDonald, an attorney for the North Dakota Newspaper Association and advocate for state sunshine laws. The law protects a citizen's right to get a public record and use it however they want, he said.

This bill could prompt government officials to ask people what they plan to do with records they request, McDonald said. That could hinder investigative journalism and whistleblower laws if a government agency decides to take action to stifle efforts to obtain records, he claimed.

“It really will destroy the open records law,” McDonald said, adding a public record belongs to the public. “Why do you need a name?”

Lefor said the public has a right to access public records, but he feels that right has been abused when people have done it anonymously. Submitting multiple records requests with no names creates a lot of work for government agencies.

“I know of one university that got 35 anonymous requests, and it took a tremendous amount of time and energy to process that information,” he said.

People who ask for federal documents through a Freedom of Information Act request must submit their names, addresses and contact information, Lefor noted. He said he feels North Dakota law should line up with that.

“We’re not asking a lot,” he said, adding that requiring identifying information would make the processing of open records requests more efficient.

McDonald questioned whether there is evidence the anonymous clause of North Dakota’s open records law has been abused. He said he fears a public employee could face disciplinary action if a government agency finds out a worker requested information.

In Cass County, volunteer Deputy Ben Longlet made several open records requests to the Sheriff's Office as Code4 Media. He sent several public documents in October to media that revealed a deputy used his government-issued phone to send nude images of himself, including one that went to a co-worker.

The Sheriff's Office discovered Longlet was behind Code4 and placed him on administrative leave while it investigated his actions for policy violations. Longlet has asserted his right to remain anonymous under state open records laws was violated.

North Dakota has laws to protect whistleblowers from retaliation.

<https://www.inforum.com/news/north-dakota/north-dakota-bill-would-require-name-address-for-open-records-requests>

Grand Forks Herald

Our view: North Dakotans shouldn't have to provide personal info when requesting documents they already own

Public entities simply must provide the documents that are requested, without question and without bias. They may have to grit their teeth every now and then, but this is how transparency works.

Opinion by Herald editorial board
January 14, 2023 08:00 AM

When any person walks into a public office – some city hall or school headquarters, for instance – they are entitled to see any public record they wish. That person doesn't have to explain, give their name or why they have an interest in that public record.

They don't even have to be from that town.

That is not only the law, it's just common sense. State law even spells it out, saying a public entity or its representatives "may not ask for the motive or reason for requesting the records or for the identity of the person requesting records."

Not everybody sees it that way. A proposal in the North Dakota Legislature seeks to change the law so that a person requesting a public record must give their name and provide personal contact information." It's House Bill 1198 , introduced by Rep. Mike Lefor, R-Dickinson.

Our advice to lawmakers: Don't do this. Just wad it up and toss it.

Here's why: The more roadblocks that are put on public records, the less they actually become "open" – at least in the truest sense.

Already, there are fees attached to open records, and sometimes those fees can add up. A person without the money therefore cannot easily access a large number of documents. We understand why there are fees attached – it's because public employees must process the requests – but when a bill comes in at \$100 or more, it certainly can be a deterrent.

At times, newspapers in the Forum Communications Co. chain have paid thousands of dollars to access documents. We know of one case where \$7,000 was spent.

But also, some requesters might be hesitant to attach their name to a request because it could raise flags that ultimately could sway them from seeking the records.

What if a person wants documents related to a small-town mayor or sheriff? That could spark a confrontation, and it might sway the requester from going through the trouble.

These things happen. We know of a case in South Dakota, in the early 2000s, when a newspaper intern was sent to a local City Hall to request information about the chief of police. That intern was then detained in a separate room and questioned.

Everyone is a member of the public and we all own these records. So why should it matter who is making the request for public documents?

And why should anyone have to provide personal information to know what their government is up to?

They shouldn't have to.

Public entities simply must provide the documents that are requested, without question and without bias. They may have to grit their teeth every now and then, but this is how transparency works.

For the sake of openness in North Dakota, we hope HB 1198 dies a quick death.

<https://www.grandforksherald.com/opinion/editorials/our-view-north-dakotans-shouldnt-have-to-provide-personal-info-when-requesting-documents-they-already-own>

Bismarck Tribune

The North Dakota Legislature is considering a change to the open records law to prohibit anonymous requests for government records. It's an unnecessary change that will severely weaken the open records law.

