

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2265

2007 SENATE JUDICIARY

SB 2265

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2265**

## Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 23, 2007

Recorder Job Number:1672

Committee Clerk Signature

*Maria L Solbey*

**Minutes:** Relating to release of confidential records.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

### Testimony In Support of Bill:

**Mary Kae Kelsch**, Assistant Attorney General (meter 0:05) Introduced and opened the bill.

Att. # 1.

**Sen. Nething** requested and explanation of the term "redacted" for the committee (meter 14:33)

### Testimony in Opposition of the Bill:

None

### Testimony Neutral to the Bill:

None

**Senator David Nething**, Chairman closed the hearing.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2265

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1843

Committee Clerk Signature

**Minutes:** Relating to release of confidential records.

**Senator David Nething**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

**Sen. Nething** reviewed for the committee the history of the fee and discussion of people requesting information and then not using it. On page 3, section 5-it was important to keep some of the information confidential.

**Sen. Olafson** made the motion to Do Pass SB 2265 and **Sen. Lyson** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Nething**

**Senator David Nething**, Chairman closed the hearing.

**FISCAL NOTE**  
 Requested by Legislative Council  
 01/18/2007

Bill/Resolution No.: SB 2265

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

It appears that SB2265 impacts all state agencies that would provide copies of the information indicated in the bill, thus, the fiscal impact cannot be determined.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Sandy Paulson	<b>Agency:</b>	OMB
<b>Phone Number:</b>	328-2148	<b>Date Prepared:</b>	01/18/2007



**REPORT OF STANDING COMMITTEE**

**SB 2265: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
**(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2265 was placed on the**  
**Eleventh order on the calendar.**

2007 HOUSE JUDICIARY

SB 2265

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2265

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/28/07

Recorder Job Number: 4054

Committee Clerk Signature

*R. F. Moore*

Minutes:

**Vice Chairman Klemin:** We will open the hearing on SB 2265.

**Mary Kae Kelsch, Assistant Attorney General:** (see attached testimony). Explained the bill.

**Rep. Meyer:** Are there fee increases in here.

**Mary Kae Kelsch:** No.

**Rep. Charging:** It says you can charge \$25/hr – is that currently in law.

**Mary Kae Kelsch:** Yes, the first hour is free. You don't have to charge that amount, but that is the maximum, you don't have to charge that amount.

**Rep. Charging:** You why do you have to add that in here.

**Mary Kae Kelsch:** The amount is currently in the law but it is not clear that you can charge that amount for redacting and locating. But it is not clear that you can ask for upfront costs; for a deposit. It is a good faith deposit.

**Rep. Charging:** You bring up a good point about domestic violence cases, can you protect the address; can that record be removed from public record.

**Mary Kae Kelsch:** Certainly could make any report of domestic violence confidential to protect a person, so it couldn't be given at all. I'm not sure of other ramifications. There may

be several part of the domestic violence report so they'd have to cross that part of it every time. By saying it was confidential instead of exempt, that would essentially remove it from being a public record. Making it exempt sort of does it, it gives them discretion, so it's likely that they're not going to give it out. If it is made confidential, you might be hearing from Jack McDonald, because I ran all of this by him and he was okay with it.

**Rep. Charging:** I would be willing to draft an amendment in that regard, just because we need to protect the person making the report.

**Mary Kae Kelsch:** I have no objection to that, that is a decision for the committee.

**Rep. Charging:** I had a question about protection of financial records, you redact that information but for a sex offender, that is public record where they are at.

**Mary Kae Kelsch:** Yes, in other statutes make all of that open. The whole basis of open records laws starts off with "except as otherwise provided by law". If another law says that something has to be made public, it's going to override this. The current law protects that sort of information from being open. The criminal file doesn't only have the information about the criminal, but also have information about victims. So if you have a criminal file about even identity theft, it seems kind of silly to have prosecution of identity theft and then give everyone the file with all the credit card information.

**Rep. Delmore:** We want to make sure that the information is available to law enforcement so that they know their previous background. Once we get into closing all records, we have to make sure that there is access for some people who would wish to have access to those files, such as law enforcement, shelter workers, etc.

