

2025 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1306

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1306
2/6/2025

Relating to fees assessed for open records requests.
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9:13 a.m. Chairman Schauer opened the hearing.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Members absent: Representative Christy

Discussion Topics:

- Proposed amendments relating to the time of production

9:13 a.m. Representative Kasper, District 46, introduced the bill.

9:19 a.m. Kory Peterson, North Dakota League of Cities, testified in opposition and submitted testimony, #35652.

9:24 a.m. Danelle Preskey, ND Association of Counties, testified in opposition.

9:29 a.m. Deborah Moeller, Cass County Recorder, testified in opposition, #35401.

9:39 a.m. Aimee Copas, Executive Director of the NDCEL, testified in opposition and submitted testimony, #35765.

9:41 a.m. Katie Paulson, McKenzie County, Recorder/Tax Director, testified in opposition and submitted testimony, #35644.

Additional written testimony:

#33965, #33988, #34480, #34534, #34791, #34819, #35318, #35363, #35403, #35423, #35449, #35477, #35592, #35608, #35610, #35663, #35719, #35787

9:46 a.m. Chairman Schauer closed the hearing.

Jackson Toman, Committee Clerk



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TESTIMONY ON HOUSE BILL NO. 1306

House Committee of Government and Veterans Affairs

Chairperson Schauer and members of the Committee:

Thank you for the opportunity to discuss the challenges local governments face in fulfilling public records requests, particularly considering the proposed expansion of free processing hours under NDCC 44-04-18(2).

As a local government, we are committed to transparency and ensuring the public has access to government records. However, responding to Open Records Requests in compliance with NDCC 44-04-18(2)—especially broad and complex ones—requires significant time, staff effort, and resources. Currently, requesters receive one hour of free processing time, with additional time billed at \$25 per hour. The proposal to expand this to **40 free hours per requestor once per year** would have significant financial and operational impacts on our agency.

1. Increased Financial and Operational Strain

Under the current system, agencies can recover some costs when processing large requests. However, increasing the free processing time to 40 hours would shift the burden entirely onto taxpayers and local government budgets. To illustrate:

- **40 hours per requestor per year at \$25 per hour equals \$1,000 in unrecoverable costs per requestor.**
- If even 50 requestors take advantage of this, our agency would absorb **\$50,000 in lost revenue**, diverting funds from essential services.
- Many open records requests require specialized searches across multiple systems, legal review, and redactions, which must be conducted by experienced staff. The current **\$25 per hour fee does not fully cover the costs** of fulfilling these requests, as the actual cost of staff time—including benefits and overhead—is often significantly higher.

2. Encouraging Broad and Abandoned Requests

One of the most significant issues we face is **overly broad requests that yield thousands of records, only for the requestor to abandon them after realizing the volume of data involved**. This creates a situation where:

- Staff spend dozens of hours collecting, reviewing, and redacting records, only for the requestor to drop the inquiry.
- There is no accountability for requestors who make large demands on government resources with no intention of following through.



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- The increased free processing hours could **encourage fishing expeditions**—sweeping, unfocused requests that require substantial government effort but provide little real value to the public.

Conclusion

Expanding the free open records processing time from 1 hour to 40 hours per requestor per year would place a significant burden on local government operations, resulting in **increased taxpayer costs, staff shortages, and an influx of broad, abandoned requests**. While transparency is critical, we must also ensure that open records laws serve the public without overextending limited government resources. We urge careful consideration of the financial and operational impacts before implementing this expansion.

Sincerely-

Bob Henderson
Director of Technology
Cass County
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hendersonb@casscountynd.gov

Government & Veteran's Affairs Committee

Date February 3, 2025

By: Cindy Ornsbey- Slope County's Clerk and Recorder

RE: HB 1306: relating to
Open Records requests

Good Morning Chairman Austen Schauer and Committee Members.

For the record I am Cindy Ornsbey, Slope County's Clerk and Recorder. I am writing to you today in opposition to HB 1306 and would appreciate a DO NOT PASS recommendation.

This bill allows for a 40-hour search time free of charge. It is supposed to be an annual number of hours but as Recorders we cannot ask who a person works for, nor can we ask their name. This would allow a company to use several employees and get a multitude of 40 hours of search time at no cost. As a small county with no deputy at the time, 40 hours of free searching would seriously hinder my job.

Also, Recorders in 50 counties use NDRIN (North Dakota Recorders Information Network), which is a web- based search site that people can use with a daily pass or an annual membership. My county's records go from 1996 all the way to present, and other counties go back even further. People or companies can search for as long as they would like for little to no charge in the comfort of their offices or even their recliners.

For these reasons I ask for a DO NOT PASS recommendation on bill number HB1306.

Thank you again for your time and consideration.

Cindy A. Ornsbey
Slope County Clerk and Recorder
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701-879-6275
cornsbey@nd.gov

**We are providing this information under the
open record laws and do not guarantee its
sufficiency. This office takes no responsibility
for accuracy, errors or omissions of documents.**

North Dakota State's Attorneys' Association

February 4, 2025

To: House Government & Veterans Affairs
Hon. Chairman Schauer
Hon. Vice-Chair Satrom
Members of the Committee

RE: House Bill No. 1306

Chairman Schauer, Vice-Chair Satrom, and Members of the Government & Veterans Affairs Committee:

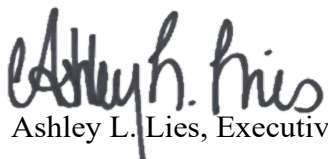
The North Dakota State's Attorneys' Association (NDSAA) is submitting this letter requesting a **DO NOT PASS** to House Bill 1306 to bring up several concerns with the Bill as currently presented.

First, this Bill does not have a fiscal note attached to it, but offers up to forty hours of free searching for open records to North Dakota citizens. Public offices are already understaffed and overworked. Providing this work without a fiscal note to hire someone to handle the number of requests that will pour in isn't feasible. Additionally, what is to stop a husband and wife from making separate requests, thus obtaining up to 80 hours of free research, or worse a large company with a dozen employees each requesting up to 480 hours?

Next, a core concept of open records requests is that the entity cannot even ask the requester's name. This Bill states that this search is free for North Dakota citizens. How is an entity supposed to determine who is a resident without violating the provisions of the open records laws? If we can't ask if someone is a resident, then is there just a presumption that every requester is a North Dakota citizen?

If anything, the fees for open records requests need to be increased to cover actual costs incurred by public entities in finding and providing these records. Giving away free searches is not in the best interests of our State.

On behalf of the North Dakota State's Attorneys:



Ashley L. Lies, Executive Director

House Government and Veteran Affairs

February 6, 2025

By: Carol Fey, McIntosh County Recorder and Clerk of Court

Re: HB 1306 – Relating to Open Records and Fees

Chairman Schauer and Committee Members

As a county recorder and clerk of court we have numerous records in both offices. This bill would make our work lives miserable. I cannot imagine any office in the state thinking that this is a bill that is necessary or even possible of abiding by.

Who has forty hours to give to even one citizen of the state, now all of them? Then we are to keep track of that individual request and track the number of hours that we spent on each individual search throughout the year, not possible.

We have open record policies in place that we follow in both of my offices that are working. Please give HB 1306 a do not pass.

Thank you for your time and consideration.

Testimony Prepared for the
House Government and Veterans Affairs Committee
February 6, 2025
By: Missy Hanson, Burleigh County Recorder

RE: HB1306 Relating to the
fees assessed for open records requests

My name is Missy Hanson, and I am the Burleigh County Recorder. Thank you for the opportunity to submit written testimony in opposition of HB1306. This bill would amend and reenact subsection 2 of N.D.C.C. 44-04-18 to allow one open records request per year, per North Dakota (ND) citizen, free of charge for up to 40 hours. The current fee for a search is \$25/hr. after the first hour.

I am not in favor of HB1306 for the following reasons:

In Burleigh County in the last ten years, we have recorded an average of 17,350 documents a year. In my office we are also responsible for issuing Marriage Licenses as well as being acceptance agents for Passport applications.

