

# North Dakota State University

## Policy Manual

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### SECTION 718 PUBLIC/OPEN/CONFIDENTIAL RECORDS

SOURCE: NDSU President  
SBHE Policy 1912

Pursuant to N.D.C.C. Section 44-04-18, except as otherwise specifically provided by law, all records of North Dakota State University are public records, open and accessible for inspection during regular office hours. NDSU shall comply with the public records laws. NDSU will not disclose information which is considered exempt under the public records laws.

This policy applies to all records, including all University information and University resources, regardless of format.

#### Definitions

Record N.D.C.C 44-04-17.1.16	“Recorded information of any kind, regardless of the physical form or characteristics by which information is stored, recorded, or reproduced, which is in the possession or custody of NDSU 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, but does include preliminary drafts and working papers.”
Closed Record N.D.C.C 44-04-17.1.2)	“All or part of an exempt record that NDSU, in its discretion, has not opened to the public.”
Confidential Record N.D.C.C. 44-04-17.1.3	“All or part of a record that is either expressly declared confidential or is prohibited from being open to the public.”
Exempt Record N.D.C.C. 44-04-17.1.5	“All or part of a record that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of NDSU.”
Public Record N.D.C.C. 44-04-18.1	“All records of a public entity are public records, open and accessible for inspection during reasonable office hours.”
Public Employee N.D.C.C. 44-04-18.1	Public employee includes any individual who has applied for employment, is employed, or has been employed by a public entity.

## I. Public/Open Records

- A. Copies of records classified as public shall be provided upon request, after all exempt and/or confidential material has been removed from the records.
- B. State law mandates that responses to open record requests cannot be unreasonably delayed; these requests must be given a high priority.

## II. Exempt/Confidential Records

### A. Student Records

1. Student education records are confidential, and access to those records is restricted according to the Family Education Rights and Privacy Act (FERPA) of 1974.

### B. Personnel Records

1. Personnel records, other than personnel records that relate to individuals employed as a result of his or her status as a student, are public records and open to inspection by the public.
2. Employee medical and employee assistance program records are confidential and are not to be placed in an employee's personnel file and are not to be released without written consent of the employee.
3. Personal information, as defined in N.D.C.C. Section 44-04-18.1, including a person's home address; home telephone number; photograph; medical information; motor vehicle operator's identification number; Social Security number; payroll deduction information; the name, address, phone number and date of birth of any dependent or emergency contact; credit, debit or electronic fund transfer card number; and any account number at a bank or other financial institution, are exempt from the open records law and may be released only as required by law, pursuant to an institution policy or with the employee's written consent.

### C. Campus Police Records

1. Access to, and disclosure of, campus police records is governed by N.D.C.C. Section 44-04-18.7. Accordingly, active criminal intelligence information and active criminal investigative information are exempt from the open records law. Other law enforcement records which are exempt include, but are not limited to:
  - a. Law enforcement records and files concerning a child, as that term is defined in N.D.C.C. Ch. 27-20, shall be kept separate from the records and files of adults, shall not be open to public inspection and may not be disclosed except according to the provisions of N.D.C.C. Ch. 27-20.
  - b. Records of undercover law enforcement officers are confidential and exempt from the open records law as provided by N.D.C.C. Section 44-04-18.3.

## III. Procedures and Materials

Procedures and materials required to support and enforce this policy will be developed and maintained by the Records Management Advisory Committee and the Director of Records Management.

## IV. Imposition of Sanctions

Failure to follow and comply with this policy may result in employee discipline, including termination of employment.

## PUBLIC/OPEN RECORDS PROCEDURES

### I. Public Records Procedures

- A. Responses to open records requests, other than routine requests in the normal course of business in an office or department, shall be coordinated as follows:
  1. Through the Office of the Vice President for University Relations, if the request is from a media source.
  2. Through the Chief of Staff to the University President, if the request is from a non-media source.
- B. Copies shall be made of records and documents in the format filed, or kept in the normal course of business.
- C. Employees are not required to retrieve, collate and/or summarize data or prepare other special reports or documents not required by law or otherwise prepared in the normal course of business.
- D. A fee for allowing access to documents may not be assessed; however, each institution shall establish and collect a fee to cover reasonable copying costs, including reasonable costs of computer generated documents. The fee for standard paper copies may not exceed twenty-five cents per copy.
- E. A fee not to exceed twenty-five dollars per hour, excluding the first hour, may be charged per request for locating records if locating the records requires more than one hour.
- F. A fee not to exceed twenty-five dollars per hour, excluding the first hour, may be charged per request for excising confidential or closed material if doing so requires more than one hour.
- G. Access to electronically stored records is free if the records are recoverable without the use of a computer backup. If a request is made for access to records on a backup for copies of electronically stored records, a reasonable fee may be charged to cover costs attributable for retrieving the information.

### II. Student Education Records

- A. Student education records, including those of former students, are confidential, and access to those records is restricted according to FERPA.
- B. Pursuant to FERPA, NDSU will:
  1. Annually notify currently enrolled students of their rights under FERPA.
  2. Except as provided under FERPA and 34 CFR Section 99.31, relating to conditions under which personally identifiable information may be disclosed without consent, obtain a signed and dated written consent of a student before disclosing personally identifiable information from the student's education records;
  3. Maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student as required by FERPA, 34 CFR Section 99.32;
  4. Provide required notice concerning disclosure of directory information pursuant to FERPA, 34 CFR Section 99.37;
  5. Adopt procedures implementing FERPA provisions governing release and transfer of confidential student disciplinary records;
  6. Comply with all other requirements of FERPA and applicable regulations;
  7. Eliminate the use of the Social Security number (SSN) as an identification number for university-related business transactions;
  8. Increase awareness of the confidential information; and

9. Ensure appropriate and consistent handling of confidential information throughout the University.

III. Personnel Files

- A. N.D.C.C. Section 54-06-21 states that the “official” personnel file is “the file maintained under the supervision of the agency head or designated representative.” At NDSU, the “official file” location is designated as follows:

Non-Broadbanded Employees	
Faculty (ranked)	Dean’s Office
Lecturers and Graduate assistants	Dean’s Office
Extension/Ag. Experiment staff	VP of Agriculture
Other non-broadbanded staff	Office of Human Resources/Payroll
All Broadbanded employees	Office of Human Resources/Payroll

- B. Personnel files must include an access record. The access record must contain the date and name of any person viewing the file except when the custodian of the file is inserting salary, insurance, medical, tax, Workers Compensation, pretax benefits, deferred compensation information or employment forms pursuant to N.D.C.C. Section 54-06-21.

HISTORY:

New	May 1998
Amended	April 2003
Amended	October 2005
Amended	October 2007
Amended	November 2008
Housekeeping	October 2, 2015
Amended	April 28, 2016