

A. PUBLIC RECORDS STATUTES

As noted in the Introduction and Glossary of Terms, your state likely recognizes a distinction between “public records,” which may include correspondence, office records, personnel records, etc., and “government publications,” which may be compiled as a means to disseminate government information of educational or public interest. This section addresses statutes that concern public records and, in particular, those that focus on record keeping requirements and retention. The compilation of statutes for your state may combine record keeping requirements with public access provisions or freedom of information laws. Those statutes are addressed in Sections B & C.

1. Does your state have “public records statutes,” as referred to in the paragraph above?

Yes
 No

- a. If “Yes,” cite your state’s public records statutes and the administrative regulations that supplement them.

Open records provisions are found in both the North Dakota Constitution and the North Dakota Century Code.

Unless otherwise 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.

N.D. CONST. art. XI, § 6.

In the North Dakota Century Code (N.D. CENT. CODE), the main sections include: N.D. CENT. CODE §§ 44-04-17.1 to 44-04-18.17 and 44-04-19.1 (2001).

There are numerous provisions concerning public records access relating to agencies in the North Dakota Administrative Rules (see Additional Comments).

- b. If “No,” skip this whole section.

Additional comments:

The North Dakota Office of Attorney General provides relevant information on its official website: <<http://www.ag.state.nd.us>>. The website provides a link to Open Records and Meetings. One of the available documents, “Open Records and Meetings Manual,” revised August 2000, is a downloadable, 359-page PDF document that extensively covers North Dakota’s public records laws. Pages R-D1 through R-D54 provides a comprehensive list entitled “North Dakota Statutes and Administrative Rules Regarding Open Records.” The list contains over 700 references to governmental bodies and agencies covered by the law, with references to the appropriate state statute or administrative rule that applies.

For the historical development of open records laws in North Dakota see Daniel S. Guy & Jack McDonald, *Government in the Sunshine: The Status of Open Meetings and Open Records Laws in*

North Dakota, 53 N.D.L. REV. 51 (1976) and Daniel M. Traynor, *Open Records - Agencies or Custodians Affected: The North Dakota Supreme Court Expands the Scope of North Dakota's Open Records Law*, 72 N.D.L. REV. 745 (1996).

2. The public records statutes/regulations apply to which of the following branches?

- Executive
- Legislative
- * Judicial
- Administrative (applying to all agencies, no matter what branch of government)
- Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

See generally Item A.1.a above.

* State courts are not subject to the open records law. *“Record” also does not include records in the possession of a court of this state.* See N.D. CENT. CODE § 44-04-17.1(15) (2001). However, the North Dakota Supreme Court has concluded that *it is the right of the public to inspect the records of judicial proceedings after such proceedings are completed and entered in the docket of the court.* See State v. O’Connell, 151 N.W.2d 758 (N.D. 1967).

Additional comments:

In the “Other” category above, nongovernmental organizations - corporations and other business entities - are subject to the open records laws if they are considered a public entity. A major consideration is whether the entity is supported in whole or part by public funds, or expending public funds. See N.D. CENT. CODE § 44-04-17.1(12), (15) (2001).

3. Cite to public records statutes/regulations where “public record” is defined.

N.D. CENT. CODE § 44-04-17.1(15) (2001).

Additional comments:

4. Do the public records statutes/regulations address electronic records separately vis-à-vis print records?

- Yes
- No

a. If “Yes,” cite to and briefly discuss statutes/regulations addressing electronic records; how are they treated differently?

N.D. CENT. CODE § 44-04-17.1(15) (2001). *“Record” means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business.*

N.D. CENT. CODE § 44-04-18 (2001). *Access to public records -Electronically stored information.* Subsection (3) states in part: *Access to an electronically stored record under this section, or a copy thereof, must be provided at the requester's option in either a printed document or through any other available medium.*

There are some limits to access: when incompatible or alternate formats are requested or when the electronic materials cannot be separated from closed or confidential materials. In court actions involving a public entity, applicable discovery rules must be followed to gain access. Fees may also be charged.

Subsection (4) allows for access from a remote location; access is authorized for records of state-level entities if procedures are adopted to maintain the confidentiality of information protected by federal and state law.

Additional comments:

There are two ND Attorney General's letters relating to electronic records:

Letter to Charlie Whitman (Oct. 8, 1991) stating that open records law applies to computer records.