North Dakota has 50 of their 53 counties that are members of the North Dakota Recorders Information Network (NDRIN). NDRIN allows people to search the records of those 50 counties 24/7 for a very minimal fee. NDRIN has two different options. There is what they call a "Day Pass" which allows the constituent 24 hours to search the records of those 50 counties and allows copies to be made for the normal copy fee (\$1 per page), or they have a "Monthly Subscription" as well. The Day Pass is a fee of \$7 and the Monthly Subscription is \$30. To my understanding the other three counties that are not members of NDRIN have their own search tools for their records as well.

With being the second largest county in North Dakota, I only have myself and three staff members to do all the services that the Burleigh County Recorder's Office provides. If we were to add up to 40 hours of searching per ND citizen, this would create a large hardship to my office. I feel that we would need to hire additional staff on the dime of the taxpayers of my county and know that this would not be well received. We are ultimately trying to cut taxes, not raise them. There are many County Recorders that hold other offices as well, and many County Recorder's Offices that have one or two employees in the office. There would simply just not be enough staff to fulfill their daily duties as well as be required to do 40 hours of searching on top of that. I feel that this could potentially cause our Recorders to fall behind with their duties as Recorder.

I am also concerned that if in our searching, we missed a record that may be of importance to the requester, who would be liable as we are not insured like a title company, land men or attorneys. We have our records available on NDRIN (24/7), and during office hours for people to research, so we are not withholding any records from them, but by doing this type of searching, we would be doing their work for them, and not doing the work that we were hired to do by the county we work for.

For these reasons I ask that you to not pass HB1306.

Thank you again for your time and consideration.

Written Testimony for the
House Government and Veterans Affairs
February 6, 2025
Sally Whittingham, Dunn County Auditor/Treasurer

RE: OPPOSITION for HB 1306

Good morning, Chairman Schauer, and members of the House Government and Veterans Affairs Committee. My name is Sally Whittingham and I serve as the Auditor/Treasurer for Dunn County. I stand in opposition of HB 1306.

This bill changes the current Open Records Request policy from one free hour of work per request to 40 free hours of work for one request each year to a citizen of the state. This legislation, in its current form, could become very burdensome on county officials and would result in the duties of the office being put aside to deal with extensive open records request. I firmly believe any person should have the ability to request any record they wish, but ask the committee to limit the scope as 40 hours of free time, in my opinion, is excessive.

Currently after the first free hour, the political subdivision is able to charge \$25/hour needed to obtain and redact any documents. This cost no longer covers the wages and fringe benefits for staff members. Should the committee wish to increase the amount of free hours for a given request, I respectfully request that the amount per hour is also raised, to allow political subdivisions the ability to recoup some of the costs associated with gathering and providing the requested information.

Additionally, there is no guidance in the bill as to what would be needed to prove the requestor is a "citizen of the state." Does this follow election laws for voter identification requirements, proof of citizenship simply by owning property in the state, or simply just a statement from the requestor that they are a citizen.

Due to the reasons stated above, I urge a **DO NOT PASS** recommendation on HB 1306 as currently written.

House Government and Veterans Affairs
Date 02/06/2025
Nancy Seefeldt – Morton County Recorder

RE: HB 1306 Relating to fees assessed for open
records requests

Chairman Schauer and Committee:

My name is Nancy Seefeldt, and I am the Recorder in Morton County. I am providing testimony as I am opposed to HB 1306 and will explain how this will potentially affect my office.

First of all, I will start by explaining our office duties. As Recorders we are to record documents that meet our recording requirements per NDCC. Then we are responsible for the upkeep of those records so that they are available for searching. We like to compare ourselves to a librarian, we accept the records and make sure they are available for searching by the public. We do not do title searches as we are not trained to do so and we aren't trained to decipher the legality/verbiage in a document. That would be the duty of an abstractor/landman. If somebody would like a copy of a document we can print or email them a copy for a fee.

On Page 2, line F of HB 1306 our current search fees are stated. Currently we will do a record search for free if the records take less than one hour to find. If the search takes more than an hour we can charge a \$25 fee per hour, excluding the first hour. I have worked in Morton County for just short of 20 years and I have only charged this fee one time. This is because our records are easily accessed.

This bill has an amendment that we shall furnish one request per requester per year for free as long as it takes 40 hours or less and they are a citizen of ND. I have multiple Concerns with this amendment.

It is stated that an entity shall furnish one request per requester per year free of charge for locating records and excising confidential or closed material from the records.

How do we keep track of these requests? Is this one request per county or per office per county? We could have one business have 10 different employees request a search. Totaling 400 hours.

A lot of our offices consist of 2-3 employees. When you look at how many constituents and businesses we serve, this could get more than overwhelming and impossible for our offices. Some of the businesses we work with have many employees and each of them could request this of us each year. My office already has busy days as land records are not the only duty we have, we also take Passport Applications, Marriage Licenses and file Burial Permits. I also officiate marriages in the court house. If this bill passes there is the possibility that recorder's offices would have to hire extra staff in order to keep up with the work load this bill would allow.

50 of the 53 counties in ND have a website called NDRIN, this provides easy and very affordable options for record searches to be done from an office or home. It costs \$30 for a month to access info for 50 counties records and \$7 for a 24 hour period to access 50 counties records. The remaining 3 ND Counties have similar tools available also.

If HB1306 is passed I believe this would just be an excuse for people to pass their work onto us to free up their time. As we all know there are 52 weeks in a year and each free request could be up to 40 hours. My county would definitely get enough requests to take up one of our employees work load for the entire year. Therefore, shorting our office an employee for an entire year. If we have an employee sick, injured or on leave that would put even more strain on our office.

Thank you for your time and consideration.

I would appreciate a DO NOT PASS recommendation on HB 1306.

House Government & Veteran Affairs Committee

February 6, 2025

By: Carrie K. Krause, Wells County Recorder

RE: HB 1306 Relating to fees
assessed for open records
requests

Chairman Schauer and Committee Members.

I am Carrie Krause, Wells County Recorder. I am writing to you in opposition of HB 1306.

Currently we get open record requests quite regularly and we are always happy to help. We explain to them that we can search for 1 hour for free and after that it is \$25 an hour. When we explain this most of the time they can narrow the search down to exactly what they are looking for. 9 times out of 10 we can complete that open records search request in an hour, if not we let them know what we have found and explain we will now have to charge. They either tell us to go forward and keep searching for the fee or send them what records we have. Very rarely do we search more than the first hour.

If they want to search on their own they are more than welcome to come into the office to search. We show them how to use our books and how to search on the public computer. We also assist them if they have questions.

HB 1306 changes the amount of time for a search where an open records request is made by a North Dakota resident one time a year for free. This would change it to up to 40 hours of free searching for that North Dakota resident one time a year. How are we to know they are a North Dakota resident or that this would be their first open records request for the year as the part of NDCC **44-04-18.2** states

“A public entity may require written clarification of the request to determine what records are being requested, but may not ask for the motive or reason for requesting the records or for the identity of the person requesting public records.”

Many rural county offices only have 1 to 2 staff members, some are dual offices and I know of a couple of the counties that only have 1 staff member and hold a dual office. Having to do 40-hour searches will be detrimental to those offices that don't have the staff available to handle these kinds of searches and keep up with daily work. Larger counties with their work load and a large customer base will also have issues with not having enough staff.

For these reasons I ask for a **DO NOT PASS** recommendation on HB 1306

Thank you again for your time and consideration.

Testimony Prepared for the
House Government and Veterans Affairs Committee
February 6, 2025
By: Deborah A. Moeller, Cass County Recorder

RE: HB1306 Relating to fees
assessed for open records
requests

My name is Deb Moeller and I am the Cass County Recorder. Chairman Schauer and committee members, thank you for the opportunity to submit oral testimony opposing HB 1306 which would amend and reenact subsection 2 of N.D.C.C. 44-04-18 to allow one open records request per year, per ND citizen, free of charge up to 40 hours.

