



QUICK GUIDE

NORTH DAKOTA OPEN RECORDS LAWS

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What are open records laws?	<p>Open records laws promote transparency by ensuring public access to government records. Section 5 of Article XI of the Constitution of North Dakota and North Dakota Century Code Section 44-04-18 provide unless otherwise provided by law, all records of a public entity are public records, open and accessible for inspection.</p> <p>Open records laws are known by different names depending on the jurisdiction. At the federal level, the Freedom of Information Act (FOIA) is the primary law supporting public access to government records, while states often refer to similar laws as "sunshine laws," open records laws, or public information acts.</p>
What is an open record?	<p>An open record is information held by a public entity, related to public business, regardless of format, including email, text, paper, audio, and video. All records in the possession of a public entity are public records unless a law specifically exempts or makes the record confidential.</p>
What is a public entity?	<p>A public entity is a public or governmental body of the state or political subdivision created to exercise public authority or perform a governmental function, including organizations or agencies supported in whole or in part by public funds, or expending public funds.</p>
How is a record requested?	<p>A request may be made through any available method, including calling, emailing, mailing, or making an in-person request to the appropriate public entity. If the request clearly identifies the existing records being sought, the agency must respond within a reasonable amount of time by providing the records or citing a legal basis for denial. The agency only is required to provide existing records, not answer questions about its operations or about the content of records.</p>
Is a public entity required to compile or create a record?	<p>A public entity is not required to create records or compile information if the records do not already exist, except as reasonably necessary to provide data contained in an electronically stored record. In that case, a public entity must provide an electronically stored record in a different structure, format, or organization.</p>
May a public entity charge a fee to process a record request?	<p>A public entity may charge a fee for processing an open records request, but only within limits set by law. A fee of up to 25 cents per page may be charged, along with a reasonable fee for nonpaper copies based on actual costs such as labor, materials, and equipment. The entity also may charge actual postage costs for mailing records.</p> <p>If locating records requires more than 1 hour, up to \$25 per hour, excluding the first hour, may be charged, and the same hourly rate may apply for time spent redacting confidential information. Electronic copies generally are provided at no cost beyond the allowable fees although additional charges may apply if fulfilling the request requires extensive use of information technology resources.</p>

<p>What is a confidential record?</p>	<p>Confidential records include certain health information and medical records, Social Security numbers held by public entities, and sensitive security data like passwords or emergency plans. A confidential record may not be released to the public except as specifically authorized by statute, with no discretion granted to the public entity.</p>
<p>What is an exempt record?</p>	<p>An exempt record includes personal contact and identifying information of public employees, financial and payroll-related details, and sensitive law enforcement materials such as active investigation records. An exempt record is allowed to be withheld but may be released at a public entity's discretion. Records not made public are referred to as "closed" records. The decision to release an exempt record depends on the judgment of the public entity.</p>
<p>What if only part of a record is confidential?</p>	<p>If confidential or closed information is contained in an open record, a public entity must review the record, redact the exempt or confidential information, and turn over the remaining unprotected portions of the record.</p>
<p>What legislative records are considered exempt?</p>	<p>Records relating to the Legislative Council, the Legislative Assembly, or a member of the Legislative Assembly are exempt from open records laws when the records involve purely personal matters, internal work products, the content of communications between a member of the Legislative Assembly and any person, and certain telephone usage records. An otherwise exempt record is no longer exempt if the record is distributed or made available during an open public meeting.</p>
<p>What is the process for requesting an Attorney General opinion regarding a public entity providing open records?</p>	<p>Any individual may request an Attorney General opinion related to open records by sending a letter or email to the Attorney General's office describing the alleged violation of open records laws. The request should include the name of the public entity involved, the date of the alleged violation, and a clear explanation of the incident. The requester's name and contact information also must be provided. Anonymous requests are not accepted.</p> <p>The request must generally be made within 30 days of the alleged violation.</p>
<p>Are there penalties for a public entity who violates the open records laws?</p>	<p>Section 44-04-21.2 provides a court may order a public entity to release records and may award court costs and attorney's fees for violations. The court also may order damages of \$1,000 or actual damages, whichever is greater, if the violation was intentional. Before a lawsuit for fees or damages is filed, the entity generally must be given 3 working days to fix the issue, unless the entity has previously been found by the Attorney General to have violated open records or open meetings laws.</p>
<p>Are there penalties for a public servant who violates the open records laws?</p>	<p>Section 44-04-21.3 provides a public servant who knowingly violates certain open records provisions may be charged with a Class A misdemeanor under Section 12.1-11-06 for failure to perform a public duty. Under Section 12.1-13-01, knowingly disclosing confidential information obtained as a public servant is a Class C felony.</p>