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Sixty-second
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2232

Introduced by

Senators Andrist, Burckhard, Nelson

Representatives Froseth, Kilichowski, Maragos

A BILL for an Act to create and enact a new section to chapter 44-04, a new subsection to section 44-04-18.7, and a new section to chapter 54-40.3 of the North Dakota Century Code, relating to the exemption of medical treatment information in an emergency response record, the exemption of crime scene images, and to joint powers agreements between political subdivisions for a joint emergency services communications system; to amend and reenact sections 32-12.2-12 and 44-04-17.1, subsections 2 and 3 of section 44-04-18, subsection 2 of section 44-04-18.1, subsection 1 of section 44-04-18.3, subsection 3 of section 44-04-18.7, and subsections 2, 3, 4, and 6 of section 44-04-20 of the North Dakota Century Code, relating to state agency loss control committee meetings, the definition of information technology resources, fees and access to electronic records, exempt personal information of a public employee, release of personnel records of employees of the department of corrections and rehabilitation, definition of criminal intelligence information, and public meeting notices posted on a website of a public entity; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-12.2-12 of the North Dakota Century Code is amended and reenacted as follows:

32-12.2-12. State agency loss control committee records and meetings privileged and exempt from open records and open meetings law.

The ~~portions of the~~ records ~~and meetings~~ of any state agency loss control committee ~~dealing with confidential records~~addressing any pending or reasonably predictable claim are ~~not public records or~~exempt from section 44-04-18 and are not open records under section 6 of article XI of the Constitution of North Dakota unless the director of the office of management and budget determines disclosure will not prejudice any pending or reasonably predictable claim and the meetings of any loss control committee of a governing body are not public

meetings subject to ~~sections 44-04-18 and~~section 44-04-19 and ~~sections~~section 5 ~~and 6~~ of article XI of the Constitution of North Dakota. ~~Those~~The records and communications at meetings of the committee regarding any pending or reasonably predictable claim are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil action. The records of the committee include all information, data, reports, or records created by or made available to the committee. Any information, data, report, or record otherwise available from original sources is not confidential or immune from discovery or use in any civil action merely because it was presented or considered during the proceedings of the committee. A person who testified before the committee or who is a member of the committee may testify as to matters within that person's knowledge but may not be asked about the records of, the testimony before, or the discussions of the committee. This section does not relieve any person of any liability incurred as a result of actions reviewed by the committee.

SECTION 2. AMENDMENT. Section 44-04-17.1 of the North Dakota Century Code is amended and reenacted as follows:

44-04-17.1. Definitions.

As used in this section through section ~~44-04-21.2~~44-04-32:

1. "Closed meeting" means all or part of an exempt meeting that a public entity in its discretion has not opened to the public, although any person necessary to carry out or further the purposes of a closed meeting may be admitted.
2. "Closed record" means all or part of an exempt record that a public entity in its discretion has not opened to the public.
3. "Confidential meeting" or "confidential record" means all or part of a record or meeting that is either expressly declared confidential or is prohibited from being open to the public.
4. "Executive session" means all or part of a meeting that is closed or confidential.
5. "Exempt meeting" or "exempt record" means all or part of a record or meeting that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity.
6. "Governing body" means the multimember body responsible for making a collective decision on behalf of a public entity. "Governing body" also includes any group of

persons, regardless of membership, acting collectively pursuant to authority delegated to that group by the governing body.

7. "Information technology resources" includes data processing hardware and software or technology support services necessary to facilitate a response to a request for electronic records.

8. "Law" includes federal statutes, applicable federal regulations, and state statutes.