While I believe public access to government records is important, I oppose HB 1306 for the following reasons:

1. In addition to the one hour of free research currently available to the public, county recorder offices have already invested in self-help platforms to allow public access to county real estate records as follows:
 - a. The Cass County Recorder's Office and the 52 other North Dakota county recorders provide free public access to the real estate records filed and recorded in our offices. In Cass County, we offer public computer terminals and/or direct access to our books and microfilm.
 - b. Most counties also export all recorded documents to the North Dakota Recorders Information Network (NDRIN), or a similar platform, to allow for 24/7 online searching. The NDRIN search option is provided at a reasonable fee of \$7 for a 24-hour day pass or \$30 for a monthly subscription. This online resource also contains information on how to search our records.
 - c. County recorders are available during regular business hours to assist customers with their questions related to record searches in the recorder's office or online. We often provide customers with up to one free hour of research as currently provided by N.D.C.C. If more research is required, a customer will usually choose to complete the additional research themselves or decide they do not need additional records.
2. If passed, the proposed amendment to N.D.C.C. 44-04-18 would require *each* county office, according to the definition of "public entity", to provide up to 40 hours of free research and other services to produce the requested records. Our concerns are:
 - a. A North Dakota citizen could potentially receive more than 40 free hours related to open records request if records were requested from multiple county departments.

- b. Rather than use the self-help platforms in which county offices have already invested, requesters could now expect staff to provide the extended free research services. Using the current \$25 per hour rate as an example, this could cost up to \$1,000 per request. Further, the current \$25 per hour fee does not fully cover the actual staff time of fulfilling an open record request.
 - c. Additional staff would need to be hired to accommodate the expanded free services in a timely manner.
 - d. The county taxpayer would be further burdened with the increased costs associated with individual requests, many of which are associated with for-profit businesses such as realtors, appraisers, law firms, banks, and similar entities.
 - e. Additional administrative time would be needed to determine if a requester is a North Dakota citizen and whether the current request is the first in a calendar year. Complicating this task is the fact that under subsection 2.b. of N.D.C.C. 44-04-18, we may not ask the identity of the requester.
3. N.D.C.C. 44-04-18 is adequate as currently written in that it offers a free hour for a basic open record request and, while not covering the cost of the request, a reasonable fee of \$25 per hour is applied to more extensive requests to ensure that the open records laws serve the public without further burdening the taxpayer and limited government resources.

For these reasons I ask for a DO NOT PASS recommendation on HB 1306.

Thank you for your time and consideration.

House Government and Veterans Affairs

February 6, 2025

By: Shelly Schwab, Ransom County Recorder

RE: HB1306 – Relating to Open Records and Fees

Chairman Schauer and Committee Members

For the record, I am Shelly Schwab, Ransom County Recorder. I am writing today in opposition of HB1306 and would appreciate a DO NOT PASS recommendation.

I oppose HB1306 for the following reasons:

- My County is small and myself and my Deputy work in the office. Our main duty is Recording, and we recently added applicant agents for passports, applications for marriage licenses and perform marriage ceremonies to our duties. We continue to back index our old documents to get that information onto the NDRIN site which makes our documents available to the public for a nominal fee if they chose to purchase. My office will be hard pressed to give 40 hours, free of charge, to do research for anyone. I have no problem doing the first hour free of charge and \$25 for each additional hour.
- With the NDRIN site in place for the purpose of public searching, it's counterproductive to now send it back to our individual offices to do research for these entities who very well will abuse this resource available to them. We know it will be abused because there are entities out there now that try to get Recorders to do their job. Some of the entities' job is to do this research for which they are getting paid with this bill Recorder's won't get paid but will be taking precious time out of our work day to do someone else's research before we get our work done that we are being paid to do. County offices are short staffed and this will only add more strain to the daily work load.

For these reasons I ask for a DO NOT PASS recommendation on HB1306.

Thank you for your time and consideration.



Date: February 5, 2025

To: House Committee of Government and Veterans Affairs

From: Sarah VanBerkum – Records Administrator Bismarck Police Department

RE: Testimony on House Bill 1306

Chairman Schauer, Vice-Chairman Satrom and Members of the Government & Veterans Affairs Committee:

I am writing to express my opposition to House Bill 1306 to amend and reenact subsection 2 of section 44-04-18 of the North Dakota Century Code, relating to fees assessed for open records requests.

First, per North Dakota Open Records Law, a requester is not required to identify themselves when making an open records request. How is an agency to document who has received their free report/redaction of said report for the year if the requester chooses not to identify themselves? Also, if the requester remains anonymous, how are we to know if they are a citizen of the state without violating North Dakota Open Records Law?

Second, public agencies throughout the state process hundreds and thousands of records requests each year for citizens of the state. The vast majority do not have dedicated personnel for open records rather they produce records as requested alongside their other assigned duties. We as an agency have no issue with transparency or releasing open records requested. As the current open records law exists with only the first hour of redaction and location free, it serves to keep most of the punitive, frivolous and overly burdensome requests to a minimum. We still get requests for wide ranging overly broad open records requests that the requestor ultimately does not pay for or follow up on but we spend significant time trying to locate records to get estimates of their cost. By instituting the first 40 hours be free it will be overly burdensome on the agencies and increase the punitive and frivolous requests. For this agency the vast majority of open records requests can be accomplished in the first hour of location and most redactions can be accomplished within the first hour.

What happens when a requester calls in and wants all reports, body cam and dash cam footage for themselves? With this proposal, we would be required to give the requester up to 40 hours of location and redaction time for free. Currently \$25 does not even fully cover the costs of fulfilling these requests. Increasing to 40 hours free would only increase the burden on the agency and the taxpayer. With all other duties and responsibilities employees currently have, this would place a significant burden on staff causing burn out and staff shortages. This change will likely cause the need for additional FTE staff.

Would this proposal be for people requesting reports or for entities requesting reports? If one person from a large entity (ie. Law Firms, Property Management Companies, etc.) requests 40 hours' worth of

Dave Draovitch, Chief of Police

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location and redaction time of records and another person from the same entity requests 40 hours' worth of location and redaction time of records, how would this work with the proposal?

I see this as a way for requesters to send already overworked, public employees on fishing expeditions for large demand requests. What is to say that a public employee redacts 40 hours' worth of documents for free for a requester who ultimately doesn't pick them up? Would that requester have met their free 40 hours per year, or would they have the ability to request an entirely different request for 40 free hours of redaction since they never received their original request? There would be no accountability for requesters that don't follow through with their bulk requests.

Finally, it would be nearly impossible to keep track of something of this magnitude each year. Between the large amount of requests and the fact that a requester is not required to identify themselves, tracking this would be impossible.

In conclusion, I do not see this proposal being of any benefit to State or Local agencies who process open records requests on a daily basis. Therefore, we request that this house bill Do Not Pass.

Thank You,



Sarah VanBerkum
Records Administrator
Bismarck Police Department

Dave Draovitch, Chief of Police

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**GRAND FORKS COUNTY SHERIFF'S OFFICE**

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SHERIFF ANDY SCHNEIDER



To: House Government & Veterans Affairs
From: Captain Joel Lloyd, Grand Forks County Sheriff's Office
Date: February 5, 2025
Re: Opposition to HB1306

Honorable Chairman Schauer
Honorable Vice Chair Satrom
Members of the Committee

I am submitting this letter today on behalf of the Grand Forks County Sheriff's Office, as we are requesting a DO NOT PASS recommendation on HB1306. The Sheriff's Office is specifically opposed to the language being proposed to section (g) of the bill which mandates that our office shall furnish one records request per requester, per year and free of charge, if the cost of the request does not exceed forty hours and the requester is a citizen of the state.

There are a few reasons why we oppose HB1306. The first reason for our opposition is that our office is not able to verify if the person requesting records is a citizen of the state or not, as section 2(b) of the same bill prohibits us from asking for the identity of the person making the request, and our office frequently receives requests from individuals who submit them anonymously.

