

OPEN RECORDS AND MEETINGS LAW

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All public entities in North Dakota are subject to open records and open meetings law. "Public entity" includes state and local government agencies, rural fire and ambulance districts, public schools, private businesses or non-profit organizations that are supported by or expending public funds, and contractors, if the contractor is providing services in place of a public entity. The courts are not subject to open records and open meetings law.

MEETINGS

All meetings of a public entity are open unless a specific exception applies to permit the entity to close a portion of the meeting or hold an executive session. *Anyone*, regardless of where they live, has the right to attend and record meetings of a public entity. A member of the public does not have the right to *speak* at an open meeting. As a general rule, there is *no* minimum or mandatory advance notice period for public meetings.

MEETINGS A "meeting" means *any* gathering of a quorum of the members of a governing body of a public entity regarding public business, and includes: committees and subcommittees, informal gatherings or work sessions, and discussions where a quorum of members are participating by phone, e-mail or other electronic format (either at the same time or in a series of individual contacts). Even e-mails or text messages between members of a committee or subcommittee regarding public business may constitute a meeting.

- A gathering of a quorum of members is not a meeting if it is a purely social gathering, or if the members are present but are not discussing public business; however, as soon *any* as public business is discussed, it is a "meeting."
- Before a governing body can close a portion of its meeting, it first must convene in a properly noticed open meeting. Next, it has to announce the legal authority to close the meeting and the topics to be considered during the closed portion of the meeting. Unless the law requires a closed meeting, the governing body must vote on whether to close the meeting. Any executive session must be tape recorded.
- All substantive votes must be recorded by roll call.

COMMITTEES If a governing body delegates any authority to two or more people, the newly formed committee is subject to the open meetings law, even if the committee does not have final authority or is just fact-finding. What it is called does not matter, it is still a committee. Committee and subcommittee meetings must be noticed.

- Portfolios are a committee of the governing body if more than one commissioner holds the portfolio.

NOTICES Prior written notice is required for all meetings, including committee and sub-committee meetings.

- The notice must include, at a minimum, the date, time and location of the meeting and the agenda topics the governing body expects to address during the meeting. Regular meeting agendas may be altered or added to at the time of the meeting. For special or emergency meetings, *only* the specific topics included in the notice may be discussed.
- If an executive session is anticipated, the meeting notice also must include the executive session as an agenda item, along with the subject matter and the legal authority for the executive session.
- Meeting schedules and notices must be filed with the Secretary of State (for state agencies), the City Auditor (city level entities), or the County Auditor (all other entities); *alternatively*, the public entity may choose to post the meeting schedules and meeting notices on its official website.
- The notice must be posted in the entity's main office, if it has one, and at the location of the meeting (if the meeting is held elsewhere), filed at the appropriate central location (or the entity's website), and given to anyone who has requested it—at the same time the governing body is notified of the meeting.
- Notice of special or emergency meetings also must be given to the entity's official newspaper, as well as to any media representatives or members of the public who have asked to be notified of meetings.

MINUTES The minutes of meetings are public records and must be provided to anyone upon request. Draft minutes should be made available to the public even if the minutes have not been approved. Some public entities are required by law to provide minutes to the official newspaper.

- Minutes must include, at a minimum, the names of the members attending the meeting; the date and time the meeting was called to order and adjourned; a list of topics discussed regarding public business; a description of each motion made at the meeting and whether the motion was seconded; the results of every vote taken at the meeting; and the vote of each member on every recorded roll call vote. This requirement applies to all governing bodies, including committees and subcommittees.

ALL records of a public entity regarding public business are open unless a specific statute makes a record or part of a record confidential or exempt. Everyone has the right to access and obtain copies of public records. A public entity cannot require a request be made in writing, ask the requester's identity, or inquire about the reason for the request. An entity must provide reasonable public access to electronically stored records. If requested, *electronic* records must be provided in electronic format. The entity does not have to respond to questions about public records, create records that do not exist, or convert records to a different format. A public entity cannot refuse to provide an otherwise open record simply because it contains confidential or exempt information; instead, that information must be redacted and the record provided within a reasonable time (generally a few hours or days). An entity must provide the statutory authority for denying all or part of a record, and, if requested, put the denial in writing.

RECORDS

**OPEN
Records**
(**MUST** be released)

Any communication with a public entity or official relating to public business, including minutes, memos, reports, outlines, notes, and other information kept for or relating to official business or public funds, regardless of format or location, including video & audiotape, computer data, e-mails, and photographs, employee salary and job performance records, financial records, telephone records, and travel vouchers.

**EXEMPT
Records**
(**MAY** be withheld at the discretion of the public entity)

- Home address, home/cell 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 (§ 44-04-18.1);
- Active criminal intelligence, criminal investigative information, officer training materials and other information that may impact officer safety (§ 44-04-18.7); work schedule of employees of a law enforcement agency (44-04-18.3(3));
- Homicide or sex crime scene images or any image of a minor victim of a crime (§ 44-04-18.7(8));
- Address, phone number, or personal 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);
- Financial account numbers (§ 44-04-18.9);
- 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);
- Driver's license number, phone number, day/month of birth, and insurance information from a motor vehicle accident report form, except it is open to the parties involved in the accident or their insurers (§ 39-08-13(4));
- 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).
- 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).
- Attorney work product (§ 44-04-19.1(1));
- Security system plans (§ 44-04-24) and public health & security response plans (§ 44-04-24, § 44-04-25);
- Critical infrastructure information vital to maintaining public safety, security, or health (§ 44-04-24);
- Bids/proposals in response to an RFP, but once all proposals opened/presentations heard, 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);
- 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
Records**
(**CANNOT** be released)

- Social Security numbers (§ 44-04-28);
- Address & home phone of an employee of a law enforcement agency (§ 44-04-18.3);
- Any information that would reveal the identity of an undercover law enforcement officer (§ 44-04-18.3);
- Public employee medical treatment records (§ 54-52.1-12, § 44-04-18.1(1), Ch. 23-01.3);*
- Employee Assistance program records (§ 44-04-18.1(1));
- Patient records at university system medical centers or public health authority* (§ 44-04-18.16);
- Criminal history records (§§ 12-60-16.5, 12-60-16.6);**
- 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; after that, the information is open (§ 39-08-10.1);
- Income tax and sales & use tax returns and information (§ 57-38-57), (§ 57-39.2-23);
- Autopsy photographs, images, audio/video recordings, working papers, notes except the final report of death, which is open (§ 44-04-18.18, § 23-01-05.5);
- Trade secret, proprietary, commercial & financial information, *if* it is of a privileged nature *and* has not yet been publicly disclosed (§ 44-04-18.4);
- Electronic (computer or telecommunication) security codes and/or passwords (§ 44-04-27);
- Fire investigations until the investigation is completed, then the information 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)). ❖

* Federal law (HIPAA) may prohibit release of health information from other sources.

** Criminal history records may be obtained only from the BCI. There is a statutory fee.