

**N.D.A.G. Letter to Person (Jan. 21, 1988)**

January 21, 1988

Mr. Alan Person  
Executive Director  
North Dakota Public Employees Retirement System  
1930 Burnt Boat Drive  
Box 1214  
Bismarck, ND 58502

Dear Mr. Person:

Thank you for your letter of January 5, 1988, inquiring as to the applicability of the open meetings law to the North Dakota Public Employees Retirement System Board where that Board considers records of an employee which are statutorily declared to be confidential.

This office has had the prior occasion to respond to this issue. I am enclosing a copy of a letter written to the Pierce County State's Attorney on February 28, 1980. That letter opinion mentions a previous letter of this office as well as a Florida Supreme Court case concerning this issue. The conclusion reached by this office in 1980 was that a statute declaring records to be confidential created an exception to the open meetings law where those confidential records were to be revealed. However, only so much of the meeting as was directly related to the specific confidential records were to be closed. Other portions of the meeting not dealing with confidential records and not otherwise declared to be a closed meeting by law, should be open to the public.

This issue has also been addressed by the Texas Attorney General's office. In 1978, a county child welfare board was found to be covered by their Texas open meetings law. However, a separate Texas statute made it unlawful for anyone to disclose the names of persons applying for or receiving assistance or to disclose any information about such persons. Since the other statute expressly prohibited disclosure of such material, the Texas Attorney General ruled that meetings discussing particular case files of persons receiving or applying for public assistance were not required to be open by the open meetings law. The attorney general was careful to note, however, that the exception applied only to those portions of the meeting discussing the confidential material. 1978 Tex. Op. Att'y Gen. H-1154.

It is my opinion that an otherwise open meeting of a public body may become a closed meeting where it considers information declared by law to be confidential. However, the closed portion of the meeting may continue to occur only so long as the confidential material is being discussed.

Sincerely,

Nicholas J. Spaeth

CV

Enclosure