Another reason for our opposition to this bill is the mandate that our office provide the records free of charge for up to 40 hours of our processing time. Many of the records requests we receive are for the videos from body camera's worn by sheriff's deputies. Nearly all these videos contain a substantial amount of exempt or confidential information that needs to be redacted prior to the release, resulting in a significant amount of time needed to do the video redactions. In our office, these video redactions are done by a single person who is specifically trained to do them. This person currently has an hourly pay rate of \$34.08, and our office is already operating at a loss on each hour spent conducting video redactions at the current fee of \$25/hr. HB1306 would mandate that this person now conduct a 40 hour records request, which equates to their entire work week, free of charge to the requestor at the expense of the tax payers of Grand Forks County. If HB1306 were to pass, it would likely lead to a substantial increase in the perception of "free" records requests, which would certainly lead to our agency needing to hire and train additional personnel to fulfill them, again at the expense of the taxpayers of this county.

Further, HB1306 allows a requestor to make one request per year free of charge for up to 40 hours of our time. An individual would very easily be able to make their one "free" request, and then simply ask their friends to make additional "free" requests on their behalf. Another unintended consequence of HB1306 would be the potential for abuse of the open records laws it would cause. It's no secret there are some members of society who don't like law enforcement – and HB1306 would certainly make it easy for them to tie up and waste law enforcement resources with repeated, frivolous, and "free" records requests all while potentially remaining anonymous and do so without consequence.

We understand that this bill may have been well intentioned in increasing government transparency and accountability, something our agency has always honored to the best of our ability, but the cost of that should fall on the requestor of the record at the more than reasonable current cost of \$25/hr. The cost should not be at the expense of the general taxpayers of Grand Forks County, or any other county of this state.

Again, we would ask for a DO NOT PASS recommendation, thank you.

Joel Lloyd

Captain Joel Lloyd
Grand Forks County Sheriff's Office

House Government and Veterans Affairs Committee
February 6, 2025
By: Laurie Good, LaMoure County Recorder

RE: OPPOSITION for HB 1306

Good morning, Chairman Schauer and Committee Members.

Thank you for allowing me to provide written testimony in opposition for HB 1306. My name is Laurie Good, LaMoure County Recorder.

Coming from a smaller county office the change in this code being brought forth is alarming. As it currently stands the rate allowed now is out of line with what truly is affordable for counties. The code says we must search for the first hour for free and then have the ability to charge \$25.00 per hour after. Customers who leave for the winter and in their spare time are working on genealogy searches will be more than happy to pay for a few days of work and not have to drive or fly to ND to search on their own. They are a citizen of the state but what kind of proof do they have to give? How can an entity recoup the lost hours in those potential searches.

This bill wants to change the existing 1 hour to 40 hours FREE per requestor, so a family of 10 gets 400 hours free? There is just no possible way our office could handle this type of request.

I do agree our records are open and should be made available for searching but this change as written will cripple most political subdivision offices in the State of North Dakota. I know it will my office for sure.

For these reasons I urge you to please give HB 1306 a DO NOT PASS recommendation. I would greatly appreciate your support.

Thank you for your time and consideration on this bill.

Sincerely,

Laurie Good
LaMoure County Recorder
701-883-6070
lgood@nd.gov

HOUSE GOVERNMENT AND VETERANS AFFAIRS
FEBRUARY 6, 2024

TESTIMONY OF ANNIQUE LOCKARD
OFFICE OF ATTORNEY GENERAL
HOUSE BILL NO. 1306

Chairman Schauer, members of the Committee:

I am Annique Lockard, Assistant Attorney General, and I submit this written testimony on behalf of the Attorney General in my capacity as the current open records and open meetings portfolio holder.

Article 11, Section 6, of the North Dakota Constitution provides that “**all records** of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, **shall be public records, open and accessible** for inspection during reasonable office hours.”

Attachment 1 to this testimony is the “Open Records Guide” that is available on the Attorney General’s website. It provides a summary of open records law, including how the public can request records and how public entities should respond to requests under the law.

This bill amends subsection 2 of Section 44-04-18 of the North Dakota Century Code in two ways. First, it appears to arbitrarily add subdivisions that potentially confuse decades of established law and Attorney General opinion precedent. Second, it grossly expands the duty of public entities to respond to record requests.

Subdivisions

The ability of the public to access public records has existed since the North Dakota Constitution was adopted. Specific to this bill, Section 44-04-18 was created by the Legislative Assembly in 1957. It simply stated what we now view as 44-04-18(1). The Legislative Assembly amended Section 44-04-18 fourteen times from 1977-2017. Section 44-04-18 has substantially existed in the subsection paragraph form it is currently in since 1997. (See S.L. 1997, ch. 381, Sec. 2)

While the addition of subdivisions to subsection 2 of 44-04-18.4 in this bill may appear helpful to drafters, legislators, or the general public, 68 years is a long time for a section of state law. According to a quick Westlaw search, Section 44-04-18 is cited in 298 Attorney General opinions. The topics of those opinions, and subsections that were reviewed, would vary widely but for at least 28 years the Attorney General's office has opined on 44-04-18 in the section format that is in current law. Arbitrarily adding subdivisions to subsection 2 of 44-04-18 risks causing confusion with issued opinions. Opinions prior to this bill becoming an effective law would refer to 44-04-18(2) but after August 1, 2025, opinions regarding alleged open record violations regarding record requests would start referring to (2)(a)-(i) with no noticeable change in the language. Legal research searches may miss relevant opinions with this change to subdivisions. Precedent is important and the needles that move precedent should be used intentionally. This bill lacks that intentionality. Our position is that the structure of Subdivision 2 of Subsection 44-

04-18 has been functioning fine since 1997, through many amendments. This change is unnecessary and will lead to confusion.

Requests

Section 44-04-18 of the North Dakota Century Code provides reasonable guardrails regarding the public's access to public records. A few provisions of Section 44-04-18 are relevant to this bill. First, Section 44-04-18 allows public entities the option to charge limited fees for responding to record requests. A public entity is only permitted the option to charge for: paper copies (up to \$0.25 per page), a reasonable fee for copies larger than 8.5x14 inches, actual postage costs, up to \$25 per hour, after the first hour, to locate records, and up to \$25 per hour, after the first hour, to redact records. Further, "[i]f a public entity receives five or more requests from the same requester within seven days, the public entity may treat the requests as one request in computing the time it takes to locate and excise the records." (N.D.C.C. 44-04-18(2)) Electronic copies of records must be provided without copy charges, with an exception for "actual cost incurred for the extensive use of information technology resources incurred by the public entity." (N.D.C.C. 44-04-18(3)) Attachment 2 to this testimony is a "Template for Public Entity Use When Responding to Open Records Request" available on the Attorney General's website which summarizes the most frequently used allowable costs.

The language on page 2, line 12, new subdivision g, of this bill appears to supersede fee requirements in the same section. We fear this will lead to confusion if this bill becomes an effective law. For example, does one requester who is a citizen

of the state that requests meeting minutes from their city commission automatically use up their one request under this bill if they are directed to the website and the public entity's time was less than 5 minutes to respond? And their next request could be assessed other applicable charges? But a requester that asks for ten years of records that require hours to locate and redact with their first request gets the benefit of this new subdivision?

This bill views open record requests optimistically. That is not always the practical case. While one citizen may benefit from one request per year of a full-time employee's work for one full week of work, the risk of this bill is not one citizen getting one free set of records – it is 100 citizens getting up to 40 hours from one entity. That would be a crippling amount of work for most public entities.

Allowing public entities the discretion to charge reasonable fees for public records has been a part of Section 44-04-18 since 1993. (See S.L. 1993, ch. 441, Sec. 1) There is no requirement in ch. 44-04 for a public entity to charge for access to or copies of records. There are only limits on allowable charges; the public entity always has the discretion whether to charge for the records or not. Under current law, all records could be provided for free. Page 2, lines 12-13, of this bill change that precedent and would require a public entity to provide records responsive to one request per requester free of charge. There are a wide range of record requests that public entities receive – from meeting minutes available on a city or county commission websites to voluminous e-mail requests that need days of review and redactions. The law currently provides that a public entity could not charge a

requester for meeting records available on their website and would have the discretion to charge for reviewing e-mails in the second example.