~~8.~~9. a. "Meeting" means a formal or informal gathering or a work session, whether in person or through electronic means such as telephone or videoconference, of:

(1) A quorum of the members of the governing body of a public entity regarding public business; or

(2) Less than a quorum of the members of the governing body of a public entity regarding public business, if the members attending one or more of such smaller gatherings collectively constitute a quorum and if the members hold the gathering for the purpose of avoiding the requirements of section 44-04-19.

b. "Meeting" does not include:

(1) A chance or social gathering at which public business is not considered;

(2) Emergency operations during a disaster or emergency declared under section 37-17.1-10 or an equivalent ordinance if a quorum of the members of the governing body are present but are not discussing public business as the full governing body or as a task force or working group; and

(3) The attendance of members of a governing body at meetings of any national, regional, or state association to which the public entity, the governing body, or individual members belong.

c. Notwithstanding subdivisions a and b, as applied to the legislative assembly, "meeting" means any gathering subject to section 14 of article IV of the Constitution of North Dakota.

~~9.~~10. "Organization or agency supported in whole or in part by public funds" means an organization or agency in any form which has received public funds exceeding the fair market value of any goods or services given in exchange for the public funds, whether through grants, membership dues, fees, or any other payment. An exchange must be

conclusively presumed to be for fair market value, and does not constitute support by public funds, when an organization or agency receives a benefit under any authorized economic development program.

~~10.~~11. "Political subdivision" includes any county or city, regardless of the adoption of any home rule charter, and any airport authority, township, school district, park district, rural fire protection district, water resource district, solid waste management authority, rural ambulance service district, irrigation district, hospital district, soil conservation district, recreation service district, railroad authority, or district health unit.

~~11.~~12. "Public business" means all matters that relate or may foreseeably relate in any way to:

a. The performance of the public entity's governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or

b. The public entity's use of public funds.

~~12.~~13. "Public entity" means all:

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.

~~13.~~14. "Public funds" means cash and other assets with more than minimal value received from the state or any political subdivision of the state.

~~14.~~15. "Quorum" means one-half or more of the members of the governing body, or any smaller number if sufficient for a governing body to transact business on behalf of the public entity.

~~15.~~16. "Record" means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business. "Record" does not include unrecorded thought processes or mental impressions, but does include preliminary drafts and working papers. "Record" also does not include records in the possession of a court of this state.

~~16.~~17. "Task force or working group" means a group of individuals who have been formally appointed and delegated to meet as a group to assist, advise, or act on behalf of the individual in charge of a state agency or institution when a majority of the members of the group are not employees of the agency or institution.

SECTION 3. AMENDMENT. Subsections 2 and 3 of section 44-04-18 of the North Dakota Century Code are amended and reenacted as follows:

2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. A request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches [19.05 by 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the copy. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour

per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10 from the records, including electronic records. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.

3. ~~Access to electronically stored records is free if the records are recoverable without the use of a computer backup. If a request is made for access to a record on a backup, or for a copy of an electronically stored record, in addition to the charge in this section, the public entity may charge a reasonable fee for providing the copies, including costs attributable to the use of information technology resources.~~Automation of public records must not erode the right of access to those records. As each public entity increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law. A public entity may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records online or stored in an electronic recordkeeping system used by the agency. An electronic copy of a record must be provided upon request at no cost, other than costs allowed in subsection 2, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the agency may charge no more than the actual cost incurred for the extensive use of information technology resources incurred by the public entity. "Extensive" is defined as a request for copies of electronic records which take more than one hour of information technology resources to produce.

SECTION 4. AMENDMENT. Subsection 2 of section 44-04-18.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as otherwise specifically provided by law, personal information regarding a public employee contained in an employee's personnel record or given to the state or

a political subdivision by the employee in the course of employment is exempt. As used in this section, "personal information" means a person's home address; home telephone number or personal cell phone number; photograph; medical information; motor vehicle operator's identification number; public employee identification number; payroll deduction information; the name, address, telephone number, and date of birth of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.

SECTION 5. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Medical condition or medical treatment information obtained during emergency medical response - Exempt.

The medical condition of an individual, medical treatment provided to an individual, and the name of an individual who received medical treatment from a public entity during an emergency medical response is an exempt record.