Letter to Helen Tracy (Sept. 10, 1992) stating that raw data in computer database is a record.

5. Do the public records statutes/regulations address retention of records?

Yes
 No

a. If "Yes," cite to and briefly summarize the retention provisions.

N.D. CENT. CODE §§ 54-46-01 to 54-46-14 (2001). Records Management Act.

The Records Management Act establishes that a state records administrator, either the chief information officer of the state or another appointed to serve in such capacity, provide for a program to retain state records. The act points to requirements of and responsibilities for retention of records by state agencies, counties, cities, and park districts. The act also provides for assistance, upon request, to legislative and judicial branches.

The Attorney General website at <<http://www.ag.state.nd.us>> provides a link to Open Records and Meetings. The PDF document, "Open Records and Meetings Manual," at pages R-D88 through R-D98 references official materials related to records retention. References to over 120 specific public entities are made. These are cross referenced with an accompanying list of the type of material required to be retained under the law, and the length of time the material must be maintained, as well as a cross reference to the applicable statute or administrative code section.

b. If "Yes," also cite to and discuss any provisions/regulations that address retention of electronic records; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

The definition of records in this chapter does not define electronic records, but applies to *other material, regardless of physical form or characteristics*, which elsewhere in the code, covers electronic material. See N.D. CENT. CODE § 44-04-17.1(15) (2001).

Additional comments:

6. Do the public records statutes/regulations or other sources of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens' access to public records or acknowledge the state's responsibility to permanently maintain public records?

Yes
 No

- a. If "Yes," cite to and provide relevant language.

The major open records laws in North Dakota were passed in 1957. See 1957 N.D. Laws ch. 305. Although there is no language specifically labeled "legislative intent" referred to in the statutes, there was a North Dakota Supreme Court ruling, Grand Forks Herald, Inc. v. Lyons, 101 N.W. 2d 543, 546 (N.D. 1960), which summarized the purpose of open records law: "What the Legislature was attempting to accomplish was to provide the public with the right and means of informing itself of the conduct of the business in which the public has an interest, in order that the citizen and taxpayer might examine public records to determine whether public money is being properly spent, or for the purpose of bringing to the attention of the public irregularities in the handling of public matters."

Additional comments:

7. Is a public records administrator, a public records commission or other officer/government entity responsible for administering the public records statutes/regulations?

Yes
 No

- a. If "Yes," cite to applicable statutes/regulations and identify the responsible officer/government entity.

N.D. CENT. CODE § 54-46-03 (2001) establishes the State Records Administrator as being the chief information officer of the state or an individual designated by the chief information officer to serve as the state records administrator. The Records Management Division is a division of the state Information Technology Department.

- b. If "Yes," also cite to and discuss any source of law requiring the responsible officer/government entity to permanently maintain government information; cite attorney general opinions, court decisions, and administrative rules or guidelines.

N.D. CENT. CODE §§ 54-46-01 to 54-46-14 (2001) cover records management. See N.D. CENT. CODE § 54-46-08 (2001): Determination necessary for final disposition of records. *Prior to the final disposition of any type or class of record, the administrator, after consultation with the*

official or department head concerned, the attorney general, the state auditor, and the state archivist, shall determine that the type or class of record has no further administrative, legal, or fiscal value and is subject to final disposition under section 54-46-08.1 (Preservation of records found to be archival resources) or section 54-46-09 (Destruction of nonrecord materials and nonarchival resources). If a statute requiring retention of a record does not either provide a specific retention period or specifically provide that the record be permanently retained, the administrator, after completing the consultation required by this section, shall establish a specific retention period for the record. The administrator shall annually survey the state agencies and shall order final disposition under section 54-46-08.1 or section 54-6-09 of any records which have been determined to have no further administrative, legal, or fiscal value pursuant to this section.

N.D. CENT. CODE § 54-46.1 (2001) establishes a central microfilm unit for the microfilm retention of materials under the control of the state records administrator.

Attorney General's Opinions relating to record retention:

1972-74 N.D. Op. Att'y Gen. 348 (microfilming of state records).

1972-74 N.D. Op. Att'y Gen. 352 (transferring/loaning records to a university).

1972-74 N.D. Op. Att'y Gen. 343 (disposal of records of Governor's office).