**Mary Kae Kelsch:** Making something confidential sounds wonderful to everyone, because it's a word that everyone knows and sounds solid in its protection. In reality, even if something is private and we think it should be confidential, doesn't mean that law enforcement, domestic

violence shelter, people involved that may need some information and by making it confidential, you putting a dead end on it. It's important to think about that, who might need this information, that's absolutely correct.

**Rep. Boehning:** On page 4, line 5 and 6, where the entity could require the payment before locating and redacting. I can see the public records being priced out of the hands of the public, who may not be able to afford to pay the fees. Are we going to set the level too high.

**Mary Kae Kelsch:** That's a legitimate concern and there's always the tension between wanting everything to be open, even the public's records and they should be able to access them. On the other hand, you have people who abuse it, people who do harass agencies. Now for the most part, asking for the fees upfront isn't an issue, because agencies are very cooperative and a lot of times they don't ask for fees upfront, when it seems that it is a legitimate request. Usually it won't apply because you will be done within the first hour, which is free. This really addresses the broad requests, the exceptions. Even in broad requests, they aren't asking for it upfront. It's usually with the people who they've had an experience where they've been burned before where they didn't pay or it's someone who abuses the system. It's a balance, you have to balance everyone's best interests. I guess if it starts being abused, we will have to look at that, and either have to lower the amount or change the policy.

**Bonnie Palacek, ND Council on Abused Women's Services:** Support, particularly in section 5, which would exempt the domestic violence record information. We appreciate being on Ms. Kelsch's list during the year. This is an issue for us in terms of the creative stalkers, it will keep their information safe. Just a couple of thoughts on confidentiality. We don't have privilege on domestic violence records in the state, in other words, we're not like ministers or lawyer/client or advocates. But we do have a really quite a strong confidentiality statute that protects identifying information in records between any conversations between an advocate

and the client that comes into the shelter. In thinking about exempt and confidential records, the two instances that I can think of, would be in spite of the fact that we have a very strong confidentiality statute on shelter records, at the same time there is an exemption to that which says that for the smooth operation of the center, this record will be open. For example, if a law enforcement agency needs to know if someone is in a shelter because they are getting ready to drag the river because of a missing person case, that kind of situation. Or even for the centers themselves, for us to be able to do our jobs. The other exception I can think of, is the court records. Court records in ND, proceedings on domestic violence, protection orders for example are closed, and yet there is an exemption there as well for cases in which there is a child abuse allegation. So a judge may look at that particular case, in camera, just that part of the information in the judge's chambers. That is an exception to that confidentiality law as well. Certainly, section 5 we feel is much needed, it's just with the dynamic of domestic violence, we know that it is not unusual for complaints to be filed and then dropped by victims of domestic violence. We know it's not unusual for their very creative stalker to get information.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Aaron Birst, States Attorneys Association:** Support. Regarding this bill, the States Attorneys support this concept. If there are particular amendments, the only thing I would caution is that ultimately, if prosecutors want to prosecute somebody, we have to disclose the police reports, the records. So there has to be some sort of exception so that you would be able to prosecute the cases. States Attorneys have no problems with making contact and financial information in a police report, not public record, but the other part about the case itself would have to be open. That would put the states attorneys in a bind, when a person comes in and says I don't want my boyfriend to see what's going on in this case. We tell them if we

are going to charge it, we're going to have to show your boyfriend. Obviously, once it goes to the boyfriend/husband or girlfriend/wife, whatever the case may be, then it could be distributed and then the state can't stop it. That's the reality. We are supportive of the bill and process.

**Rep. Charging:** It wasn't to keep it out of law enforcement hands, just to take it out of the public's hands. Is there a way to craft that or if everyone is fine with it, then we'll leave it.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2265

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/28/07

Recorder Job Number: 4130

Committee Clerk Signature

*Penrose*

Minutes:

**Chairman DeKrey:** We will take a look at SB 2265. What are the committee's wishes.

**Rep. Delmore:** I move a Do Pass.

**Rep. Wolf:** Second.

**Rep. Klemin:** I believe Rep. Charging had some questions about this, and she's not here.

**Rep. Delmore:** I withdraw my motion.

**Rep. Wolf:** I withdraw my second.

**Chairman DeKrey:** We will take this up later.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2265

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/5/07

Recorder Job Number: 4369

Committee Clerk Signature *D. Penrose*

Minutes:

**Chairman DeKrey:** We will take a look at HB 2265. What are the committee's wishes.

**Rep. Charging:** I move a Do Pass.

**Rep. Delmore:** Second.

14 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Dahl

Date: 3/5/07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2265

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep. Charging Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Dahl

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2265: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS**  
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2265 was placed on the  
Fourteenth order on the calendar.

