

## **CHAPTER 44-04 DUTIES, RECORDS, AND MEETINGS**

### **44-04-01. When official reports to be made.**

All county, township, and city officers, except such as are required to make their reports at some other specified time, who are required by law to make annual reports for any purpose to any state officer, shall prepare and transmit the same on or before the fifteenth day of August of each year to the proper officer. For the purpose of preparing such report, the year begins on the first day of July of each year and ends on the last day of June of the succeeding year.

### **44-04-02. Penalty for failure to make report.**

Repealed by S.L. 1975, ch. 106, § 673.

### **44-04-03. Attorney general and state's attorney to prosecute officer for failure to make report.**

Upon the willful neglect of any public officer to make any report required by law, the officer or board to whom such report should be made promptly shall notify the attorney general or the state's attorney of such failure to report. The attorney general or state's attorney shall investigate the neglect of duty complained of, and, if in the opinion of the attorney general or state's attorney, the officer has not a sufficient excuse for such failure, the attorney general or state's attorney shall prosecute such officer.

### **44-04-04. Aliens convicted of felony or adjudged mentally ill.**

Whenever any person convicted of a felony or adjudged mentally ill is committed to the custody of the department of corrections and rehabilitation, a county jail, or to any other county institution that is supported wholly or in part by public funds, the warden, superintendent, sheriff, or other officer in charge shall inquire immediately into the nationality of that person, and, if it appears that that person is an alien, immediately shall notify the United States immigration officer in charge of the district in which that person is located, of the date of and the reason for the commitment, the length of time for which the alien was committed, the country of which the alien is a citizen, and the date on, and the port at, which the alien last entered the United States.

### **44-04-05. Certified copies of papers on alien convicted of felony - Request by United States immigration officer.**

Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing an alien, for the commission of a felony, to any state institution supported wholly or in part by public funds, the clerk of such court shall furnish, without charge, a certified copy of the complaint, information, or indictment, and the judgment and sentence, and any other record pertaining to the case of the convicted alien.

### **44-04-06. Peace officers to report law violations.**

The state's attorney, assistant state's attorney, sheriff, deputy sheriff, or peace officer of any county, township, city in this state, having any evidence, knowledge, or notice of any violation of any liquor, gambling, cigarette, snuff, pool hall, bawdyhouse, prostitution, white slave, or habit-forming drug laws of North Dakota shall investigate and seek evidence of the violation and the names of witnesses by whom the violation may be proved. Any peace officer shall report the information to the state's attorney of the county in which the violation occurs and shall assist the state's attorney in the prosecution of the violators of said laws.

### **44-04-07. Inventory required.**

The person in charge of any state department, industry, institution, board, association, or commission shall maintain, or cause to be maintained, a complete and current inventory record of all property of sufficient value and permanence as to render such inventory record practical. Each year such person shall make a complete inventory of all such property, and shall maintain such inventory, with the person's certificate thereto attached, as to the correctness of same, in

the files and records of the department, industry, institution, board, association, or commission. Said inventory record must provide a comprehensive description of each item, together with manufacturer's serial number, or other means of positive identification, and must include statements of all property disposed of by any means whatsoever, including livestock and increase therefrom, and must be in such form and detail as may be prescribed by the department charged with the duty of auditing or examining such records.

**44-04-08. Duty of the heads of state institutions and state boards, departments, or offices to make reports.**

Repealed by S.L. 1973, ch. 403, § 57.

**44-04-09. Nepotism.**

A state official or state employee, in the exercise of that official's or employee's duties, may not serve in a supervisory capacity over, or enter a personal service contract with, that official's or employee's parent by birth or adoption, spouse, son or daughter by birth or adoption, stepchild, brother or sister by whole or half blood or by adoption, brother-in-law or sister-in-law, or son-in-law or daughter-in-law. As used in this section, "supervisory capacity" means the authority to appoint, employ, hire, assign, transfer, promote, evaluate, reward, discipline, demote, or terminate. As used in this section, "evaluate" does not include evaluations by peers or subordinates. This section does not apply to an employment relationship or contract entered before August 1, 1999; nor to any employment relationship or contract entered before the state official or employee assumed the supervisory capacity; nor to any temporary work arrangement necessary to meet a critical and urgent agency need.

**44-04-10. Violation of provisions against nepotism - Penalty.**

Any moneys paid out, in violation of section 44-04-09, must be deducted from the salary of the hiring or contracting state official or state employee.

**44-04-11. Offices to be kept where required by law - Penalty for violation.**

Repealed by S.L. 1975, ch. 106, § 673.

**44-04-12. Public property must be delivered to successor.**

Unless otherwise specifically provided by law, every officer elected or appointed under the laws of this state, on going out of office, shall deliver to that officer's successor in office all public moneys, books, records, accounts, papers, documents, and property in that officer's possession belonging or appertaining to such office.

**44-04-13. Property delivered to successor.**

Upon the death, resignation, suspension, or removal from office of any officer, all books and papers belonging to the office, and all moneys and property in the officer's hands, must be delivered to the officer's successor.

**44-04-14. Examination of records of county officers - State's attorney to prosecute.**

At the end of the term of office of each county officer, or whenever it may seem advisable, the board of county commissioners may secure an examination of the records in that person's office by the state auditor or other competent accountants. Any failure or irregularity discovered must be remedied or the state's attorney shall prosecute the officer guilty thereof for neglect as provided in section 44-04-03.

**44-04-15. Examination of records of local officers - State's attorney to prosecute.**

At the end of the term of office of each city, township, or school district officer, the city council or board of city commissioners, board of township supervisors, or school board, as the case may be, shall examine the records of that officer's office in the manner provided by section 44-04-14 or shall employ a competent accountant to make such examination. Upon complaint of

irregularity by the proper board, the state's attorney shall prosecute as provided in section 44-04-03.

**44-04-16. Officer to provide blanks and records for office.**

Each county, city, township, or school district officer shall provide, at the expense of the county, city, township, or school district, as the case may be, such blanks and records as are necessary for making proper records and for transacting any official business connected with the office.

**44-04-17. Various officers' restrictions - Penalty.**

Repealed by S.L. 1975, ch. 106, § 673.

**44-04-17.1. Definitions.**

As used in this section through section 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.
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;
  - (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; and
  - (4) Training seminars where no other public business is considered or discussed.