The one request per requester be provided free of charge language in this bill is limited by two things. First, “production of the request does not exceed forty hours” and “the requester is not a citizen of the state.” Record request responses that would take up to forty hours, in my experience hearing from a variety of the public entities defined in ch. 44-04 and opinions issued by this office, are relatively rare. If an entity is dealing with a request nearing forty hours of work that is a significant commitment of the time and resources of the public entity. Allowing public entities to have discretion over charging gives them the authority to decide how to efficiently and responsibly manage timely record request responses. These allowable, discretionary fees are the final guardrail for state agencies and political subdivisions against a vexatious requester that seeks to weaponize the open records law against public entities and public servants.

Second, this bill as currently drafted limits requests under this section to citizen of the state. Under current law, a public entity is specifically prohibited from asking “for the identity of the person requesting public records.” (N.D.C.C. 44-04-18(2)) It is unclear how a public entity would be able to ask for citizenship, to meet this new requirement, but still be prohibited from asking about the requester’s motive or reason for the request or their identity.

As a final reminder, Chapter 44-04 of the North Dakota Century Code defines public entity as:

- a. Public or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor or any task force or working group created by the individual in charge of a state agency or institution, to exercise public authority or perform a governmental function;
- b. Public or governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state and any entity created or recognized by the Constitution of North Dakota, state statute, executive order of the governor, resolution, ordinance, rule, bylaw, or executive order of the chief executive authority of a political subdivision of the state to exercise public authority or perform a governmental function; and
- c. Organizations or agencies supported in whole or in part by public funds, or expending public funds.

House Bill 1306 applies to all of these entities. This testimony is intended to bring awareness to the legislative assembly that passage of this bill as introduced will cause a significant increase in duties for the long list of public entities in chapter 44-04 and appears to address problems that do not exist while creating new ones. Further, this bill creates conflicts with current law and potentially increases the cost and workload for public entities that they will lose the discretion to recoup.

Thank you for your time and consideration. Please contact our office with any questions.

Office of Attorney General

OPEN RECORDS GUIDE

600 E. Boulevard Avenue, Dept. 125, Bismarck, ND 58505. Tel: (701) 328-2210

North Dakota's laws state that all government records and meetings must be open to the public unless otherwise authorized by a specific law. The basic laws are found in North Dakota Century Code, beginning at §44-04-17.1. The public has the right to know how government functions are performed and how public funds are spent.

DEFINITION OF RECORD

"Record" includes *all recorded information regardless of physical form (e.g. paper, e-mail, computer file, photograph, audiotape or recording, video, text message, etc.) that has a connection with how public funds are spent or with the public entity's performance of its governmental functions or its public business, regardless of format or location.*

Minutes, memos, reports, outlines, notes, employee salary and job performance records, contracts, telephone records, and travel vouchers are all **OPEN** records and **must** be provided upon request.

REQUESTS FOR RECORDS

Anyone has the right to view or get a copy of public records, regardless of the reason or where they live. A request for public records can be made in any available medium. Generally, a public entity cannot ask why the records are requested, ask for identification, or require a request be made in writing (or in person). However, a request must reasonably identify existing records. If a request is unclear, the entity may require written clarification but cannot ask the requester's motive or identity. The entity can delay taking action until receiving written clarification.

- A request for *information* is not a request for records. A public entity does not have to respond to questions about its decisions, duties, functions or operations or to explain the content of its records.

The public entity must respond to a record request within a *reasonable* time, either by providing the record or explaining the legal authority for denying all or part of the request. What is "reasonable" depends on a number of factors, including the scope and type of records requested.

A public entity may only deny access to or a copy of a record for which there is a specific statute closing all or part of the information. A statute may declare certain records to be exempt or confidential.

If a record is **exempt**, a public entity has discretion to release or withhold it. If a record is **confidential**, it either cannot be released or the confidential information within the record first must be redacted.

ALLOWABLE CHARGES

Access to public records is generally free. An entity may charge up to 25¢ a page (standard letter or legal size paper). For other types of records, the entity may charge the **actual cost** for copying, including labor, materials and equipment.

The first hour of *locating* requested records (including electronic records) is free. After the first hour, the entity may charge \$25/hr for locating records and a separate \$25/hr (after the 1st hour) for *redacting* any exempt or confidential information. If providing electronic records takes more than one hour, in addition to charges for locating and redacting, the entity may charge the *actual cost* incurred for use of technology resources. *The entity can require full payment of any estimated costs before starting to make copies or releasing records.*

- An entity does not have to convert its records to another format, create or compile records that do not exist, or obtain records originating from another public entity that it does not have in its possession.

If requested records are available on an entity's website or online, an entity can direct the requester to where the record can be accessed and does not have to provide a copy unless a requester is not reasonably able to access the internet.

A public entity may allow the use of personal devices to duplicate records but can impose reasonable procedures or conditions to protect the integrity of its records.

DENIAL

If a request for records is denied, the entity must explain what specific federal or state law makes all or part of the record closed. If asked, the entity must put the reason for the denial in writing. The denial must state if the requested record does not exist.

- It is not a violation if a public entity declines to provide an exempt record, or if the reason a public entity cannot provide a record is that it does not exist, even if the requester believes the record *should* exist.

REFUSAL

If repeated requests for records disrupt other essential functions, a public entity may refuse to provide access to or copies of its records to that requester but must put its reasons for doing so in writing. A requester may seek an opinion from the Attorney General on whether the entity's refusal was proper.

OPINION REQUESTS

A request for an opinion must be submitted to the Office of Attorney General within 30 days of the alleged open record violation or refusal, regardless of when the requester became aware of the violation.

EXEMPT (may be withheld at the discretion of the public entity)

- Home address, home/personal phone numbers, employee ID number, driver's license number, dependent information and emergency contact of public employees **§44-04-18.1(2)**, or individuals licensed by a state occupational/professional board, association, agency, or commission **§44-04-18.1(4)**.
- Personal financial information of public employees used for payroll purposes and the **type** of leave taken or accrued (the **amount** of leave taken and dates taken is open) **§44-04-18.1**.
- Active criminal intelligence, criminal investigative information, officer training materials, information that may impact officer safety **§44-04-18.7**, the work schedule of employees of a law enforcement agency **§44-04-18.3(3)**; records relating to background interviews of law enforcement applicants **§44-04-18.31**, active investigations records of MFCU **§50-24.8-12**.
- Homicide or sex crime scene images or any image of a minor victim of a crime **§44-04-18.7(8)** image of a victim of a fire **§44-04-30(4)**.
- Address, phone number, identifying information that could be used to locate or identify a victim/alleged victim of domestic violence, human trafficking, a sex offense, or a sexual performance by a child **§44-04-18.20**.
- Law enforcement records containing an individual's personal information, including driver's license number, day/month of birth (the year of birth is open), home street address (the city, state, zip is open), height, weight, home and personal cell phone numbers, and medical information **§44-04-18.7**. *NOTE: If a victim has asserted Marsy's law: the complete home and employment address or location, email address, and any other contact information for the victim or a member of the victim's family is also protected. This information may be contained in digital media such as audio, video, or images, or in witness statements.*
- Address, phone number, place of employment or other information in records of a criminal justice agency, correctional facility or the DOCR that could be used to locate the victim or witness to a crime **§12.1-34-02(11)**.
- Financial account numbers **§44-04-18.9**.
- Communications between a legislator and a public employee or official **§44-04-18.6**.
- E-mail address/phone number of an individual provided for purposes of communicating with a public entity, except this exemption cannot be used to shield the person's identity **§44-04-18.21**.
- Interviews/statements of child victims or witnesses obtained during an investigation of a violent crime or sex offense **§12.1-35-03(2)**.
- Driver's license number, phone, day/month of birth, and insurance information from a motor vehicle accident report form, except it is open to the parties involved or their insurers **§39-08-13(4)**.
- Applications for employment with a public entity, until the finalists are designated, then the applications and related records of the designated finalists are open **§44-04-18.27**.
- Records related to the name and medical condition of an individual and treatment provided by a public entity during an emergency medical response **§44-04-18.22**, medical records or other records containing medical information in possession of public entity **§44-04-18.32**.
- Recordings of 911 calls and related responses, except a person may listen to, or obtain written transcript of, the recordings **§57-40.6-07(4)**.
- Body camera images taken in a private place by law enforcement or firefighter **§44-04-18.7**.
- Records relating to the internal investigation of a complaint of misconduct by an entity or employee, but only until the investigation is complete or for 75 days, whichever is first, then it is open **§44-04-18.1**.
- Attorney work product **§44-04-19.1(1)** and active litigation records **§44-04-19.1(12)**.
- Security system plans, critical infrastructure information vital to maintaining public safety, security, or health; **§44-04-24**; public health & security response plans **§44-04-24**, **§44-04-25**, records relating to cyberthreats, or security, disaster, or emergency threat assessments, mitigation, responses, or recovery, of public facilities or critical infrastructure **§44-04-18.4**.
- Bids/proposals in response to an RFP, but only until all proposals opened/presentations heard, after which it is open **§44-04-18.4(6)**.
- Personal information of applicants/recipients of economic assistance programs administered under division of community services or a community action agency **§44-04-18.19**.
- Records revealing negotiating strategy and draft agreements subject to negotiations, but only as long as release would have an adverse fiscal effect on the entity **§44-04-19.2**.
- Settlement agreements between a public entity and another party, until fully executed and accepted by all parties **§44-04-19.1**.
- Private donor and prospective donor personal and financial information. **§44-04-18.15**.
- Title IX complaint and investigation records **§44-04-18.28**.
- Risk Management records of claims against the state/employee **§32-12.2-11(1)** & state agency loss control committee records **§32-12.2-12**. ■

