

January 24, 2023

Dear Chairman and Members of the Government and Veteran Affairs Committee:

My name is Michael Hayen and I reside in Napoleon, North Dakota (Logan County). I would like to express my opposition to proposed House Bill 1198 and would like for you to consider the same.

Recent new articles and opinion editorials across the state have highlighted the potential consequences of this proposed law change. I have attached copies of articles as they address valid, reasonable points. I would like to share with you my opinion and experiences with the current open records law.

Most government agencies and employees are willing to provide data in response to open records requests. However, some government agencies and employees "take it personal and make it personal" when an open records request is made. Motives are questioned with, "what do you want it for?" Agencies/employees attempt to create financial barriers in releasing information such as requiring a significant number of paid hours to review requested materials for preparation and redactions. Employees have acted and spoken defensively and protectively when presented with a request.

An open records request made with my name on it was met with hostility and contempt from an employee of the government agency. The employee made it personal and responded with unprofessional comments. My family and I are concerned about retaliation.

I know numerous citizens who refuse to request information for the sole reason of the retaliation they may face. This may not be a big issue in larger communities but in smaller communities it is. In my experiences there is a perception that if you dissent with local government and request information it will be held against you.

I oppose House Bill 1196 and urge the committee to consider the negative effects on government transparency by discouraging citizens from making opens records requests.

Thank you for your time and consideration in this matter.

A handwritten signature in blue ink, appearing to read 'M Hayen', is written in a cursive style.

Michael Hayen

Fargo Forum

North Dakota bill would require name, address for open records requests

One lawmaker claims the anonymous aspect of open records law is being abused, but a sunshine law advocate said the bill could lead to abuse by government agencies.

By April Baumgarten
January 12, 2023 02:27 PM

BISMARCK — A North Dakota bill would require residents who want to request public documents to give their name, address and contact information to government agencies if they want the records.

Rep. Mike Lefor, R-Dickinson, introduced House Bill 1198 on Monday, Jan. 9. If passed, government entities could ignore records requests if a person who asks for documents doesn't provide a valid name, address or contact information.

"If you can do things anonymously, it makes me wonder why," Lefor said. "Why wouldn't you declare what your name and address and so forth is?"

With some exceptions, government records in North Dakota are public, meaning anyone can view or request copies of those documents. North Dakota law prohibits a public entity from asking for a person's identification.

Government agencies also cannot ask why a record is being requested, and the request doesn't have to be put in writing or made in person.

Forcing people to attach a name to a public records request destroys the basic purposes of open records laws in North Dakota, said Jack McDonald, an attorney for the North Dakota Newspaper Association and advocate for state sunshine laws. The law protects a citizen's right to get a public record and use it however they want, he said.

This bill could prompt government officials to ask people what they plan to do with records they request, McDonald said. That could hinder investigative journalism and whistleblower laws if a government agency decides to take action to stifle efforts to obtain records, he claimed.

“It really will destroy the open records law,” McDonald said, adding a public record belongs to the public. “Why do you need a name?”

Lefor said the public has a right to access public records, but he feels that right has been abused when people have done it anonymously. Submitting multiple records requests with no names creates a lot of work for government agencies.

“I know of one university that got 35 anonymous requests, and it took a tremendous amount of time and energy to process that information,” he said.

People who ask for federal documents through a Freedom of Information Act request must submit their names, addresses and contact information, Lefor noted. He said he feels North Dakota law should line up with that.

“We’re not asking a lot,” he said, adding that requiring identifying information would make the processing of open records requests more efficient.

McDonald questioned whether there is evidence the anonymous clause of North Dakota’s open records law has been abused. He said he fears a public employee could face disciplinary action if a government agency finds out a worker requested information.

In Cass County, volunteer Deputy Ben Longlet made several open records requests to the Sheriff's Office as Code4 Media. He sent several public documents in October to media that revealed a deputy used his government-issued phone to send nude images of himself, including one that went to a co-worker.

The Sheriff's Office discovered Longlet was behind Code4 and placed him on administrative leave while it investigated his actions for policy violations. Longlet has asserted his right to remain anonymous under state open records laws was violated.

North Dakota has laws to protect whistleblowers from retaliation.

<https://www.inforum.com/news/north-dakota/north-dakota-bill-would-require-name-address-for-open-records-requests>

Grand Forks Herald

Our view: North Dakotans shouldn't have to provide personal info when requesting documents they already own

Public entities simply must provide the documents that are requested, without question and without bias. They may have to grit their teeth every now and then, but this is how transparency works.

Opinion by Herald editorial board
January 14, 2023 08:00 AM

When any person walks into a public office – some city hall or school headquarters, for instance – they are entitled to see any public record they wish. That person doesn't have to explain, give their name or why they have an interest in that public record.

They don't even have to be from that town.

That is not only the law, it's just common sense. State law even spells it out, saying a public entity or its representatives "may not ask for the motive or reason for requesting the records or for the identity of the person requesting records."