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

**44-04-18. Access to public records - Electronically stored information.**

- 1. Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. As used in this subsection, "reasonable office hours" includes all regular office hours of a

public entity. If a public entity does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the public entity's records must be posted on the door of the office of the public entity, if any. Otherwise, the information regarding the contact person must be filed with the secretary of state for state-level entities, for public entities defined in subdivision c of subsection 13 of section 44-04-17.1, the city auditor or designee of the city for city-level entities, or the county auditor or designee of the county for other entities.

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. An initial request need not be made in person or in writing, and the copy must be mailed upon request. 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. 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. The public entity may withhold records pursuant to a request until such time as a requester provides payment for any outstanding balance for prior requests. 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 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. 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. 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.
4. Except as provided in this subsection, nothing in this section requires a public entity to create or compile a record that does not exist. Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium. A computer file is not an available medium if no means exist to separate or prevent the disclosure of any

closed or confidential information contained in that file. Except as reasonably necessary to reveal the organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization. This section does not require a public entity to provide a requester with access to a computer terminal or mobile device. A public entity is not required to provide a copy of a record that is available to the requester on the public entity's website or on the internet. The public entity shall notify the requester the record is available online and direct the requester to the website where the record can be accessed. If the requester does not have reasonable access to the internet due to lack of computer, lack of internet availability, or inability to use a computer or the internet, the public entity shall produce paper copies for the requester, but may charge the applicable fees under this section.

5. A state-level public entity as defined in subdivision a of subsection 13 of section 44-04-17.1 or a political subdivision as defined in subsection 11 of section 44-04-17.1, may establish procedures for providing access from an outside location to any computer database or electronically filed or stored information maintained by that entity. The procedures must address the measures that are necessary to maintain the confidentiality of information protected by federal or state law. Except for access provided to another state-level public entity or political subdivision, the state or political subdivision may charge a reasonable fee for providing that outside access. If the original information is keyed, entered, provided, compiled, or submitted by any political subdivision, the fees must be shared by the state and the political subdivision based on their proportional costs to make the data available.
6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action, adjudicative proceeding as defined in subsection 1 of section 28-32-01, or arbitration in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules or orders and be made to the attorney representing that entity in the criminal or civil action, adjudicative proceeding, or arbitration. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules.
7. A denial of a request for records made under this section must describe the legal authority for the denial, or a statement that a record does not exist, and must be in writing if requested.
8. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in subsections 2 and 3.
9. It is not an unreasonable delay or a denial of access under this section to withhold from the public a record that is prepared at the express direction of, and for presentation to, a governing body until the record is mailed or otherwise provided to a member of the body or until the next meeting of the body, whichever occurs first. It also is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, the record is distributed to a member of a governing body or discussed by the body at an open meeting, or work is discontinued on the draft but no final version has been prepared, whichever occurs first.
10. For public entities headed by a single individual, it is not an unreasonable delay or a denial of access to withhold from the public a working paper or preliminary draft until a final draft is completed, or work is discontinued on the draft but no final version has been prepared, whichever occurs first. A working paper or preliminary draft shall be deemed completed if it can reasonably be concluded, upon a good-faith review, that all substantive work on it has been completed.
11. A disclosure of a requested record under this section is not a waiver of any copyright held by the public entity in the requested record or of any applicable evidentiary privilege.

12. A public entity may allow an individual to utilize the individual's own personal devices for duplication of records and, if so, shall establish reasonable procedures to protect the integrity of the records as long as the procedures are not used to prevent access to the records.
13. If repeated requests for records disrupt other essential functions of the public entity, the public entity may refuse to permit inspection of the records, or provide copies of the records. A public entity refusing to provide access or copies of public records under this section shall state in writing the reasons supporting the refusal and provide the reasoning to the requester. The requester may seek an attorney general's opinion under section 44-04-21.1, on whether the public entity's decision was proper.

**44-04-18.1. Public employee personal, medical, and employee assistance records - Confidentiality - Personal information maintained by state entities - Exempt.**

1. Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and, except as otherwise authorized by law, may not be used or disclosed without the written authorization of the employee. As used in this section, the term "public employee" includes any individual who has applied for employment, is employed, or has been employed by a public entity.
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 month and day of birth; 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. Information regarding the type of leave taken by an employee is exempt, although the amount of leave taken or accrued, and the dates of the leave taken, is public record. Information regarding leave applied for but not yet taken is exempt until the leave is taken.
3. Nonconfidential information contained in a personnel record of an employee of a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1 is exempt.
4. Except as otherwise specifically provided by law, personal information regarding a licensee maintained by an occupational or professional board, association, state agency, or commission created by law is exempt. As used in this section, "licensee" means an individual who has applied for, holds, or has held in the past an occupational or professional license, certificate, credential, permit, or registration issued by a state occupational or professional board, association, agency, or commission.
5. Information relating directly to persons engaged in an organized public safety peer counseling or a public safety peer debriefing is exempt.
6. Records relating to a public entity's internal investigation of a complaint against a public entity or employee for misconduct are exempt until the investigation of the complaint is complete, but no longer than seventy-five calendar days from the date of the complaint.

**44-04-18.2. Certain economic development records exempt from disclosure.**

Repealed by S.L. 1997, ch. 381, § 23.

**44-04-18.3. Records of juvenile court supervisors and probation officers and law enforcement and correctional employees - Law enforcement work schedules - Confidential informants.**

1. Any telephone number and the home address of a juvenile court 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. Information contained in a personnel record of an employee of the department of corrections and rehabilitation may not be disclosed to an 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. Information contained in a personnel record of a law enforcement officer of a state or local law enforcement agency or in the personnel record of a correctional employee of a correctional facility subject to chapter 12-44.1 may not be disclosed to an inmate confined in a state correctional facility or correctional facility subject to chapter 12-44.1 unless authorized by the employing agency.

2. Records or other information that would reveal the identity, or endanger the life or physical well-being, of an undercover law enforcement officer is confidential. For purposes of this subsection, an "undercover law enforcement officer" means a full-time, salaried employee of a local or state law enforcement agency who acts surreptitiously or poses as someone other than a law enforcement officer while engaging in the investigation of a violation of law.
3. Any record containing the work schedule of employees of a law enforcement agency is exempt.
4. A law enforcement officer or prosecutor, within the scope of the employment of the officer or prosecutor, may provide assurances of confidentiality to a person providing information regarding violations of the law. Any information that would identify or provide a means of identifying a confidential informant, if the identity of the informant is not otherwise publicly known, is confidential and may be disclosed only as permitted by law.