CONFIDENTIAL (cannot be released)

- Social Security number **§44-04-28**;
- Phone number & home address of prosecutors, supreme court justices, district court judges, judicial referees, juvenile court directors or probation officers, employees of law enforcement agencies, state or local correctional facilities, and DOCR (*the home address included in a GIS system or property tax records is also confidential but only if the individual or their employer submits a written request, renewed annually*); records or other information that would reveal the identity, or endanger the life or physical well-being, of an undercover officer; **§44-04-18.3**;
- Public employee medical treatment records **§44-52.1-12**, **§44-04-18.1(1)**, **Ch. 23-01.3**; patient records at university system medical centers or public health authority **§44-04-18.16**; Employee Assistance program records **§44-04-18.1(1)**; HIPAA may prohibit release of health information from other sources.
- Criminal history records **§12-60-16.5**, **§12-60-16.6**. *These may be obtained only from BCI.*
- Identifying information of a living child victim or witness of a crime, except in the case of traffic accident or victim of fire **§12.1-35-03**;
- Names of persons injured or deceased, but only until law enforcement has notified the next of kin or for 24 hours, whichever occurs first, then the information is open **§39-08-10.1**;
- Autopsy photographs, images, audio/video recordings, working papers, notes, except the final report of death, which becomes open eight days after it is finalized **§44-04-18.18**, **§23-01-05.5**;
- Income, and sales & use tax returns and information **§57-38-57**, **§57-39.2-23**;
- Trade secret, proprietary, commercial & financial information, if it is of a privileged nature and has not yet been publicly disclosed; research records of the universities and colleges under the SBHE; **§44-04-18.4**;
- Electronic security codes and passwords **§44-04-27**;
- Fire investigations until the investigation is completed, then it is open **§44-04-30(1)**;
- WSI employer files, except a Safety Grant recipient's name & amount awarded is open **§65-04-15**;
- Foster care records **§50-11-05**;
- Law enforcement & correctional facility records of delinquent, unruly, or deprived child **§27-20-52(1)**. ■

Attachment 2 to "Testimony of Annique Lockard, Office of Attorney General, House Bill 1306

TO:

FROM:

Re: Your request for records

DATE

You requested records¹:

-
- ☐ Pursuant to N.D.C.C. § 44-04-18(4), [available] records responsive to your request are online at: _____
- ☐ Attached are [the records you requested] [additional records responsive to your request].
- ☐ Some information is redacted because it is exempt and/or confidential pursuant to Marsy's Law and/or N.D.C.C. §§ _____
- ☐ To the extent [requested] [other records] may/do exist, release is prohibited by the provisions of Marsy's law and/or the records are/would be confidential or exempt in entirety, under N.D.C.C. §§ _____
- ☐ The records you requested cannot be provided because no such records exist OR the requested records are not records of this agency.
- ☐ The estimated cost for the requested records is calculated as follows:
- | | |
|--|-----------------|
| Actual cost of technology resources | \$ _____ |
| _____ pages @ 25¢ per page | \$ _____ |
| _____ other copies @ \$ _____ each | \$ _____ |
| _____ hours for locating records @ \$25/hr (after the 1 st hour) | \$ _____ |
| _____ hours for redacting records @ \$25/hr (after the 1 st hour) | \$ _____ |
| TOTAL: | \$ _____ |
- Estimated costs are payable *in advance*. We do not waive estimated costs. *After* we receive a *cashier's* check/money order for the estimated costs, payable to "_____", we will begin work on your request. We estimate it will take approximately _____ days to complete your request.
- ☐ If we do not receive [payment] [clarification] from you within ten (10) days from today's date, we will consider your request withdrawn.
- ☐ Your request did not reasonably identify specific records. We cannot comply with your request without clarification. Please call me at (701) _____.
- ☐

¹ A public entity does not have to convert its records to another format, create or compile records that do not exist, or obtain records originating from another public entity that it does not have in its possession. A public entity has no obligation to respond to requests for *information*, to respond questions about its duties, functions or operations, or to explain the content of its records.



House Government and Veterans Affairs Committee

HB 1306

February 6, 2025

Representative Austen Schauer, Chair

Summary:

- The City of Bismarck **opposes** the amendment allowing each citizen the entitlement of one free records request per year which does not exceed 40 hours to produce.
- 40 hours of un-funded staff time for each request could severely hamper workflow and significantly compromise the amount of work produced by municipal government staff.

Testimony:

Chairman Schauer and Members of the House Government and Veterans Affairs Committee:

On behalf of the City of Bismarck, I am Jason Tomanek, City Administrator and today I offer testimony in **opposition** to HB1306.

The City of Bismarck strongly supports access to information and records by all members of the public. The current regulations are adequate by allowing an hour of staff time at-no-charge to an individual requesting public records. The current rate set by North Dakota Century Code 44-04-18 of \$25 for each hour beyond the first hour provides a portion of the expenses associated with records requests.

The current regulations and practices associated with open records requests collectively requires thousands of hours of staff time each year throughout our organization. While the City of Bismarck supports access to public records; frequent and voluminous requests regularly disrupt the work of many City staff whose primary roles are compromised by in-depth records requests which require immediate attention causing other tasks to become secondary or unattainable. Providing each resident with up to 40 hours of staff time without any financial support resulting from the work would significantly compromise the professional work required of many individuals throughout our organization, and the state of North Dakota.

The City of Bismarck respectfully requests a **Do Not Pass** recommendation on HB 1306 as it would significantly, and negatively impact the ability of City staff to effectively manage their workload, projects, and primary responsibilities on a day-to-day basis and cause a deterioration of the level of service our residents and business owners have come to expect from the Capital City of North Dakota.

