

As a citizen and taxpayer, you are entitled to know how state and local government functions are performed and how public funds are spent.

Like other states, North Dakota has "sunshine laws" which provide that all government records and meetings must be open to the public unless a specific statute requires or authorizes a meeting or record to be closed.

The open records and meetings laws make an incredible amount of information available at your request. A key to exercising your rights under these laws is knowing what to expect when you request government records or want to attend a meeting of a governmental body. My office has prepared this brochure to help you understand and exercise those rights.

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Opinions and other information relating to the Open Records and Open Meetings laws can be accessed on the Attorney General's website, at:

www.ag.state.nd.us

A Citizen's Guide to

North Dakota's Open Records



and Open Meetings Laws



Office of Attorney General



AT A GLANCE

- * A statute may declare certain records to be exempt or confidential. If a record is **exempt**, a public entity may release it at its discretion. If the entity decides not to release an exempt record, that information is closed. If a record is **confidential**, the public entity either cannot release it or must cross out the confidential information first.
- * **Anyone** has the right to attend meetings of a public entity or access and obtain copies of the entity's records, **regardless** of where they live.
- * A governing body can close a meeting to talk with its attorney if the discussion pertains to the attorney's advice regarding a pending or reasonably predictable lawsuit involving the public entity.
- * Courts are not subject to the open records and meetings laws.
- * Economic development information identifying the name, nature, and potential location of a business considering relocating or expanding within the state can be closed until the business announces its intentions.
- * Public employee salary and job performance information is open, but certain personal information may be exempt or confidential.
- * Confidentiality clauses in a settlement agreement involving a public entity are against public policy and are declared void by state law.
- * Although there are laws throughout the Century Code regarding open meetings and open records, the basic laws are found from Sections 44-04-17.1 through 44-04-31.

INFORMATION

Who is subject to the Open Records and Meetings Laws?

All "public entities." This includes:

- State agencies;
- Political subdivisions;
- Private organizations or non-profit organizations that are supported by public funds or are expending public funds;
- Contractors—if the contractor is providing services **in place of** a public entity rather than simply providing services **to** that entity.

Access to records and meetings.

The terms "record" and "meeting" are defined broadly. Before a public entity can deny you access to a record or meeting, it first has to tell you which law closes the record or meeting.

- To deny access to records, the public entity must explain to you **within a reasonable time** the legal authority for denying your request. You may ask for a written denial.
- To deny access to a meeting, the public entity must identify the topics to be considered and the legal authority for closing a meeting **before** asking you to leave the meeting room.

What can I do if I think a public entity has violated the law?

You can ask the Attorney General to issue an advisory opinion regarding an alleged violation of the open records and meetings laws. You have only **90 days** after an alleged violation of the open meetings law and **30 days** after an alleged violation of the open records laws to request an opinion. There is no charge for the opinion, which will be issued to the public entity. You will receive a copy of the opinion.

If the Attorney General finds that there was a violation, the public entity will have seven days to take corrective action.

NOTICE OF MEETINGS

When is notice required?

Prior written notice is required for **all** open meetings. The notice must include the date, time and location of the meeting and the agenda topics the governing body expects to address during the meeting. Regular meeting agendas may be altered at the time of the meeting.

For special or emergency meetings, the public entity's discussion is limited to **just** the topics included in the notice.

How can I find out about a meeting?

You can ask the public entity to give you personal notice of all of its meetings during a specified time, or get a copy of meeting notices from the appropriate office. Meeting notices are filed with the Secretary of State for state agencies, the City Auditor for city-level entities, and the County Auditor for all other entities.

Notices must be posted in the entity's main office, if it has one, and at the location of the meeting (if the meeting is held elsewhere).

Notice of special or emergency meetings must be given to the entity's official newspaper and any media representatives who have asked for notice of special or emergency meetings.

How far in advance is notice required?

As a general rule, there is no mandatory notice period for public meetings. Notice must be posted, filed at the central location, and given to anyone who has requested it, at the same time the members of the governing body are notified of the meeting.



OPEN MEETINGS

What is a “meeting?”

As used in the open meetings law, the term “meeting” means any gathering of a quorum of the members of a governing body of a public entity regarding public business. The **form** of the gathering is irrelevant.

“Meeting” includes committees and subcommittees, informal gatherings or work sessions, **and** discussions where a quorum of the members of the governing body are participating by phone, either at the same time or in a series of individual conversations.

If a governing body delegates any authority to two or more people, the newly formed committee is also subject to the open records and meetings laws.

The **only** time a gathering of a quorum of members is not a meeting is if it is a purely social gathering—as soon as public business is discussed, it becomes a “meeting.”

Do I have the right to speak to the governing body at an open meeting?

No. You are only entitled to see and hear what happens at a meeting, and to record or broadcast those observations. However, other statutes may require a public hearing at which you can comment on specific subjects.

Can an open meeting be closed?

Before a governing body can close a portion of its meeting, it first must convene in a properly noticed open meeting. Next, it has to announce the legal authority to close the meeting and the topics to be considered during the closed portion of the meeting.

After that, unless the law requires a closed meeting, the governing body must vote on whether to close the meeting. Any executive session must be tape recorded. All substantive votes must be recorded by roll call.

OPEN RECORDS

What is a “record?”

The definition of "record" includes all recorded information, regardless of physical form (paper, e-mail, computer file, photographs, audiotape, or videotape) that has a connection with how public funds are spent or with the public entity's performance of its governmental functions.

How do I request records?

You can make a request in person, by mail, or by telephone. A public entity cannot require you to make a request in a specific manner.

You have a **right** to open records, regardless of your identity or purpose, however, your request must reasonably identify existing records.

The entity **cannot**:

- ⊗ Ask why you want the records.
- ⊗ Ask for identification.
- ⊗ Require the request be made in person—or in writing.

The open records law only entitles you to review and receive a copy of open public records. It does **not** require a public entity to respond to your questions, or to create a record that does not exist.

When can I expect a response to my request?

Don't expect the public entity to drop everything and respond immediately. A public entity is required to respond to an open records request within a **reasonable** time, either by providing the requested record or by explaining the legal authority for denying all or part of the request. Depending on the amount of records requested, a “reasonable” time could be a couple of hours or a few days, but not several days or weeks. If the public entity does not provide immediate access, ask when the records will be available.

Can I find out why my request was denied?

If a public entity denies a request for records, the entity **must** tell you what specific federal or state law makes the requested record confidential or closed to the public. If you ask for it, the entity **must** put the reason for the denial in writing.

Is there a fee for getting the records I requested?

Access to records is generally free. For **copies** of records on 8½ x 11” or 8 ½ x 14” paper, the entity can charge **up to 25¢ per page**. For any other kind of copy (including photos, maps, computer records, etc.) the entity can charge the actual cost of making the copy, including labor, materials and equipment. The entity must inform you if other statutes authorize a different fee.

The first hour of locating the records is free. After the first hour, the entity can charge **up to \$25 per hour** for locating the records.

The entity can also charge up to \$25 per hour for the time it takes to review the records and cross out exempt or confidential information from open records; however, the first hour is **free**.

Can a public entity deny access to an entire document because part of it is exempt or confidential?

No. A public entity can only deny access to the items of recorded information for which there is a specific statute closing that information to the public. The remaining information must be open to the public.

Can I ask the entity to send me a copy of a record?

Yes, if the record is open you are entitled to receive a copy of that record upon request and to have the copy mailed. Obviously, you will need to identify yourself if you want the record mailed to you. The entity can charge you for postage.