**44-04-18.4. Confidentiality of trade secret, proprietary, commercial, financial, and research information.**

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
2. Under this section, unless the context otherwise requires:
  - a. "Commercial information" means information pertaining to buying or selling of goods and services that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
  - b. "Financial information" means information pertaining to monetary resources of a person that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
  - c. "Proprietary information" includes:
    - (1) Information shared between a sponsor of research or a potential sponsor of research and a public entity conducting or negotiating an agreement for the research.
    - (2) Information received from a private business that has entered or is negotiating an agreement with a public entity to conduct research or manufacture or create a product for potential commercialization.
    - (3) A discovery or innovation generated by the research information, technical information, financial information, or marketing information acquired under activities described under paragraph 1 or 2.
    - (4) A document specifically and directly related to the licensing or commercialization resulting from activities described under paragraph 1, 2, or 6.
    - (5) Technical, financial, or marketing records that are received by a public entity, which are owned or controlled by the submitting person, are intended to be



and are treated by the submitting person as private, and the disclosure of which would cause harm to the submitting person's business.

- (6) A discovery or innovation produced by the public entity that an employee or the entity intends to commercialize.
  - (7) A computer software program and components of a computer software program that are subject to a copyright or a patent and any formula, pattern, compilation, program, device, method, technique, or process supplied to a public entity that is the subject of efforts by the supplying person to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that might obtain economic value from its disclosure or use.
  - (8) A discovery or innovation that is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, combination of devices, method, technique, technical know-how or process that is for use, or is used, in the operation of a business and is supplied to or prepared by a public entity that is the subject of efforts by the supplying or preparing person to maintain its secrecy and provides the preparing person an advantage or an opportunity to obtain an advantage over those who do not know or use it or that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, a person that might obtain economic value from its disclosure or use.
- d. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, technical know-how, or process, that:
- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and
  - (2) Is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information.
3. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.
  4. This section does not limit the release or use of records obtained in an investigation by the attorney general or other law enforcement official.
  5. Unless made confidential under subsection 1, the following economic development records and information are exempt:
    - a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, expand within this state, or partner with a public entity to conduct research or to license a discovery or innovation. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
    - b. Trade secrets and proprietary, commercial, or financial information received from a person that is interested in applying for or receiving financing, technical assistance, or other forms of business assistance.
  6. Unless made confidential under subsection 1 or made exempt under subsection 5:
    - a. Bids received by a public entity in response to an invitation for bids by the public entity are exempt until all of the bids have been received and opened by the public entity.
    - b. Proposals received by a public entity in response to a request for proposals are exempt records until a notice of intent to award is issued.

- c. Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open.
7. Unless made confidential under subsection 1, records received by the state department of emergency services under chapter 37-17.1 and the state local intelligence center from the federal government and any public or private agency or entity for disaster mitigation, preparation, response, and recovery, or for cyber threat are exempt.
8. Unless made confidential under subsection 1, university research records are exempt. "University research records" means data and records, other than a financial or administrative record, produced or collected by or for faculty or staff of an institution under the control of the state board of higher education in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone, or in conjunction with a governmental or private entity, provided the information has not been publicly released, published, or patented.
9. Personally identifiable study information is confidential. "Personally identifiable study information" means information about an individual participating in a human research study or project at an institution under the control of the state board of higher education which requires prospective institutional review board review or a determination of exemption, if the information can be used to distinguish or trace the individual's identity, or is linked or linkable to the individual. Examples of personally identifiable study information include name, maiden name, mother's maiden name, alias, personal identification number, social security number, passport number, driver's license number, taxpayer identification number, financial account or credit card number, address, email address, photographic images, fingerprints, handwriting, and other biometric data. Information about participants in human subjects research which does not constitute personally identifiable study information but is part of a human subjects research study or project at an institution under the control of the state board of higher education requiring prospective institutional review board review or a determination of exemption is a university research record under subsection 8.
10. Subsections 8 and 9 do not apply to a student record or other information disclosed by an institution under the control of the state board of higher education to the statewide longitudinal data system.

**(Contingent effective date - [See note](#)) Confidentiality of trade secret, proprietary, commercial, financial, and research information.**

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
2. Under this section, unless the context otherwise requires:
  - a. "Commercial information" means information pertaining to buying or selling of goods and services that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
  - b. "Financial information" means information pertaining to monetary resources of a person that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
  - c. "Proprietary information" includes:
    - (1) Information shared between a sponsor of research or a potential sponsor of research and a public entity conducting or negotiating an agreement for the research.
    - (2) Information received from a private business that has entered or is negotiating an agreement with a public entity to conduct research or manufacture or create a product for potential commercialization.

- (3) A discovery or innovation generated by the research information, technical information, financial information, or marketing information acquired under activities described under paragraph 1 or 2.
  - (4) A document specifically and directly related to the licensing or commercialization resulting from activities described under paragraph 1, 2, or 6.
  - (5) Technical, financial, or marketing records that are received by a public entity, which are owned or controlled by the submitting person, are intended to be and are treated by the submitting person as private, and the disclosure of which would cause harm to the submitting person's business.
  - (6) A discovery or innovation produced by the public entity that an employee or the entity intends to commercialize.
  - (7) A computer software program and components of a computer software program that are subject to a copyright or a patent and any formula, pattern, compilation, program, device, method, technique, or process supplied to a public entity that is the subject of efforts by the supplying person to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that might obtain economic value from its disclosure or use.
  - (8) A discovery or innovation that is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, combination of devices, method, technique, technical know-how or process that is for use, or is used, in the operation of a business and is supplied to or prepared by a public entity that is the subject of efforts by the supplying or preparing person to maintain its secrecy and provides the preparing person an advantage or an opportunity to obtain an advantage over those who do not know or use it or that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, a person that might obtain economic value from its disclosure or use.
- d. "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, technical know-how, or process, that:
- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and
  - (2) Is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information.
3. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or department of environmental quality or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.
  4. This section does not limit the release or use of records obtained in an investigation by the attorney general or other law enforcement official.
  5. Unless made confidential under subsection 1, the following economic development records and information are exempt:
    - a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, expand within this state, or partner with a public entity to conduct research or to license a discovery or innovation. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