Opinion by Mr. Tory Jackson
January 19, 2023

Rep. Mike Lefor, R-Dickinson, the new House Majority Leader, introduced House Bill 1198, which would allow government agencies to refuse a public records request that doesn't include a name, address and contact information.

Subject to a few exceptions, all government records are public records, open and accessible by any person. Under current law, a government agency cannot demand a reason or motivation for a records request or the identity of the person making the request. Government records belong to the people, so the identity or motivation of the person seeking them is not relevant.

Lefor questions why anyone would request records anonymously and implies that doing so is somehow inappropriate. He also cites an example of "one university" (which, apparently, wishes to remain anonymous) that spent a good deal of time and effort responding to anonymous records requests.

All of that points to the actual purposes behind HB 1198. Either the government wants to use identity as a proxy for a person's motivations, or the government is hoping that outing those who seek public records will have a chilling effect and reduce the number of requests.

If the government can demand identifying information, it inevitably will assign motives to certain people, whether explicitly or implicitly. It won't be long before agencies deny or delay the release of certain records because they disagree with the person making the request or simply are annoyed by a person who makes repeated requests.

A person whose records request is denied or delayed can seek review by the attorney general or a district court. Government agencies might routinely refuse requests from disfavored groups or individuals to force them into that more burdensome review process, in the hopes of discouraging requests in the first place.

Even if state agencies do not use identifying information to stifle open records requests, those outside of state government are likely to do so. Requests for public records are themselves public records. If a member of the Sierra Club requests records pertaining to a certain oil company, that oil company could use the information to retaliate. If a known supporter of the Bastiat Caucus seeks records about an establishment Republican office holder, the party could take retaliatory action against the requester.

Prohibiting anonymity also would hamper the ability of government whistleblowers to uncover corruption or misconduct. Government employees are in a unique position to know exactly which documents to request, but they will not do so without anonymity, for fear of being fired or otherwise retaliated against. The existing whistleblower protection laws are fairly narrow and do not specifically protect a government employee from retaliation for making an open records request.

Even if a few people sometimes abuse the open records law by making frequent anonymous requests, that does not outweigh the importance of maintaining the public's right to government records. If requests sometimes create a lot of work for government agencies, well, so be it. Given the relative size of our state government, it's hard to believe that responding to records requests creates a substantial burden on government employees. If it does, the law already allows government agencies to deny requests that interfere with other essential functions.

The cornerstone of the open records law is that government records are public and can be requested by anyone for any reason. Prohibiting anonymous requests for public records leads down a slippery slope toward more government secrecy and less accountability.

Mr. Tory Jackson is an attorney and writer. His legal practice involves real estate and business matters, with a particular focus on historic rehabilitation projects. He holds degrees from Bismarck State College, the University of Virginia and Harvard Law School. He lives in Bismarck, where he was born and raised.

https://bismarcktribune.com/opinion/columnists/speaking-out-anonymous-records-requests-are-vital/article_a91732da-9742-11ed-8cc8-cb245e3e6cac.html

Thank you for this opportunity to make this submission in opposition to HB 1198.

HB 1198 should be rejected.

I have a Ph.D. in Rhetoric from Duquesne University (Pittsburgh, PA). Some people *might* consider me an “expert” in communication. However, with this educational background, I write as here a citizen of the United States and a resident of North Dakota. I do not speak for Dickinson State University or the North Dakota University System.

Although the parameters of open records laws and procedures should always be a matter of legitimate debate, North Dakota certainly should not move away from the possibility of anonymous open records requests. Folks from across the political spectrum should oppose HB 1198. For a range of possible circumstances, there are situations in which one or more anonymous requests could be practically necessary. Taking this option off the table is a major step away from the transparency, accountability, and scrutiny that we claim to prioritize in North Dakota. Those persons who make claims/allegations regarding malfeasance in delicate situations, including workplace situations, need adequate avenues of obtaining evidence to support such claims/allegations.

HB 1198 should be rejected.

Like with HB 1446 (the tenure bill), from my point of view, there is good reason to believe that this bill reflects efforts to avoid facing trouble and accountability within the North Dakota University System. This has been my own viewpoint from the start (when learning about HB 1198). Dustin Gawrylow has provided some big picture connections to consider that pertain to HB 1198. As part of my testimony submission, I include his recent article in its entirety.