SECTION 6. AMENDMENT. Subsection 1 of section 44-04-18.3 of the North Dakota Century Code is amended and reenacted as follows:

1. Any telephone number and the home address of a juvenile court ~~supervisor~~director or probation officer, an employee of a law enforcement agency, employee of a state or local correctional facility, and an employee of the department of corrections and rehabilitation are confidential. ~~A record containing information relating to~~Information contained in a personnel record of an employee of the department of corrections and rehabilitation may not be disclosed to an ~~appropriate authority under policy established by the department of corrections and rehabilitation~~inmate in the legal custody of the department of corrections and rehabilitation confined in a jail, prison, or other correctional facility unless authorized by the director of the department of corrections and rehabilitation.

SECTION 7. AMENDMENT. Subsection 3 of section 44-04-18.7 of the North Dakota Century Code is amended and reenacted as follows:

3. "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Criminal intelligence

information must be considered "active" as long as it is related to intelligence gathering conducted with a reasonable good-faith belief ~~that~~ it will lead to detection of ongoing or reasonably anticipated criminal activities. Criminal intelligence information also includes training materials and information obtained by a criminal justice agency regarding prospective criminal activities which impact officer safety until the information is publicly disclosed.

SECTION 8. A new subsection to section 44-04-18.7 of the North Dakota Century Code is created and enacted as follows:

Crime scene images of a victim of a homicide or sex crime or any image of a minor victim of any crime is an exempt record as defined in subsection 5 of section 44-04-17.1.

SECTION 9. AMENDMENT. Subsections 2, 3, 4, and 6 of section 44-04-20 of the North Dakota Century Code are amended and reenacted as follows:

2. The notice required in this section must contain the date, time, and location of the meeting and, if practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken thereat. The notice must also contain the general subject matter of any executive session expected to be held during the meeting. For meetings to be held by telephone or videoconference, or other electronic means, the location of the meeting and the place the meeting is held is the location of a speakerphone or monitor as required under section 44-04-19.
3. If the governing body holds regularly scheduled meetings, the schedule of these meetings, including the aforementioned notice information, if available, must be filed annually in January with the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, and the county auditor or designee of the county for all other bodies or the schedule must be posted on the public entity's website. This schedule must be furnished to anyone who requests the information. When reasonable and practicable, a governing body of a public entity should attempt to set a regular schedule for its meetings by statute, ordinance, or resolution. This

subsection does not apply to meetings of the legislative assembly or any committee thereof.

4. The notice required in this section must be posted at the principal office of the governing body holding the meeting, if such exists, and at the location of the meeting on the day of the meeting. In addition, unless all the information contained in the notice was previously filed with the appropriate office under subsection 3, the notice must be filed in the office of the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 12 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, ~~and~~ the county auditor or designee of the county for all other bodies, or posted on the public entity's website. This subsection does not apply to meetings of the legislative assembly or any committee thereof.

6. In the event of emergency or special meetings of a governing body, the person calling such a meeting shall, in addition to the notices in subsection 4, also notify the public entity's official newspaper, if any, and any representatives of the news media which have requested to be so notified of such special or emergency meetings, of the time, place, date, and topics to be considered at the same time as such governing body's members are notified. If the public entity does not have an official newspaper, then it must notify the official newspaper of the county where its principal office or mailing address is located. Topics that may be considered at an emergency or special meeting are limited to those included in the notice.

SECTION 10. A new section to chapter 54-40.3 of the North Dakota Century Code is created and enacted as follows:

Application of open records law.

If a joint powers agreement is entered into between a political subdivision of this state and a political subdivision of another state which creates a joint emergency services communications system, the joint powers agreement must address which jurisdiction's open records law will apply in the event a request is made for records that originated from the partner state but is in the possession of the joint emergency services communications system located in North Dakota. The agreement may provide that the emergency services records may be provided pursuant to the open records law of the originating state. If the joint powers agreement does not

1 address this matter, it will be presumed that records will be provided pursuant to North Dakota

2 law.

3 **SECTION 11. EMERGENCY.** This Act is declared to be an emergency measure.