- b. Trade secrets and proprietary, commercial, or financial information received from a person that is interested in applying for or receiving financing, technical assistance, or other forms of business assistance.
6. Unless made confidential under subsection 1 or made exempt under subsection 5:
  - a. Bids received by a public entity in response to an invitation for bids by the public entity are exempt until all of the bids have been received and opened by the public entity.
  - b. Proposals received by a public entity in response to a request for proposals are exempt records until a notice of intent to award is issued.
  - c. Records included with any bid or proposal naming and generally describing the entity submitting the proposal are open.
7. Unless made confidential under subsection 1, records received by the state department of emergency services under chapter 37-17.1 and the state local intelligence center from the federal government and any public or private agency or entity for disaster mitigation, preparation, response, and recovery, or for cyber threat are exempt.
8. Unless made confidential under subsection 1, university research records are exempt. "University research records" means data and records, other than a financial or administrative record, produced or collected by or for faculty or staff of an institution under the control of the state board of higher education in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone, or in conjunction with a governmental or private entity, provided the information has not been publicly released, published, or patented.
9. Personally identifiable study information is confidential. "Personally identifiable study information" means information about an individual participating in a human research study or project at an institution under the control of the state board of higher education which requires prospective institutional review board review or a determination of exemption, if the information can be used to distinguish or trace the individual's identity, or is linked or linkable to the individual. Examples of personally identifiable study information include name, maiden name, mother's maiden name, alias, personal identification number, social security number, passport number, driver's license number, taxpayer identification number, financial account or credit card number, address, email address, photographic images, fingerprints, handwriting, and other biometric data. Information about participants in human subjects research which does not constitute personally identifiable study information but is part of a human subjects research study or project at an institution under the control of the state board of higher education requiring prospective institutional review board review or a determination of exemption is a university research record under subsection 8.
10. Subsections 8 and 9 do not apply to a student record or other information disclosed by an institution under the control of the state board of higher education to the statewide longitudinal data system.

#### **44-04-18.5. Computer software programs exempt.**

Any computer software program or component of a computer software program contracted, developed, or acquired by a public entity or state agency, institution, department, or board and for which the public entity or state agency, institution, department, or board acquires a license, copyright, or patent is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. After receiving written approval from the governor, a state agency, institution, department, or board may enter into agreements for the sale, licensing, and distribution of its contracted, licensed, patented, or copyrighted computer software programs. A state agency, institution, department, or board may take any needed action, including legal action, to protect the state's interest in the computer software against improper or unlawful use or infringement and may collect and enforce the collection of any sums due for the licensing or sale of the computer software. A public entity may enter into agreements for the sale, licensing, and distribution of its licensed, patented, or copyrighted computer software programs.

#### **44-04-18.6. Access to legislative records and information.**

The following records, regardless of form or characteristic, of or relating to the legislative council, the legislative management, the legislative assembly, the house of representatives, the senate, or a member of the legislative assembly are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota: a record of a purely personal or private nature, a record that is legislative council work product or is legislative council-client communication, a record that reveals the content of private communications between a member of the legislative assembly and any person, and, except with respect to a governmental entity determining the proper use of telephone service, a record of telephone usage which identifies the parties or lists the telephone numbers of the parties involved. This section does not apply to any record distributed at a meeting subject to section 44-04-19 and section 5 of article XI of the Constitution of North Dakota.

#### **44-04-18.7. Criminal intelligence information and criminal investigative information - Nondisclosure - Record of information maintained.**

1. Active criminal intelligence information and active criminal investigative information are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. A criminal justice agency shall maintain a list of all files containing active criminal intelligence and investigative information which have been in existence for more than one year. With respect to each file, the list must contain the file's number or other identifying characteristic and the date the file was established. The list required under this subsection is subject to section 44-04-18. Personal information of any person contained in an active or nonactive file is an exempt record as defined in subsection 5 of section 44-04-17.1.
2. "Criminal intelligence and investigative information" does not include:
  - a. Arrestee description, including name, date of birth, address, race, sex, physical description, and occupation of arrestee.
  - b. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer.
  - c. Conviction information, including the name of any person convicted of a criminal offense.
  - d. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person.
  - e. A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred.
  - f. A crime summary, including a departmental summary of crimes reported and public calls for service by classification, nature, and number.
  - g. Radio log, including a chronological listing of the calls dispatched.
  - h. General registers, including jail booking information.
  - i. Arrestee photograph, if release will not adversely affect a criminal investigation.
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 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.
4. "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Criminal investigative information must be considered "active" as long as

it is related to an ongoing investigation that is continuing with a reasonable good-faith anticipation of securing an arrest or prosecution in the foreseeable future.

5. "Criminal justice agency" means any law enforcement agency or prosecutor. The term also includes any other unit of government charged by law with criminal law enforcement duties or having custody of criminal intelligence or investigative information for the purpose of assisting law enforcement agencies in the conduct of active criminal investigations or prosecutions.
6. "Personal information" means a person's medical records or medical information obtained from the medical records; motor vehicle operator's identification number; social security number; any credit, debit, or electronic fund transfer card number; month and date of birth; height; weight; home street address; home telephone number or personal cell phone number; and any financial account numbers.
7. A computerized index created by a criminal justice agency of names included in criminal files, whether active or inactive, is an exempt record.
8. 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.
9. An image taken by a law enforcement officer or a firefighter with a body camera or similar device and which is taken in a private place is an exempt record.

#### **44-04-18.8. Examination questions and procedures exemption.**

The following records are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota: examination or test questions, scoring keys, and other data used to administer any licensing, employment, academic, or certification examination or test, if the examination or test is to be used again in whole or in part; and records establishing examination or test procedures and instructions regarding the administration, grading, or evaluation of any examination or test, if disclosure may affect scoring outcomes.

#### **44-04-18.9. Access to financial account numbers.**

Any credit, debit, or electronic fund transfer card or account number and any financial institution account number that a public entity, elected official, or appointed official uses or has available for making electronic or other deposits, transfers, or payments is not an open record.

#### **44-04-18.10. Disclosure of public records.**

1. A public entity may not deny a request for an open record on the ground that the record also contains confidential or closed information.
2. Subject to subsection 3 of section 44-04-18, if confidential or closed information is contained in an open record, a public entity shall permit inspection and receipt of copies of the information contained in the record that is not confidential or closed, but shall delete, excise, or otherwise withhold the confidential or closed information.
3. An officer or employee of a public entity may disclose or comment on the substance of an open record. Any agreement prohibiting the disclosure or comment is void and against public policy.
4. Unless otherwise prohibited by federal law, records of a public entity which are otherwise closed or confidential may be disclosed to any public entity or federal agency for the purpose of law enforcement or collection of debts owed to a public entity, provided that the records are not used for other purposes and the closed or confidential nature of the records is otherwise maintained. For the purpose of this subsection, "public entity" is limited to those entities defined in subdivision a or b of subsection 13 of section 44-04-17.1.
5. Confidential records that are authorized by law to be disclosed to another entity continue to be confidential in the possession of the receiving entity, except as otherwise provided by law.

