

Date Issued: March 25, 1982 (AGO 82-23)

Requested by: Kent Conrad, State Tax Commissioner

- QUESTION PRESENTED -

Whether, a state official or his employees, in response to a request for a public record, may take a reasonable amount of time to determine whether that particular record is subject to the North Dakota's Open Records Law, section 44-04-18 of the North Dakota Century Code.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that, a state official or his employees, in response to a request for a public record, in light of the relatively limited statutory and case law exceptions to the North Dakota Open Records Law, section 44-04-18, N.D.C.C. should know what public records are covered by an exception to this law, but that in those cases of first impression where no prior determination has been made, a reasonable amount of time may be taken to determine whether an exception exists for that particular record.

- ANALYSIS -

North Dakota's Open Records Law is found at section 44-04-18, N.D.C.C.

44-04-18. ACCESS TO PUBLIC RECORDS - PENALTY.

1. Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.
2. Violations of this section shall be punishable as an infraction.

Simply put, the North Dakota Open Records Law requires all records of North Dakota government to be open for public inspection unless there is a specific state or federal law or regulation which provides for the confidentiality of that record. When a request is made to inspect a record of a public or governmental body or agency, that request must be honored unless there is a specific law providing for the confidentiality of the record.

Section 44-04-18, N.D.C.C., is a very broad provision to which there are relatively few statutory or case law exceptions. Every state official and the employees of any department should start with the assumption that every public record is to be open and accessible pursuant to section 44-04-18, N.D.C.C. Likewise, every state official and the

employees of any department should know what records are excepted by statutes or case law decisions from the requirements of this law. As to any record about which there is a reasonable doubt, a state official and the employees of any department may take the necessary time to determine whether or not an exception exists for the particular record in question. How much time it will take depends upon what is reasonable under the circumstances in each particular case.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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