1960-62 N.D. Op. Att'y Gen. 171 (final decision on retention).

Additional comments:

8. Has any public records legislation/administrative regulation been proposed calling for "permanent public access" to electronic public records?

Yes

No

a. If "Yes," cite to and briefly discuss the legislation/proposed regulation; what was the outcome?

b. If "Yes," also cite to documents from the legislative or regulatory history.

Additional comments:

The North Dakota open records statutes covers electronic public records. Electronic records are therefore subject to the same permanent public access provisions guiding the state records administrator. See Item A.7.a above.

9. Has litigation under the public records statutes resulted from the state's failure to "permanently" maintain a public record?

Yes
 No

a. If "Yes," cite to and briefly discuss each case.

No litigation directly on the state's failure to permanently maintain a public record. Generally, see the Attorney General website at <http://www.ag.state.nd.us> and the link to Open Records and Meetings. The PDF document, "Open Records and Meetings Manual," at pages R-E1 through R-E4 references North Dakota Supreme Court cases and a North Dakota District Court case regarding open records.

Additional comments:

10. Discuss any unique circumstances in your state relevant to "permanent public access" of public records under public records statutes/regulations.

B. FREEDOM OF INFORMATION ACT

A state's freedom of information act (or law) generally addresses public access to "public records." As noted under Section A above, the compilation of statutes for your state may combine record keeping requirements and public access provisions.

1. Does your state have a "freedom of information act," as referred to in the paragraph above?

Yes
 No

a. If "Yes," cite your state's freedom of information act (or law) statutes and the administrative regulations that supplement them.

b. If "No," skip this whole section.

Additional comments:

Although North Dakota statutes do not specifically refer to the "Freedom of Information Act," the North Dakota Century Code General Index references "Freedom of Information" and directs researchers to the same statutes listed in Part A of this Survey Report.

2. The freedom of information act statutes/regulations apply to which of the following branches?

Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

- a. Briefly explain your answer and cite to applicable statutes/regulations.

Additional comments:

3. Cite to freedom of information law statutes/regulations where “public record” is defined.

Additional comments:

4. Do the freedom of information act statutes/regulations address electronic records separately vis-à-vis print records?

Yes
 No

- a. If “Yes,” discuss whether the freedom of information act statutes/regulations had been amended at any time to cover electronic records; cite to and provide amending language.
- b. If “Yes,” also cite to and briefly discuss statutes/regulations addressing electronic records; how are they treated differently?

Additional comments:

5. Do any freedom of information act statutes/regulations assure “permanent public access” of electronic public records?

Yes
 No

- a. If “Yes,” cite to and discuss any provisions/regulations that address “permanent public access”; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

6. Do the freedom of information act statutes/regulations or other sources of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens’ access to public records or acknowledge the state’s responsibility to permanently maintain public records?

Yes
 No

- a. If “Yes,” cite to and provide relevant language.

Additional comments:

7. Has any freedom of information legislation/administrative regulation been proposed calling for “permanent public access” of electronic public records?

Yes
 No

- a. If “Yes,” cite to and briefly discuss the legislation/proposed regulation; what was the outcome?
- b. If “Yes,” also cite to documents from the legislative or regulatory history.

Additional comments:

8. Has litigation under the freedom of information act resulted from the state’s failure to “permanently” maintain a public record?

Yes
 No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

9. Discuss any unique circumstances in your state relevant to “permanent public access” of public records under freedom of information act statutes/regulations.

C. PUBLIC ACCESS LAWS

The term “public access law” is intended to be a catchall for all other statutes that address the permanency and public accessibility of government information. The type of law appropriately falling under this section is most likely to be a statute that governs availability and access of *government publications*. An example of such a statute is the “Free Public Access to the Code of Maryland Regulations Act,” whose title alone explains much about its purpose.

1. Does your state have any “public access laws,” as referred to in the paragraph above?

Yes
 No

- a. If “Yes,” cite each of your state’s public access law statutes and the administrative regulations that supplement them.

Although North Dakota statutes do not specifically refer to “Public Access Laws,” the North Dakota Century Code General Index references “Public Records, Access to,” and directs researchers to the same statutes listed in Section A of this Survey Report.

- b. If “No,” skip this whole section.