**44-04-18.11. Disclosure pursuant to subpoena or order.**

1. Unless disclosure under a court order is otherwise prohibited or limited by law, closed records must be disclosed pursuant to a subpoena issued by a court, administrative law judge, or administrative hearing officer, or other court order.
2. Unless disclosure under a court order is otherwise prohibited or limited by law, confidential records must be disclosed pursuant to a court order. Upon request of the public entity ordered to make the disclosure, the court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.
3. Any person who discloses confidential records of a public entity under this section is immune from prosecution for violating section 12.1-13-01.

**44-04-18.12. Cooperative investigations and litigation.**

A record acquired by the office of attorney general from a governmental agency or a nonpublic entity is exempt if the attorney general determines:

1. The record is necessary to monitor or enforce compliance with a law or order or to further a civil investigation or litigation by the state;
2. The record is treated as confidential or privileged by the provider of the records; and
3. The provider of the records has not agreed to waive the privilege relating to or confidentiality of the record.

**44-04-18.13. Lists of minors.**

Any record of a public entity that is a compilation of minor's names, addresses, telephone numbers, or any combination thereof, is exempt.

**44-04-18.14. Information provided to the followup information on North Dakota education and training system.**

Repealed by S.L. 2011, ch. 127, § 6.

**44-04-18.15. Fundraising and donor records exempt.**

1. Any private donor or prospective donor name, address, telephone number, electronic mail address, estate planning information, tax record or financial information, or other personal information or correspondence received or retained by a board of higher education or university system officer or employee or by an affiliated nonprofit organization that provides support to and is organized and operated for the benefit of an institution under the authority of the board of higher education is exempt.
2. Any private donor or prospective donor name, address, telephone number, electronic mail address, estate planning information, tax record or financial information, or other personal information or correspondence received or retained by a nonprofit organization that is a public entity is exempt.
3. For the purposes of this section, "financial information" includes data that provides details regarding a gift, a payment schedule of a gift, the form of a gift, or the specific amount of a gift made by a donor.

**44-04-18.16. Confidentiality of patient records at student health services and university system clinics.**

Any patient record of a patient at a state college or university student health service, university of North Dakota medical center or family practice center, or other university system medical center or clinic is confidential.

**44-04-18.17. Personal and financial information in a consumer complaint.**

Personal and financial information submitted to a state agency as part of a consumer complaint, or gathered pursuant to an investigation of a consumer complaint, is an exempt record as defined in subsection 5 of section 44-04-17.1. For purposes of this section, "personal and financial information" means the home address, home telephone number, social security number, consumer report, and credit, debit, or electronic fund transfer card number of the

complainant and any person on whose behalf the complaint is made, and any account number of a business or individual at a bank, brokerage, or other financial institution. "Personal and financial information" does not include the nature of the complaint, name of the complainant or any person on whose behalf the complaint was submitted, or the address or telephone number of the business that is the subject of the complaint.

**44-04-18.18. Autopsy images - Confidential - Exceptions.**

1. An autopsy photograph or other visual image or a video or audio recording of an autopsy is confidential. However, a criminal justice agency may use or disclose these materials for purposes of an investigation or prosecution.
2. a. After redacting all information identifying the decedent, including name, address, and social security number, and anonymizing facial recognition, a medical examiner, coroner, or physician may use an autopsy photograph, image, or recording for:
  - (1) Medical or scientific teaching or training purposes;
  - (2) Teaching or training of law enforcement personnel;
  - (3) Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;
  - (4) Conferring with medical or scientific experts; or
  - (5) Publication in a scientific or medical journal or textbook.
- b. A medical examiner, coroner, or physician who has in good faith complied with this subsection is not subject to any penalty or liability for using an autopsy photograph, image, or recording.
3. The decedent's spouse, child, parent, or sibling, upon proof of the relationship, may view an autopsy photograph, image, or recording in the business office of a medical examiner, coroner, or physician who has possession of the materials, if there is not an active criminal investigation or prosecution.
4. Disclosure of an autopsy photograph, image, or recording may be obtained under section 44-04-18.11.

**44-04-18.19. Exemption of records relating to individual recipients of economic assistance or benefits.**

Records concerning individual applicants or recipients of economic assistance or support administered under the division of community services or a community action agency, including benefits or services, are exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. These exempt records include applications, income or eligibility verification, assessments, or other personal, medical, or financial data.

**44-04-18.20. Domestic violence and victim record information exempt.**

The address, telephone number, or any identifying information that, if released, could reasonably be used to locate or identify a victim or alleged victim of domestic violence, of a sex offense under chapter 12.1-20, of sexual performances by a child under chapter 12.1-27.2, or of human trafficking under chapter 12.1-41, contained in any record maintained by a criminal justice agency as defined by section 44-04-18.7 or correctional facility as defined by section 12-44.1-01 is exempt.

**44-04-18.21. Electronic mail addresses and telephone numbers exempt.**

The electronic mail address or telephone number of an individual which is provided to a public entity for the purpose of or in the course of communicating with that public entity is an exempt record. This section may not be used to shield the identity of the individual communicating with the public entity.



**44-04-18.22. 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.

**44-04-18.23. Library, archive, and museum collections - Exempt records.**

A public library, archive, or museum may designate a donated record as an exempt record if the donor of the record requests as a condition of the donation that the record not be released to the public for a specific amount of time, which may not exceed twenty years beyond the death of the donor.

**44-04-18.24. Legislative bill tracking records - Exempt.**

Any record maintained within a legislative bill tracking system administered or operated by a public entity is an exempt record.

**44-04-18.25. Value of property paid or delivered to the administrator of the state abandoned property office - Exempt record.**

A record of the value of property paid or delivered to the administrator of the state abandoned property office under section 47-30.1-17 is an exempt record.

**44-04-18.26. Requests for records by members of the legislative assembly and the legislative council.**

Notwithstanding section 44-04-18.6, any record of the legislative council relating to a request for public records made by the legislative council on behalf of a member of the legislative assembly is a public record. The legislative council shall maintain a written or digital record of any request for public records made on behalf of a member of the legislative assembly which identifies the member of the legislative assembly who made the request.

**44-04-18.27. Applications for public employment - Hiring process - Confidential records and open records.**

If a public entity or any person delegated authority by a public entity to review applications or make hiring decisions receives applications from three or more applicants who meet the minimum qualifications for a vacant position, the public entity or other person shall designate three or more of the qualified applicants as finalists for further consideration before the public entity or other person may issue an offer of employment to fill the position. However, if the public entity or other person does not wish to consider any of the applications further and decides not to make an offer of employment for the vacant position, the public entity need not designate any finalist. The applications and any records related to the applications which contain information that could reasonably be used to identify an applicant are confidential, except records related to finalists are open to the public after the finalists are designated. The public entity or other person reviewing applications on behalf of the public entity shall comply with all requirements for an executive session to discuss confidential applications. If, by the close of the application period for a vacant position, a public entity receives applications from fewer than three applicants who meet the minimum qualifications, the applications and records related to the applications are open to the public.

