

Personnel Files & Investigations²⁰²²

ND Open Records Law

- Human Resources or Business Office personnel are typically responsible for maintaining a personnel file for each staff member.
- Personnel files are open records under NDCC

15.1-07-25. School district records - Open - Exception.

1. Except as otherwise provided by law, all records and documents of a school district are open to examination by any person. These records and documents, or copies certified by the business manager, are prima facie evidence of the facts set forth in the records and documents.

ND Open Records Law

2. If a complaint is filed concerning a school district employee and an administrative investigation is conducted, any record or document generated as part of the administrative investigation is confidential and not subject to the requirements of this section or section 44-04-18, until the investigation is completed. The investigation and any determination of disciplinary action may not exceed 60 days from the date the complaint is filed.

Open Records Requests

- Provide access by public during reasonable office hours
- Request does not need to be made in person, or in writing
- Records must be produced for inspection in a reasonable time
- Requestor need not identify self
- Email & electronic communications are open records
- May request copies, reasonable charges may apply \$25 per hour/.25 per page

Confidential Records NDCC, Cont.

44-04-18.1. Public employee personal, medical, and employee assistance records -Confidentiality - Personal information maintained by state entities - Exempt.

- 1. Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and, except as otherwise authorized by law, may not be used or disclosed without the written authorization of the employee.

Exempt Records

2. Except as otherwise specifically provided by law, personal information regarding a public employee contained in an employee's personnel record or given to the state or a political subdivision by the employee in the course of employment is exempt.
- Birthdate, home address, personal phone numbers
 - Photograph
 - medical information
 - drivers license identification number

Exempt Records

- public employee identification number; SSN
- payroll deduction information
- name, address, phone number, and birthdate of dependent or emergency contact
- any credit, debit, or electronic fund transfer card number;
- any account number at a bank or other financial institution.

Applications for employment- Open Records?

- Three or more applicants who meet minimum qualifications
- May hold executive session to discuss applications
- Designate 3 or more of the qualified applicants as finalists before any offer of employment is made (NDCC 44-04-18.27)
- Records related to the finalists are open records after the finalists are designated (non-finalists remain confidential)
- If fewer than 3 qualified applicants, the records are open after the application period closes
- If decision not to consider applicants, or make an offer at the time, then not required to designate any finalists

Personnel File Maintenance

- Organize, subdivide the file to enable quick access, or maintain a separate file
- Separation of open material from Confidential and Exempt (toolbox-see Personnel file layout example)
- Need to redact some information from an open document
- Redact the address, other exempt data from the open document
- In addition to typical performance documentation, file may contain information from special circumstances, investigations, incidents

Investigations:

- Generally, will originate from an alleged violation of district policy, such as
- Harassment/Discrimination
- Bullying
- Title IX
- Staff Code of Conduct
- FERPA

Required Policy Content:

- Who are the protected classes under the policy?
- What are their rights under this policy?
- Policies should contain a clear definition of what constitutes a violation and an explanation of prohibited behaviors/actions
- Clearly delineate procedures for reporting

Required Policy Content:

- Statement of protection from retaliation for anyone bringing a complaint under this policy
- Procedures for investigation
- Timeline for investigation and reporting of outcomes
- Possible disciplinary actions/corrective measures

Policy Best Practices:

- Policies should be published and accessible for staff, students, parents
 - ADA Requirements for Websites
- Staff should acknowledge receipt of these policies each year
- Prominent in Handbook & Employee Website
- Training may be required example: Bullying and Title IX

Receiving and Investigating a Complaint

- Determine the applicable policy or policies.
- Verbal complaint: identify the nature of the complaint, ask complainant if they wish to put the complaint in writing.
- Investigating officer will need to delineate the complaint in writing through the interview process
- Make sure complainant has access to the full policy and any supporting documents.
- Follow your policy and procedure to the letter!

Investigations

- Title IX new regulations require specific roles
 - Coordinator, Investigator, Decision Makers
 - Training required for these roles
- Resources for conducting investigations in HR I Toolkit
- Document! The complaint itself, all investigative interviews
- Do not exceed the investigation timeline given in policy
- Report out conclusions, and resulting actions

Investigations & File Documentation

- Your investigation files and notes are closed, during the investigation
- Attorney involved? Again, closed only during the investigation period
- Final report and conclusions will be published to the personnel file

Investigations & File Documentation

- Working notes and documentation, to support-
- Final report and conclusions
- May store the investigation documentation separate from the personnel file
- Dedicated storage file to retain investigation notes
- Open records still applies

Investigations and File Documentation

- Still public documentation but may relocate to a dedicated file
- Unintentional discovery
- Use of a 'record locator' in the personnel file-refers to additional documents
- example in the resources file

Resources:

- Open Records of a School District NDCC 15.1-07-25
<http://www.legis.nd.gov/cencode/t15-1c07.pdf?20160106234327>
- Beginning in NDCC 44-04-17.1 Open Meetings & Records
<http://www.legis.nd.gov/cencode/t44c04.pdf>
- Example of a personnel file layout
- Sample Investigation Questions & Investigation Procedures
- Investigating Employee Misconduct NDSBA Presentation
- Investigation Report Tracker (Record Locator)