“Is there a legislative agenda to silence whistleblowers at Dickinson State University?”

Dustin Gawrylow, January 21, 2023

North Dakota’s Watchdog Update (North Dakota Watchdog Network)

<https://watchingnd.substack.com/p/is-there-a-legislative-agenda-to>

Dr. Eric Grabowsky
Dickinson, North Dakota
(701) 306-5982

Is there a legislative agenda to silence whistleblowers at Dickinson State University?

Efforts to shut up whistleblowers will only make it harder to fix higher ed and attract/retain talent.



Dustin Gawrylow
Jan 21



Previously, I wrote about House Bill 1198 would “require an individual who requests an open record to provide the individual's name and contact information,” and how this is a huge departure from current law and policy. That bill is sponsored by Representative Mike Lefor, Representative Vicky Steiner, and Senator Dean Rummel - the entire District 37 delegation from Dickinson.

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North Dakota's Watchdog Update

Bill Would End Anonymous Open Record Requests

Last night, we released our first tracking list of the 2023 Legislative session. One bill posted today that is sure to raise some eyebrows among journalists and advocates of government transparency is House Bill 1198. This bill would “require an individual who requests an open record to provide the individual's name and contact information...”

[Read more](#)

12 days ago · Dustin Gawrylow

The Grand Forks Herald editorial board wrote an opinion agreeing that this is a bad bill:

When any person walks into a public office – some city hall or school headquarters, for instance – they are entitled to see any public record they wish. That person doesn't have to explain, give their name or why they have an interest in that public record.

They don't even have to be from that town.

That is not only the law, it's just common sense. State law even spells it out, saying a public entity or its representatives "may not ask for the motive or reason for requesting the records or for the identity of the person requesting records."

Not everybody sees it that way. A proposal in the North Dakota Legislature seeks to change the law so that a person requesting a public record must give their name and provide personal contact information." It's [House Bill 1198](#), introduced by Rep. Mike Lefor, R-Dickinson.

Our advice to lawmakers: Don't do this. Just wad it up and toss it.

But now comes the interesting part. Representative Mike Lefor, who is also the House majority leader, [has introduced House Bill 1446](#) which on the surface level sort of sounds like a good idea - requiring tenured professors to do more to attract students to colleges. But then when you dig deeper into the bill, you see some strange language, specifically Item 4c in Section 1 of the bill:

- c. Further the best interests of the institution including providing advice and shared governance to campus leaders, and exercising mature judgment to avoid inadvertently harming the institution, especially in avoiding the use of social media or third-party internet platforms to disparage campus personnel or the institution.

This sounds like an attempt to muzzle anyone who might have the inclination to act as a whistleblower. Given the history of scandals at Dickinson State University (which is my alma mater, by the way), and the fact that [the Diploma Mill scandal](#) was eventually uncovered due to DSU faculty acting as whistleblowers making reports to

members of the media and myself - this has a strong perception of being an effort to shut down dissent and silence those who do not want to go along with bad policies and behaviors.

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In fact, one such faculty member is not remaining silent and secret, [according to this Dickinson Press article](#):

The bill, introduced by House Majority Leader Representative Mike Lefor, (R-Dickinson), seeks to create a pilot program focused on campus models currently in practice at Bismarck State College and Dickinson State University, with the goal of improving the tenure process across the state system by refocusing on the responsibilities of tenured faculty members.

According to the bill, tenured faculty members would be evaluated based on their ability to generate tuition or grant revenue, adherence to current and future policies and procedures, and effectiveness in teaching and advising students. The bill prohibits tenured faculty members from engaging in activities that do not align with the institution's best interests.

However, the bill has received backlash from the academic community, with some calling it an “anti-whistleblower bill in disguise” and raising concerns over the potential infringement on academic freedom and the legal rights of tenured faculty.

The article goes on to quote Dr. Eric Grabowsky, a professor at the university, and the current advisor for the campus College Republicans group.

Dr. Eric Grabowsky, an Associate Professor of Communication at Dickinson State University, in speaking with The Dickinson Press said he believes that House Bill 1446 is a very real threat to the freedoms and responsibilities that come with tenured professorship and could be used by centers of higher learning to silence whistleblowers and remove inconvenient checks and balances on the governance of higher education.