**44-04-18.28. Title IX records at state universities and colleges exempt.**

Any record related to a complaint or investigation under title IX of the Education Amendments of 1972 [Pub. L. 92-318; 20 U.S.C. 1681 et seq.] at an institution under the control of the state board of higher education which contains personally identifiable information about a party to the complaint is an exempt record. For purposes of this section, "personally identifiable information" means information that directly identifies an individual, and information that, alone or in combination with other information, is linked or linkable to an individual and would allow a reasonable person who lacks knowledge of the relevant circumstances to identify the individual.

#### **44-04-19. Access to public meetings.**

Except as otherwise specifically provided by law, all meetings of a public entity must be open to the public. That portion of a meeting of the governing body of a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1 which does not regard public business is not required to be open under this section.

1. This section is violated when any person is denied access to a meeting under this section, unless such refusal, implicitly or explicitly communicated, is due to a lack of physical space in the meeting room for the person or persons seeking access.
2. For purposes of this section, the meeting room must be accessible to, and the size of the room must accommodate, the number of persons reasonably expected to attend the meeting.
3. The right of a person to attend a meeting under this section includes the right to photograph, to record on audiotape or videotape and to broadcast live on radio or television the portion of the meeting that is not held in executive session, provided that there is no active interference with the conduct of the meeting. The exercise of this right may not be dependent upon the prior approval of the governing body. However, the governing body may impose reasonable limitations on recording activity to minimize the possibility of disruption of the meeting.
4. For meetings subject to this section when one or more of the members of the governing body is participating by telephone or video, a speakerphone or monitor must be provided at the location specified in the notice issued under section 44-04-20.

#### **44-04-19.1. Open records and open meetings - Exemptions for attorney work product, attorney consultation, and negotiation preparation.**

1. Attorney work product is exempt from section 44-04-18. Attorney work product and copies thereof shall not be open to public inspection, examination, or copying unless specifically made public by the public entity receiving such work product.
2. Attorney consultation is exempt from section 44-04-19. That portion of a meeting of a governing body during which an attorney consultation occurs may be closed by the governing body under section 44-04-19.2.
3. Active investigatory work product is exempt from section 44-04-18.
4. "Adversarial administrative proceedings" include only those administrative proceedings in which the administrative agency or institution of higher education acts as a complainant, respondent, or decisionmaker in an adverse administrative proceeding. This term does not refer to those instances in which the administrative agency or institution acts in its own rulemaking capacity.
5. "Attorney consultation" means any discussion between a governing body and its attorney in instances in which the governing body seeks or receives the attorney's advice regarding and in anticipation of reasonably predictable or pending civil or criminal litigation or adversarial administrative proceedings or to receive its attorney's advice and guidance on the legal risks, strengths, and weaknesses of an action of a public entity which, if held in public, would have an adverse fiscal effect on the entity. All other discussions beyond the attorney's advice and guidance must be made in the open, unless otherwise provided by law. Mere presence or participation of an attorney at a meeting is not sufficient to constitute attorney consultation.
6. "Attorney work product" means any document or record that:
  - a. Was prepared by an attorney representing a public entity or prepared at such an attorney's express direction;
  - b. Reflects a mental impression, conclusion, litigation strategy, or legal theory of that attorney or the entity; and
  - c. Was prepared exclusively for civil or criminal litigation, for adversarial administrative proceedings, in anticipation of reasonably predictable civil or criminal litigation or adversarial administrative proceedings, or for guidance on the legal risks, strengths, and weaknesses of an action of a public entity.
7. "Investigatory work product" means records obtained, compiled, or prepared by a public entity in an effort to monitor and enforce compliance with the law or an order.

Investigatory work product must be considered active as long as it is related to monitoring and enforcement activity conducted with a reasonable good-faith belief that it will lead to enforcement of the law or an order the public entity is charged by statute or other law with monitoring and enforcing.

8. Following the final completion of the civil or criminal litigation or the adversarial administrative proceeding, including the exhaustion of all appellate remedies, attorney work product must be made available for public disclosure by the public entity, unless another exception to section 44-04-18 applies or if disclosure would have an adverse fiscal effect on the conduct or settlement of other pending or reasonably predictable civil or criminal litigation or adversarial administrative proceedings, or the attorney work product reflects mental impressions, opinions, conclusions, or legal theories regarding potential liability of a public entity.
9. A governing body may hold an executive session under section 44-04-19.2 to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator regarding a pending claim, litigation, adversarial administrative proceedings, or contracts, which are currently being negotiated or for which negotiation is reasonably likely to occur in the immediate future. An executive session may be held under this subsection only when an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the public entity. A record revealing negotiation strategy or instruction under this section is exempt. Drafts of contracts or agreements subject to negotiations are exempt but only for so long as release would have an adverse fiscal effect on the public entity, unless the records are otherwise exempt or confidential.
10. Nothing in this section may be construed to waive any attorney-client privilege of a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1 regarding matters that do not pertain to public business.
11. A settlement agreement between a public entity and another party is exempt from disclosure until it has been fully executed and accepted by all concerned parties unless the records are otherwise exempt or confidential. In the case of multiple settlement agreements involving multiple parties involved in the same incident or undertaking, a settlement agreement is exempt until settlement agreements have been fully executed by all concerned parties unless the records are otherwise exempt or confidential.

#### **44-04-19.2. Confidential or closed meetings.**

1. A governing body may hold an executive session to consider or discuss closed or confidential records.
2. Unless a different procedure is provided by law, an executive session that is authorized by law may be held if:
  - a. The governing body first convenes in an open session and, unless a confidential meeting is required, passes a motion to hold an executive session;
  - b. The governing body announces during the open portion of the meeting the topics to be discussed or considered during the executive session and the body's legal authority for holding an executive session on those topics;
  - c. The executive session is recorded under subsection 5;
  - d. The topics discussed or considered during the executive session are limited to those for which an executive session is authorized by law and that have been previously announced under this subsection; and
  - e. Final action concerning the topics discussed or considered during the executive session is taken at a meeting open to the public, unless final action is otherwise required by law to be taken during a closed or confidential meeting. For purposes of this subsection, "final action" means a collective decision or a collective commitment or promise to make a decision on any matter, including formation of a position or policy, but does not include guidance given by members of the governing body to legal counsel or other negotiator in a closed attorney consultation or negotiation preparation session authorized in section 44-04-19.1.