Respectfully,


Jason Tomanek, City Administrator
City of Bismarck
jtomanek@bismarcknd.gov
701.355.1300

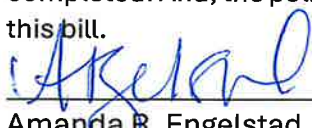
Dear Chairman Schauer, Vice Chairman Satrom, and the Government and Veteran's Affairs Committee:


We are writing jointly to oppose HB 1306. As the State Attorney and Auditor of Stark County, the majority of open records requests are handled by us. To begin, we would like to explain how onerous the process can be. When an open records request comes in, there is essentially a timer that starts to run. Stark County has a dedicated open records request email to try and keep the process running smoothly, but in reality, open records requests can be sent to any employee or commissioner, and many times they are sent to multiple individuals. From there, the open records request is *usually* forwarded to the State Attorney who assesses the request and alerts the individual who would likely be holding the records that are being requested. That individual is told to start gathering the requested records. Open records requests require a timely response which means other work gets put to the side so that the request can start being fulfilled.

Many of the open records requests that we receive are voluminous. It is rare that we get a request for one record. At times, records requests may ask for information that spans multiple years, or for an incredible amount of information related to elections, or a hot button item that may be occurring in the political sub. Other times, the requester may ask for any and all communication on any business or personal device to include all emails, texts, or other messages between a certain set of people – sometimes the request is for all county employees. Gathering this information is an ongoing process which includes sending out reminders and checking and double-checking that all of the information is handed over. In Stark County the States Attorney then goes through all of the information, redacts according to N.D.C.C. 44-04 and also redacts information that isn't county business. This can be incredibly time-consuming and can put on hold other time sensitive tasks that need to be accomplished.

The current law states “[a] public entity may require written clarification of the request to determine what records are being requested **but may not ask for the motive or reason for requesting the records or for the identity of the person requesting public records.**” We get numerous anonymous open record requests. HB 1306 is in direct contradiction with the statute as currently written. HB 1306 would allow for 40 free hours to a North Dakota resident. As is currently written, the political sub would have no way to determine whether the requester is a North Dakota resident, making this loophole ripe for abuse.

In conclusion, while we are committed to transparency, we believe this bill could be abused by individuals who are not ND residents. It will significantly impact time sensitive tasks that need to be completed. And, the political sub could incur costs that it is not able to recoup. Therefore, we oppose this bill.


Amanda R. Engelstad,
Stark County States Attorney


Karen Richard,
Stark County Auditor

To: Chairman Schauer & House Veterans & Government Affairs Committee Members

From: Katie Paulson McKenzie County Recorder/Tax Director

February 6, 2025

Re: HB 1306 Open Records Requests

Chairman Shauer and Committee Members, my name is Katie Paulson and I currently serve the citizens in McKenzie County as their elected Recorder and appointed Tax Director. I am here in opposition to HB 1306 which will mandate all county offices to offer 40 hours of free searching in regards to open records requests.

The current statute that mandates how government handles open records requests is sufficient as it is written. As an officer that handles all the permanent land records in my county as well as the property record cards, assessment information, exemptions, marriage records, and tax rolls I feel that changing the law to mandate that we allow each citizen to have 40 free hours of labor is excessive and not practical. Our office handles open records and access to open records every single day. Our goal is to allow folks access and copies of the records that they need to do many things outside of our office. My staff is always helpful and accommodating to the customers no matter where they live and strive to help them receive the needed materials. I think it is fair the way the current statute is written that allows us to search for 1 hour at no charge, and then if there is more time needed to complete the request, we can estimate and charge the individual or company the \$25 hourly fee. Most of the time we can find the requested information during the covered 1 hour and the \$25 fee never comes up.

McKenzie County is one of the oil producing counties, so over the last decade we have had numerous title companies, landmen, attorneys, and right-of-way agents research in our office, access our records through our website, or call us for specific information. Some of the research takes many hours, and I fear that approving this bill would open counties up to have to provide 40 hours for each

local employee annually the research that they should be handling on their own. I can only imagine that we would hardly be able to keep up with managing, tracking, and carrying out this sort of burden. We aren't even able to ask who is requesting the record if it isn't offered. Some of the companies that work in our county have many employees that could individually request this sort of service. This will cause our office to struggle to maintain the daily work in relation to the services that we have to offer already. If we have to hire additional staff to keep up with this, is the state legislature going to allocate funds in order for counties to maintain staffing levels to comply? We are a dual office so in addition to the land records, we also carry out the duties for tax equalization. I do this with 4 people and we can manage and it is a benefit to our taxpayers. This law would likely have me requesting for more staff.

I am dedicated to continue to provide access, information, and reasonably requested records from my office to all people that benefit from them. This law would provide unfunded and additional burden to our county, and also will contradict the rule about anonymous requestors. I have never heard from our customers that they are frustrated with open records in North Dakota. Let's not create more problems where there isn't an issue.

Thank you for your time and consideration. I urge you to vote **"Do Not Pass"** on **HB 1306**.

Sincerely,

Katie Paulson McKenzie County Recorder/Tax Director



February 6, 2025

House Government and Veterans Affairs

HB 1306

Representative Austen Schauer, Chair

For the record, my name is Kory Peterson. I am appearing before you today on behalf of the North Dakota League of Cities, in opposition to HB 1306. Prior to working with the North Dakota League of Cities, I was the Mayor of Horace for 8 years, from June 2016 to July 2024.

The League of Cities has reviewed this proposed bill and is concerned about the additional time that will be allowed to process an open records request without compensation. The increase of an additional 39 hours could also lead to more staffing concerns.

You need staff to complete these tasks. There is nobody at a city facility that is dedicated full time to processing open records requests. This usually means that any normal city task currently assigned to the staff will need to be paused to take on this open records request.

There are times when these requests are substantial, and it will take time because of having to review the documents or video for any redactions that need to happen. This action could involve outside sources like an attorney, police staff, and engineer support, which adds to the expense of the request.

The world of records has changed drastically in the last 10 years, and while it is wonderful to have evolved into a technological world, it is not without its growing pains.

In talking with law enforcement, the body-worn camera (BWC) is an area that frequently gets overlooked in significance when making an open records request. When an officer interacts with the public, it is usually in response to a call for service. From the moment a call comes in, police activity begins. Suspects, victims, and witnesses are frequently identified during these exchanges. Officers are often on camera as they obtain information such as names, addresses, date of birth, social security numbers, driver's license numbers, and a multitude of other sensitive personal identification information. These interactions are very sensitive when it comes to open records and require great skill and diligence to ensure this sensitive information

is not released. Transcripts need to be reviewed for accuracy and any redactions as well. There is a tremendous amount of data collected from a single call when discussing the positive aspects of the BWC. One open records request for a 911 call could easily consume 40 hours of work.

Having to give away 39 extra hours of time for an open records request would result in a loss of \$975 pre request at the current \$25/hour rate. When the number of requests become frequent as some cities have seen, this becomes a cost and staffing concern. The larger the volume of requests, it becomes even more impactful to city budgets and staffing.

There is concern of people abusing this system if this bill were to be approved. We have seen it in other cities where someone has issues with the city. They will make an open records request that is very broad in scope and will require multiple city resources (city staff, attorney, police, financial director and/or engineering). These types of requests put normal city functions on pause to facilitate the request. This could easily put the request at the 40-hour threshold or beyond. These types of requests are more burdensome for a city when trying to budget for these types of record requests. City's try to get the request done as soon as possible but significantly increasing the free amount of time could allow for frivolous requests that will consume a large amount of staff time to the detriment of normal activities.

Another concern with this bill revolves around the tracking of who has requested an open meetings request. The requestor does not have to identify themselves so being able to track who requests becomes impossible. This would add an additional burden to the city to create a list of who is making the request, assuming they identify themselves in the first place.

The current law today is a reasonable approach to handing open records requests. The League finds this language as an overreach on the amount of free work the city should be obligated to provide. The additional language opens up the possibility of more frivolous open records requests that can easily overwhelm city resources.

The League respectfully requests a Do Not Pass on this bill for all the reasons stated.

Thank you

Kory Peterson

Good morning, Chairman Schauer, and members of the House Government and Veterans Affairs

Committee. My name is Neal Messer and I currently serve as Chairman of the Stark County Commission. I am submitting testimony in opposition of HB 1306.