2007 TESTIMONY

SB 2265

AA #1  
1-23-07

Office of the Attorney General

Testimony on Senate Bill 2265  
Before the Senate Judiciary Committee  
January 23, 2007

Prepared by:  
Mary Kae Kelsch  
Assistant Attorney General

Same  
given to  
House

The open records and meetings law is an important part of the Attorney General's office. On a daily basis the office takes calls from citizens, media, political subdivisions, and state agencies regarding procedures related to open records and open meetings. The office provides education to public entities throughout the state regarding open records and meetings. In addition, the Attorney General issues several opinions every year addressing violations of the law.

The result of working so closely with the open records and meetings law is that the Attorney General's office is the first to recognize problems with clarity, consistency, or practical application of the law. During the last two years, this office has kept track of issues that need to be addressed. The result is Senate Bill 2265.

SECTIONS 1, 2, and 3

In 2005 the Legislature amended section 44-04-18 by changing the fees that may be charged for copies of public records. The amendments in this section remove outdated language from section 28-32-08 making the fees for copies of public records consistent with section 44-04-18.

#### SECTION 4

This amendment removes the requirement that a party to an adjudicative proceeding must get permission from an administrative law judge prior to conducting discovery under N.D.C.C. ch. 28-32.

#### SECTION 5

This language will give discretion to law enforcement personnel when dealing with an open records request for records pertaining to a report of domestic violence. Currently, if a victim of domestic violence follows through with charges, the law provides protection for the victim's address, telephone number, and other personal information. However, there are many victims of domestic violence who do not press charges. The record of the initial complaint is an open record and is sometimes requested by the alleged perpetrator of the violence. These records contain information that may be used against the victim such as a cell phone number or the address of a safehouse. By making information that may be used to locate an alleged victim of domestic violence exempt, it will allow law enforcement personnel to redact information from the record, if they believe it may be used to harm or harass the alleged victim.

#### SECTION 6

This section makes the three following changes to N.D.C.C. § 44-04-18, the open records statute:

- Subsection 2: Currently, a public entity may require pre-payment of the costs associated with making and mailing a copy of a public record from a person asking for copies. This section expands the charges that may be asked for in advance by a public entity to include locating and redacting. A public entity may

charge up to \$25 an hour for locating records and redacting confidential information from records after the first initial hour.

- Subsection 6: Currently, the open records law provides that if a party to an adversarial administrative proceeding requests records from the public entity involved in the proceeding, the party must go through discovery, rather than the open records law. The phrase "adversarial administrative" is not clearly defined and causes confusion, so, in order to clarify what kind of proceeding requires discovery, "adversarial administrative" is being replaced with "adjudicative." Chapter 28-32 contains a clear definition of what an "adjudicative proceeding."
- Subsection 8: Fees for copies of public records are discussed in subsections 2 and 3. Current law only refers to subsection 2.

#### SECTION 7

After a criminal file is no longer active, it becomes an open record and such files are commonly requested under the open records law. Certain information contained in the closed file is exempt from disclosure. This section cleans up language in section 44-04-18.7 related to what information is exempt and adds "financial account numbers" to the list of personal information that may be redacted from a closed file.

#### SECTION 8

The current law allows exempt or confidential information to be exchanged between public entities for the purposes of law enforcement. The information may only be exchanged between public entities created by North Dakota Constitution or statute. This section would allow public entities to exchange information related to law enforcement information with the federal government.

## SECTION 9

This section changes the term "children" to "minors" in section 44-04-18.13 because the term "minors" is defined by statute.

## SECTION 10

Social security numbers in the possession of public entities are confidential. The current law allows social security numbers to be released for limited purposes and to certain people. This section adds language allowing social security numbers to be released to another public entity, its agents, employees, or contractors if disclosure is necessary to perform its duties and responsibilities. It also requires that agents, employees, and contractors of a public entity maintain the confidentiality of social security numbers.

## SECTION 11

This section adds language to section 57-40.6-07 that would give the public entity in possession of the 911 record the discretion to release or withhold an address of the person who called 911 and either requested services or reported the emergency.