“From my point of view as a citizen, I encourage the public not to fall for House Bill 1446. Debates about tenure and the scope of tenure are legitimate. Colleges and universities need to be good stewards of resources,” he said. “People in North Dakota should know that there

are sometimes circumstances in which tenured faculty are uniquely situated to highlight and discuss problems involving academic integrity, overall management, retaliatory behavior or faulty procurement. Over the years, tenured faculty have raised important concerns regarding these types of areas across the North Dakota University System, including at Dickinson State University.”

Why does Dr. Grabowsky take issue with this? Because he’s been a whistleblower on yet another scandal at DSU that has gotten little to no coverage (I was not aware of it until he brought it to me.)

In 2021, internal documents, email communication and other records obtained through open records raised concerns with Dickinson State University’s procurement of a Wyoming-based company for instructional design.

A subsequent series of complaints forwarded to the Eide Bailly Fraud Hotline, between Feb. 26 and May 4, 2021, prompted an investigation into the allegations of improper procurement by Dickinson State University by the North Dakota University System. Their conclusions found that DSU’s procurement “was in violation of at least seven laws...” and “the allegations regarding improper procurement for Instructional Design were supported by the investigation.”

Grabowsky goes on to say:

“With the privileges of tenure, a person who is tenured is involved in the proper stewardship of public resources. The freedom that goes with tenure extends into proactive communication about the quality of the management and direction of a college or university, which can necessarily involve criticism of university administrators. Persons from across the political spectrum should oppose House Bill 1446,” Grabowsky said. “Workforce development and resource allocation are certainly important matters. Scrutinize tenure, for sure. Discuss and debate policies, guided by sound principles. However, we should not let such legitimate areas of focus provide legislative cover for a quick route out the door for tenured faculty who might inconveniently help to provide important checks and balances on the overall governance of higher education.”

Grabowsky added, “Through my conversations about House Bill 1446, I can say that some people are getting the sense that this bill is an anti-whistleblower bill in disguise.”

Over the last two years, several cases of academic freedom violations, including the firing of two faculty members at Collin College in McKinney, TX, for speaking out against their institution's COVID-19 reopening plans have shined new light on how university's handle dissenting voices coming from within. At the University of Mississippi, a well-respected history professor was dismissed for speaking out against powerful donors with “racist beliefs.” Another case at Pacific University in Forest Grove, OR, involved a tenured professor, Richard J. Paxton, who was suspended without proper procedure.

These incidents have been closely monitored by organizations such as the American Association of University Professors, which works to protect the academic freedom rights of educators.

“Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition,” a statement from the AAUP reads. “Tenure is a means to certain ends; specifically freedom of teaching and research and of extramural activities, and a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.”

According to the AAUP's Statement of Principles on Academic Freedom and Tenure, “College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations.”

House Bill 1446, according to Lefor, will move to the next phase of the legislative process in a hearing in three weeks at a date and time yet to be determined.

There is clearly yet another problem at DSU, and instead of remedying those problems, legislators from that district are bringing forth legislation that was silence

those who would help the public and taxpayers know what is going on.

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Republicans talk about “academic freedom” a lot.

In 2017, **State Representative Rick Becker introduced an “academic freedom” bill, which was House Bill 1329 in the 2017 session. It passed the House by a vote of 65-25, but only got 7 yes votes in the Senate.**

Perhaps if we want to retain good talent and staff, we should not make laws telling them to shut their mouths when there are problems. We should be encouraging public employees to speak up and then address the problems.

(Note: in the name of transparency, I would mention I have personally submitted my name for consideration for the openings on the State Board of Higher Education.)

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Comments



Write a comment...

January 26, 2023

Dear Chairman and Members of the Government and Veteran Affairs Committee:

I would like to make a correction regarding my written testimony submitted on January 24, 2023. In the last paragraph, it states "I oppose House Bill 1196 and urge the committee to consider the negative effects on government transparency by discouraging citizens from making opens records requests".

It should read "I oppose House Bill 1198 and urge the committee to consider the negative effects on government transparency by discouraging citizens from making opens records requests".

Thank you,

A handwritten signature in blue ink, appearing to read "M Hayen", is positioned below the "Thank you," text.

Michael Hayen

January 26, 2023

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| House Government and Veterans Affairs Committee HB 1198 |
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CHAIRMAN SCHAUER AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing here today on behalf of the North Dakota Newspaper and Broadcasters Associations. We are opposed to this bill and respectfully request a Do Not Pass.