3. The remainder of a meeting during which an executive session is held is an open meeting unless a specific exemption is otherwise applicable.
4. The minutes of an open meeting during which an executive session is held must indicate the names of the members attending the executive session, the date and time the executive session was called to order and adjourned, a summary of the general topics that were discussed or considered that does not disclose any closed or confidential information, and the legal authority for holding the executive session.
5. All meetings of the governing body of a public entity that are not open to the public must be recorded electronically or on audiotape or videotape. The recording must be disclosed pursuant to court order under subsection 2 of section 44-04-18.11 or to the attorney general for the purpose of administrative review under section 44-04-21.1. The attorney general may not disclose to the public any recording received under this subsection and must return the recording to the governing body upon completion of the administrative review. The recording may be disclosed upon majority vote of the governing body unless the executive session was required to be confidential. Disclosure of the recording by a public servant except as provided in this subsection is a violation of section 12.1-13-01. All recordings under this subsection must be retained for a minimum of six months after the executive session that is the subject of the recording.
6. A public entity may sequester all competitors in a competitive selection or hiring process from that portion of a public meeting wherein presentations are heard or interviews are conducted.

**44-04-19.3. Open meetings exemption - Legislative caucuses.**

A caucus of members of either house of the legislative assembly may meet in an executive session that is not subject to section 44-04-19.2 if the meeting is not held on public property.

**44-04-20. Notice of public meetings required - Exceptions - Schedule set by statute, ordinance, or resolution.**

1. Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity as defined in section 44-04-17.1, including executive sessions, conference call meetings, and videoconferences. Unless otherwise specified by law, resolution, or ordinance, or as decided by the public entity, notices required by this section need not be published.
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 with the secretary of state for state-level bodies or for public entities defined in subdivision c of subsection 13 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. Filing a yearly schedule of upcoming meetings does not relieve a public entity from its obligation to post an agenda for each meeting as required in subsections 2 and 4.
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 13 of section 44-04-17.1, the city auditor or designee of the city for city-level bodies, 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.

5. The governing body's presiding officer has the responsibility of assuring that public notice of a meeting's date, time, and location, is given at the same time as such governing body's members are notified, and that this notice is available to anyone requesting such information. As soon as an agenda is prepared for a meeting with the information required in subsection 2 and given to members of the governing body, the agenda must be posted at the locations as required by subsection 4 and given to anyone requesting the information. When a request is made for notice of meetings, the request is effective for one year unless a different time period is specified.
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.
7. A committee of an institution under the authority of the state board of higher education, in lieu of the notice requirements in this section, may file in the office of the president of the institution the name, address, and telephone number of a person who may be contacted to obtain specific times, dates, and locations of any meetings of that committee or to request specific notification of each meeting of that committee.
8. The attorney general shall prepare general guidelines to assist public entities in following the provisions of this section.
9. This section is violated when a notice is not provided in substantial compliance with this section.

**44-04-21. Open voting at public meetings required - Results recorded in minutes.**

1. Unless otherwise specifically provided by law, all votes of whatever kind taken at any public meeting governed by the provisions of section 44-04-19 must be open, public votes, and all nonprocedural votes must be recorded roll call votes, with the votes of each member being made public at the open meeting. Procedural votes must be recorded roll call votes upon the request of any member of a governing body holding a meeting subject to this section. As used in this section, "nonprocedural" should be broadly interpreted and includes all votes that pertain to the merits of the matter before the governing body.
2. Minutes must be kept of all open meetings and are records subject to section 44-04-18. The minutes must include, at a minimum:
  - a. The names of the members attending the meeting;
  - b. The date and time the meeting was called to order and adjourned;
  - c. A list of topics discussed regarding public business;
  - d. A description of each motion made at the meeting and whether the motion was seconded;
  - e. The results of every vote taken at the meeting; and
  - f. The vote of each member on every recorded roll call vote.Notwithstanding subsection 8 of section 44-04-18, the disclosure of minutes kept under this subsection may not be conditioned on the approval of the minutes by the governing body.

#### **44-04-21.1. Administrative review procedure.**

1. Any interested person may request an attorney general's opinion to review a written denial of a request for records under section 44-04-18, a denial of access to a meeting under section 44-04-19, or other alleged violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 by any public entity other than the legislative assembly or any committee thereof. A request made under this section must be made within thirty days of the alleged violation, except that a request based on allegations that a meeting occurred without the notice required by section 44-04-20, must be made within ninety days of the alleged violation. In preparing an opinion under this section, the attorney general has discretion to obtain and review a recording made under section 44-04-19.2. The attorney general may request and obtain information claimed to be exempt or confidential for the purpose of determining whether the information is exempt or confidential. Any such information may not be released by the attorney general and may be returned to the provider of the information. The attorney general shall issue to the public entity involved an opinion on the alleged violation, which may be a summary opinion, unless the request is withdrawn by the person requesting the opinion or a civil action has been filed involving the possible violation. If the request pertains to a public entity as defined in subdivision c of subsection 13 of section 44-04-17.1, the opinion must be issued to the public entity providing the public funds. In any opinion issued under this section, the attorney general shall base the opinion on the facts given by the public entity.
2. If the attorney general issues a written opinion concluding that a violation has occurred, the public entity has seven days after the opinion is issued, regardless of whether a civil action is filed under section 44-04-21.2, to disclose the record, to issue a notice of a meeting that will be held within a reasonable time to correct the violation, or to take steps to correct any other violation. If the public entity fails to take the required action within the seven-day period and the person requesting the opinion prevails in a civil action brought under section 44-04-21.2, the person must be awarded costs, disbursements, and reasonable attorney's fees in the action and on appeal. The attorney general may require officials of the public entity at issue in the opinion to obtain mandatory training by a certain date. The consequences for failing to comply with an attorney general's opinion issued under this section will be the same as for other attorney general's opinions, including potential personal liability for the person or persons responsible for the noncompliance.
3. If a state-level public entity as defined in subdivision a of subsection 13 of section 44-04-17.1 does not comply in full with the attorney general's opinion, and a civil action is brought under section 44-04-21.2 or is reasonably predictable, the entity, at its sole cost and expense, shall retain separate counsel who has been approved and appointed by the attorney general as a special assistant attorney general to represent the entity in that action.