As written, HB 1306 changes the current Open Records Request statute where we as public entities are currently required to provide the first hour of work generated from an open records request to FOURTY (40) free hours of work for per request each year to any citizen of North Dakota. The rate of increase for open records requests have skyrocketed in recent years. Stark County has worked very hard and spent an enormous amount of time and money in recent years to drastically increase our transparency to our citizens. We have expanded the platforms of our meeting availability to include live and taped audio, live video that includes a YouTube broadcast, and recorded video availability from both our county website and our community channel on our local cable provider. We consistently receive compliments of how much our citizens appreciate the ability to have access to our meetings.

The responsibility of receiving and complying with Open Records Requests in Stark County falls to our Auditor and States Attorney. They have also submitted written testimony and I encourage you to review the details that each request requires and receives.

From a County Commissioner perspective, I can tell you that our Elected States Attorney and Auditor agree that if the rate of Open Records Requests continue to increase dramatically, that we will need additional resources to make sure we can comply with those requests in a timely fashion and, with the likelihood of us looking down the barrel of spending caps tied to property tax relief, HB 1306 would in all likelihood would reduce our ability to perform other county functions (such as prosecutions) without hiring additional staff.

For all the reasons stated, I strongly encourage you to defeat HB1306.

Thank you for your time.

Neal Messer

Stark County Commissioner

701-290-4839

Mikayla McWilliams

City Clerk

City of Minot

mikayla.mcwilliams@minotnd.gov

701-857-4752

House Bill 1306 Testimony

House Government and Veterans Affairs Committee

Hon. Chairman Schauer

Chairman Schauer and committee members, thank you for the opportunity to discuss HB 1306. My name is Mikayla McWilliams, and I am the City Clerk for the City of Minot. I am offering testimony in opposition of HB 1306.

At the City of Minot, all staff is dedicated to providing the public with open records in accordance with the Attorney General's Open Records Laws for the State of North Dakota. Our process includes records request software, which allows the staff to track the request progress, communicate, and ensure the records are produced in a timely manner.

Section 1. Amendment. Subsection 2 (g) of section 44-04-18 of the North Dakota Century Code of HB 1306 is an amendment the City of Minot would oppose the change of. With public records software, the capability of the software to track a requester's ability to receive one free request per year would be difficult, if not impossible to track within the system. This would be a timely and manual process for staff of the government entity. The City of Minot also believes providing up to 40 hours free for the request would impose an undue burden on the entity for staff time and ability to provide the request.

In 2024, the City of Minot received 3,293 open records requests. At minimum if those requests only took the one free hour as outlined in the current policy, that would be equivalent to 1 ½ full-time employees for the City of Minot.

The City of Minot would advocate to remain with the current Open Records policy allowing the requester one free hour per request. The current Open Records policy states "Immediate access or copies are not always required, but the amount of time within which the public entity must respond to the request will usually be measured in hours or a few days rather than several days."

Furthermore, the City of Minot along with all other public entities of the state would need to develop a process on confirming the requester is a "citizen of the state". This bill provides no guidance to the public entities.

Thank you for your time. The City of Minot urges you to not pass HB 1306 as currently written.



1 Testimony Opposing HB 1306

2 Chairman Schauer and Members of the Committee - I appreciate the opportunity to testify in
3 opposition to House Bill 1306. While transparency in government is a fundamental right, it
4 must be balanced against the responsible use of taxpayer dollars and the prevention of system
5 abuse. The proposed changes in this bill undermine those protections and open the door for
6 wasteful spending and circumvention of existing safeguards.

7 North Dakota has long been a champion of open government, but the current fee structures were
8 implemented to prevent excessive and frivolous requests that strain public resources. The
9 introduction of a free annual request of up to 40 hours per requester (Section g) creates an
10 unfunded mandate on state and local entities, shifting the burden onto taxpayers.

- 11 • A single request consuming up to 40 hours of labor at no charge is an unreasonable
- 12 demand on public entities that already face staffing and budget constraints.
- 13 • Public employees will be required to divert significant time from their primary
- 14 responsibilities to fulfill these requests without any cost recovery.
- 15 • Smaller government entities, such as rural school districts or county offices, will bear the
- 16 brunt of this mandate, potentially reducing their ability to provide other essential services.

17 Ultimately, public employees and taxpayers will be forced to subsidize the research efforts of a
18 select few individuals at the expense of the broader public.

19 The bill fails to address the risk of coordinated abuse, which was a primary reason why previous
20 legislatures implemented fees for high-volume requesters. Under HB 1306, a loophole exists that
21 allows individuals to bypass existing protections against excessive records requests.

22 **The current statute was amended to include fee protections in 2015 precisely to prevent the**
23 **kind of abuse that this bill would enable. This law would reverse that law that was enacted**
24 **at that time**

25 These provisions were carefully crafted to maintain public access while ensuring taxpayer dollars
26 are not wasted. Removing these safeguards reverses hard-won legislative progress and
27 reintroduces the very inefficiencies that prior legislatures sought to eliminate.

28 While public records access is a fundamental right, it must be exercised responsibly. HB 1306
29 opens the floodgates to excessive, taxpayer-funded requests, creates opportunities for
30 coordinated abuse, and places undue burdens on public employees. The existing law already
31 provides a balanced, transparent approach that ensures access while protecting public resources.

32 I respectfully urge the committee to reject HB 1306 in its current form. Let's maintain
33 responsible governance and protect taxpayers from unnecessary financial and administrative
34 strain. Thank you for your time and consideration.

Good morning, Chairman Schauer, and members of the House Government and Veterans Affairs

Committee. My name is Neal Messer and I currently serve as Chairman of the Stark County Commission. I am submitting testimony in opposition of HB 1306.

As written, HB 1306 changes the current Open Records Request statute where we as public entities are currently required to provide the first hour of work generated from an open records request to FORTY (40) free hours of work for per request each year to any citizen of North Dakota. The rate of increase for open records requests have skyrocketed in recent years. Stark County has worked very hard and spent an enormous amount of time and money in recent years to drastically increase our transparency to our citizens. We have expanded the platforms of our meeting availability to include live and taped audio, live video that includes a YouTube broadcast, and recorded video availability from both our county website and our community channel on our local cable provider. We consistently receive compliments of how much our citizens appreciate the ability to have access to our meetings.

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From a County Commissioner perspective, I can tell you that our Elected States Attorney and Auditor agree that if the rate of Open Records Requests continue to increase dramatically, that we will need additional resources to make sure we can comply with those requests in a timely fashion and, with the likelihood of us looking down the barrel of spending caps tied to property tax relief, HB 1306 would in all likelihood would reduce our ability to perform other county functions (such as prosecutions) without hiring additional staff.

For all the reasons stated, I strongly encourage you to defeat HB1306.

Thank you for your time.

Neal Messer

Stark County Commissioner

701-290-4839

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1306
2/13/2025

Relating to fees assessed for open records requests.
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10:15 a.m. Chairman Schauer opened the meeting.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Brown, Grindberg, Karls, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Members absent: Representatives Bahl, Christy, McLeod

Discussion Topics:

- Committee work

10:16 a.m. Representative Schneider moved a Do Not Pass.

10:16 a.m. Vice-Chairman Satrom seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	AB
Representative Collette Brown	Y
Representative Josh Christy	AB
Representative Karen Grindberg	Y
Representative Karen Karls	Y
Representative Carrie McLeod	AB
Representative Karen Rohr	N
Representative Mary Schneider	Y
Representative Vicky Steiner	N
Representative Lori VanWinkle	N
Representative Steve Vetter	N
Representative Christina Wolff	Y

10:18 a.m. Motion passed 7-4-3.

Representative Schneider will be the carrier.

10:18 a.m. Chairman Schauer closed the meeting.

Jackson Toman, Committee Clerk

REPORT OF STANDING COMMITTEE
HB 1306 ([25.0025.01000](#))

Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **DO NOT PASS** (7 YEAS, 4 NAYS, 3 ABSENT AND NOT VOTING). HB 1306 was placed on the Eleventh order on the calendar.