North Dakota has a long and proud history of open meetings and records. There were open meeting and record provisions in our territorial pre-statehood laws. The current law, and its many, many amendments stems from the Revised Code of 1943. We are one of only a handful of states that have open meeting and records provisions in our State Constitution.

And in all of those 130+ plus years never has the name and address of a person requesting information been required – until HB 1198.

There are many reasons why a person may not want to give his or her name when requesting records. A newspaper, radio or television station may be doing an investigation of a public entity or official, and the name will be a tip off. There may be a whistle blower. The state has already enacted laws to protect them from retaliation. There may be a potential candidate for public office who is trying to gather information before considering a run. They don't want their intentions known since it may not pan out. There may be a person researching a certain field in order to publish a book and doesn't want others to know yet that he or she is planning this publication. I could go on and on.

There is only one reason this bill is here, and that is to enable a public entity to retaliate against the a requestor or otherwise make his or her life difficult. That's it. Plain and simple.

You have heard that some institutions have gotten multiple requests that have disrupted their normal operations. Our law already takes care of that situation in §44-034-18(13) set out below. It's also on page 5, lines 14-19, of the bill.

If repeated requests prove too disruptive, the agency can refuse them. The requestor can then appeal this refusal to the Attorney General.

This bill is not needed and will put into law a stumbling block to citizen access to government information – a proud North Dakota tradition since territorial days.

Therefore, we respectfully request a Do Not Pass vote.

Thank you for your time and consideration. I would be happy to answer any questions if I can.

-0-

Subsection 13 of Section 44-04-18, NDCC:

13. If repeated requests for records disrupt other essential functions of the public entity, the public entity may refuse to permit inspection of the records, or provide copies of the records. A public entity refusing to provide access or copies of public records under this section shall state in writing the reasons supporting the refusal and provide the reasoning to the requester. The requester may seek an attorney general's opinion under section 44-04-21.1, on whether the public entity's decision was proper.

Representative Mike Lefor – Testimony

House Bill 1198

Good afternoon, chair Schauer, vice chair Satrom and members of the Government and Veterans Affairs committee, for the record my name is Mike Lefor and I represent District 37 – Dickinson in the House. I bring HB 1198 to you for your consideration.

I am bringing this bill forward on behalf of constituents. They include a few public entities in which I have had discussions. A university, county, and a state entity. When we look at potential laws, we must keep in mind the rights of the public, first and foremost and the rights of governmental agencies to provide great public service.

In the recent past, there have been numerous anonymous requests made to public entities for public records which has caused a strain on some of our public entities. The public sector is struggling for workforce just as the private sector is in our state. The amount of time these entities are putting into this access is growing.

The director of information technology at Dickinson State University estimates that his department has spent about 105 hours on anonymous requests from 2020 to 2022. The IT department has highly compensated individuals which results in a considerable expense to taxpayers, who pay their salaries. Additionally, this takes away from time they could better be putting to good use in growing the university.

After the IT department accumulates the records, it is their duty to determine whether any portion of the records need to be redacted to remain in compliance with various laws. According to the president of the university, “In the course of the past two years, these anonymous requests has required us to peruse thousands, if not tens of thousands of documents for most of this time DSU employees have done this work. Recently, we contracted with an outside firm who performs the redaction service, because employee time away from their regular duties was hindering DSU operations.”

The fee provided by statute does not cover the cost in all cases. I would also note that some may oppose this bill because they are under the mistaken impression the requester must give the reason for the request, they don't and shouldn't have to do so.

If you would go to page 1 lines 18-23, it states as follows: “A valid request for a copy of a specific public record must be made by an identified individual who provides the individual's name, address and contact information unless the individual is a victim of a crime related to the crime including an individual who self-identifies as a victim. A request made by an individual who does not supply the individual's name, address, and contact information is invalid and must be disregarded by the agency to whom the request was directed.”

There is a national group called the National Freedom of Information Coalition which is in 39 states and the District of Columbia, they have a standard form for requesting information which

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Title.

Prepared by the Legislative Council staff for
Representative Lefor
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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1198

Page 1, line 19, after "information" insert ", unless the individual is a victim of a crime seeking information contained in a criminal record related to the crime, including an individual who self-identifies as a victim"

Renumber accordingly