Not everybody sees it that way. A proposal in the North Dakota Legislature seeks to change the law so that a person requesting a public record must give their name and provide personal contact information." It's House Bill 1198 , introduced by Rep. Mike Lefor, R-Dickinson.

Our advice to lawmakers: Don't do this. Just wad it up and toss it.

Here's why: The more roadblocks that are put on public records, the less they actually become "open" – at least in the truest sense.

Already, there are fees attached to open records, and sometimes those fees can add up. A person without the money therefore cannot easily access a large number of documents. We understand why there are fees attached – it's because public employees must process the requests – but when a bill comes in at \$100 or more, it certainly can be a deterrent.

At times, newspapers in the Forum Communications Co. chain have paid thousands of dollars to access documents. We know of one case where \$7,000 was spent.

But also, some requesters might be hesitant to attach their name to a request because it could raise flags that ultimately could sway them from seeking the records.

What if a person wants documents related to a small-town mayor or sheriff? That could spark a confrontation, and it might sway the requester from going through the trouble.

These things happen. We know of a case in South Dakota, in the early 2000s, when a newspaper intern was sent to a local City Hall to request information about the chief of police. That intern was then detained in a separate room and questioned.

Everyone is a member of the public and we all own these records. So why should it matter who is making the request for public documents?

And why should anyone have to provide personal information to know what their government is up to?

They shouldn't have to.

Public entities simply must provide the documents that are requested, without question and without bias. They may have to grit their teeth every now and then, but this is how transparency works.

For the sake of openness in North Dakota, we hope HB 1198 dies a quick death.

<https://www.grandforksherald.com/opinion/editorials/our-view-north-dakotans-shouldnt-have-to-provide-personal-info-when-requesting-documents-they-already-own>

Bismarck Tribune

The North Dakota Legislature is considering a change to the open records law to prohibit anonymous requests for government records. It's an unnecessary change that will severely weaken the open records law.

Opinion by Mr. Tory Jackson
January 19, 2023

Rep. Mike Lefor, R-Dickinson, the new House Majority Leader, introduced House Bill 1198, which would allow government agencies to refuse a public records request that doesn't include a name, address and contact information.

Subject to a few exceptions, all government records are public records, open and accessible by any person. Under current law, a government agency cannot demand a reason or motivation for a records request or the identity of the person making the request. Government records belong to the people, so the identity or motivation of the person seeking them is not relevant.

Lefor questions why anyone would request records anonymously and implies that doing so is somehow inappropriate. He also cites an example of "one university" (which, apparently, wishes to remain anonymous) that spent a good deal of time and effort responding to anonymous records requests.

All of that points to the actual purposes behind HB 1198. Either the government wants to use identity as a proxy for a person's motivations, or the government is hoping that outing those who seek public records will have a chilling effect and reduce the number of requests.

If the government can demand identifying information, it inevitably will assign motives to certain people, whether explicitly or implicitly. It won't be long before agencies deny or delay the release of certain records because they disagree with the person making the request or simply are annoyed by a person who makes repeated requests.

A person whose records request is denied or delayed can seek review by the attorney general or a district court. Government agencies might routinely refuse requests from disfavored groups or individuals to force them into that more burdensome review process, in the hopes of discouraging requests in the first place.

Even if state agencies do not use identifying information to stifle open records requests, those outside of state government are likely to do so. Requests for public records are themselves public records. If a member of the Sierra Club requests records pertaining to a certain oil company, that oil company could use the information to retaliate. If a known supporter of the Bastiat Caucus seeks records about an establishment Republican office holder, the party could take retaliatory action against the requester.

Prohibiting anonymity also would hamper the ability of government whistleblowers to uncover corruption or misconduct. Government employees are in a unique position to know exactly which documents to request, but they will not do so without anonymity, for fear of being fired or otherwise retaliated against. The existing whistleblower protection laws are fairly narrow and do not specifically protect a government employee from retaliation for making an open records request.

Even if a few people sometimes abuse the open records law by making frequent anonymous requests, that does not outweigh the importance of maintaining the public's right to government records. If requests sometimes create a lot of work for government agencies, well, so be it. Given the relative size of our state government, it's hard to believe that responding to records requests creates a substantial burden on government employees. If it does, the law already allows government agencies to deny requests that interfere with other essential functions.

The cornerstone of the open records law is that government records are public and can be requested by anyone for any reason. Prohibiting anonymous requests for public records leads down a slippery slope toward more government secrecy and less accountability.

Mr. Tory Jackson is an attorney and writer. His legal practice involves real estate and business matters, with a particular focus on historic rehabilitation projects. He holds degrees from Bismarck State College, the University of Virginia and Harvard Law School. He lives in Bismarck, where he was born and raised.

https://bismarcktribune.com/opinion/columnists/speaking-out-anonymous-records-requests-are-vital/article_a91732da-9742-11ed-8cc8-cb245e3e6cac.html