#### **44-04-21.2. Remedies for violations and enforcement procedure.**

1. A violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 may be the subject of a civil action brought by an interested person or entity. For an alleged violation of section 44-04-18, the complaint must be accompanied by a dated, written request for the requested record. If a court finds that any of these sections have been violated by a public entity, the court may award declaratory relief, an injunction, a writ of prohibition or mandamus, costs, disbursements, and reasonable attorney's fees against the entity. For an intentional or knowing violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21, the court may also award damages in an amount equal to one thousand dollars or actual damages caused by the violation, whichever is greater. An action under this subsection must be commenced within sixty days of the date the person knew or should have known of the violation or within thirty days of issuance of an attorney general's opinion on the alleged violation, whichever is later. Venue for an action is in the county where the entity has its principal office or, if the entity does not have a principal office within the state, in Burleigh County.

2. Any action that is a product of a violation of section 44-04-19, 44-04-20, or 44-04-21 is voidable by a court in a civil action authorized by this section.
3. The remedies provided in this section are not available if a violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 has been corrected before a civil action is filed and no person has been prejudiced or harmed by the delay. An interested person or entity may not file a civil action under this section seeking attorney's fees or damages, or both, until at least three working days after providing notice of the alleged violation to the chief administrative officer for the public entity. This subsection does not apply if the attorney general has found under section 44-04-21.1, on a prior occasion, that the public entity has violated section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21.

#### **44-04-21.3. Attorney general referral and criminal penalties.**

The attorney general may refer to the appropriate state's attorney any public servant as defined in section 12.1-01-04 who has been found in more than one opinion issued pursuant to section 44-04-21.1 to have violated section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21. A public servant as defined in section 12.1-01-04 who knowingly violates section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 is guilty of an offense under section 12.1-11-06.

#### **44-04-22. Conflict of interest law.**

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

#### **44-04-23. Year 2000 information requests - Use - Exceptions.**

Repealed by S.L. 2009, ch. 125, § 4.

#### **44-04-24. Security system plan - Exemption.**

1. A security system plan kept by a public entity is exempt from the provisions of section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
2. As used in this section:
  - a. "Critical infrastructure" means public buildings, systems, including telecommunications centers and computers, power generation plants, dams, bridges, and similar key resources, whether physical or virtual, so vital to the state that the incapacity or destruction of these systems would have a debilitating impact on security, state economic security, state public health or safety, or any combination of those matters.
  - b. "Security system plan" includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, communications, or consultations or portions of any such plan relating directly to the physical or electronic security of a public facility, or any critical infrastructure, whether owned by or leased to the state or any of its political subdivisions, or any privately owned or leased critical infrastructure if the plan or a portion of the plan is in the possession of a public entity; threat assessments; vulnerability and capability assessments conducted by a public entity, or any private entity; threat response plans; and emergency evacuation plans.
3. This exemption applies to security system plans received by a public entity before, on, or after March 20, 2003.
4. Nothing in this section may be construed to limit disclosure required for necessary construction, renovation, or remodeling work on a public building. Disclosure under this subsection does not constitute public disclosure.

**44-04-25. Public health and security plans - Exemption.**

Any plans and only those portions of the records, information, surveys, communications, and consultations used to produce the plans relating to protection of the public or public officials against threats of violence or other harm are exempt from the provisions of section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

**44-04-26. Security system plan - Public health and security plans - Exemption from public meeting requirements.**

Those portions of a meeting which would reveal a security system plan, a public health or security plan, or a portion of any such plan, made exempt by section 44-04-24 or 44-04-25, are exempt from section 44-04-19 and section 5 of article XI of the Constitution of North Dakota.

**44-04-27. Computer passwords and security information - Confidential.**

Security codes, passwords, combinations, or security-related plans used to protect electronic information or to prevent access to computers, computer systems, or computer or telecommunications networks of a public entity are confidential.

**44-04-28. Social security numbers - Confidential.**

1. Social security numbers in the possession of a public entity are confidential. However, social security numbers may be released as authorized in this section or by other state or federal law.
2. A social security number may be released:
  - a. For purposes of participation in retirement or other employment benefits programs;
  - b. As authorized by the individual to whom the social security number is assigned, that individual's lawful agent or guardian, or by order of a court; or
  - c. To another public entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential status of the numbers.

**44-04-29. Client files at the university of North Dakota school of law - Confidential.**

Information in the files of private clients receiving legal services through the clinical education program of the university of North Dakota school of law is confidential unless the information has been requested and is properly obtainable through applicable discovery rules.

**44-04-30. Records of fire departments and rural fire protection districts confidential.**

1. a. An investigation record of a fire department or a rural fire protection district is confidential until the investigation:
  - (1) Is closed and not referred for further criminal investigation or prosecution; or
  - (2) The criminal investigation is no longer active under section 44-04-18.7.
- b. This subsection does not restrict the release of the name and identifiable biographical information of a child under section 12.1-35-03.
2. Standard operating procedures written for emergency response, prefire action plans, plans of a building, pipeline, electrical system, or any other infrastructure plan in the hands of a fire department or rural fire protection district are exempt from section 44-04-18.
3. Individually identifiable health information obtained by a fire department or rural fire protection district is confidential.

**44-04-31. Business associate - Duty to protect information.**

1. As used in this section, "business associate" has the meaning set forth in title 45, Code of Federal Regulations, part 160, section 103.
2. If a public entity is acting as a business associate of another public entity, the entity acting as a business associate shall comply with all the requirements applicable to a



business associate under title 45, Code of Federal Regulations, part 164, section 504, subsection e, paragraph 2.

**44-04-32. Animal feeding operation record requests.**

The state department of health shall keep a written record of each individual who requests information and the type of information requested regarding an animal feeding operation permit. Within seven business days of receiving the request, the department shall provide written notice to the owner and operator of the animal feeding operation describing the type of information that has been requested and the name and address of the requester. If an individual makes inquiries on more than three files in any one request, the department shall charge the individual a fee sufficient to cover the cost of mailing the notice to the owners and operators whose files are being examined and a fee for copying the records as allowed under section 44-04-18.

**(Contingent effective date - See note) Animal feeding operation record requests.** The department of environmental quality shall keep a written record of each individual who requests information and the type of information requested regarding an animal feeding operation permit. Within seven business days of receiving the request, the department shall provide written notice to the owner and operator of the animal feeding operation describing the type of information that has been requested and the name and address of the requester. If an individual makes inquiries on more than three files in any one request, the department shall charge the individual a fee sufficient to cover the cost of mailing the notice to the owners and operators whose files are being examined and a fee for copying the records as allowed under section 44-04-18.