Additional comments:

2. For each public access law, specify the branches to which it applies.

- Executive
- Legislative
- Judicial
- Administrative (applying to all agencies, no matter what branch of government)
- Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

Additional comments:

3. For each public access law, cite to and discuss provisions/regulations addressing the particular form of government information addressed by the law.

Additional comments:

4. For each public access law, do the applicable statutes/regulations address electronic information separately vis-à-vis print information?

- Yes
- No

a. If "Yes," cite to and briefly discuss statutes/regulations addressing electronic information; how is it treated differently?

Additional comments:

5. For each public access law, do the applicable statutes/regulations specifically address permanency of the information?

- Yes
- No

a. If "Yes," for each public access law, cite to and briefly discuss the permanency provisions.

Additional comments:

6. For each public access law, do the applicable statutes/regulations specifically address accessibility of information?

- Yes
- No

a. If "Yes," cite to and briefly discuss the accessibility provisions.

Additional comments:

7. For each public access law, do the applicable statutes/regulations or any other source of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens' access to government

publications or acknowledge the state's responsibility to permanently maintain government publications?

Yes
 No

- a. If "Yes," cite to and provide relevant language.

Additional comments:

8. Has any public access legislation/administrative regulation been proposed calling for "permanent public access" of electronic publications?

Yes
 No

- a. If "Yes," cite to and briefly discuss the legislation/proposed regulation; what was the outcome?
b. If "Yes," also cite to documents from the legislative or regulatory history.

Additional comments:

9. Has litigation under any public access law resulted from the state's failure to "permanently" maintain a government publication?

Yes
 No

- a. If "Yes," cite to and briefly discuss each case.

Additional comments:

10. Discuss any unique circumstances in your state relevant to "permanent public access" of government publications under public access laws.

D. STATE OFFICE FOR TECHNOLOGY AND CHIEF INFORMATION OFFICER

1. Does your state have an office for technology (or department of information technology, department of information service, or equivalent) and/or a chief information officer (or equivalent)?

Yes
 No

- a. If "Yes," provide the complete official name for the office and/or officer; cite to the statute giving that information.

N.D. CENT. CODE § 54-59 (2001). Information Technology Department.

N.D. CENT. CODE § 54-59-03 (2001). Chief information officer of the state.

b. If "No," skip this whole section.

Additional comments:

2. Cite the "enabling" statute that created and defines the powers/responsibilities of the office/officer; when was the statute first enacted?

N.D. CENT. CODE § 54-59-05 (2001). Powers and duties of the department.

N.D. CENT. CODE § 54-59-04 (2001). Duties of chief information officer.

Additional comments:

3. Does the office/officer have power to promulgate administrative regulations?

Yes

No

a. If "Yes," cite the body of administrative regulations promulgated by the office/officer.

Additional comments:

4. The office/officer has jurisdiction over which branches?

Executive

Legislative

Judicial

Administrative (applying to all agencies, no matter what branch of government)

Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

N.D. CENT. CODE § 54-59-02 (2001). Information technology department - Responsibility. *The information technology department is established with the responsibility for all wide area network services planning, selection, and implementation for all state agencies, including institutions under the control of the board of higher education, counties, cities, and school districts in this state. With respect to a county, city, or school district, wide area network services are those services necessary to transmit voice, data, or video outside the county, city, or school district. In exercising its powers and duties, the department is responsible for computer support services, host software development, statewide communications services, standards for providing information to other state agencies and the public through the internet, technology planning, process redesign, and quality assurance.*

Additional comments:

5. Are the powers/responsibilities of the office/officer defined differently for electronic government information vis-à-vis print government information?

Yes

No

- a. If “Yes,” cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

6. Do applicable statutes/regulations for the office/officer set forth powers/responsibilities relating to “permanent public access” of government information?

Yes
 No

- a. If “Yes,” cite to and discuss any provisions/regulations that address those powers/responsibilities; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

N.D. CENT. CODE § 54-46-03 (2001). State records administrator. *The chief information officer of the state or an individual designated by the chief information officer shall serve as the state records administrator, in this chapter referred to as the administrator. The administrator shall establish and administer in the executive branch of state government a records management program, which shall apply efficient and economical management methods to the creation, utilization, maintenance, retention, and final disposition of state records.*

Additional comments:

7. Does any relevant source of law acknowledge in any way the state’s responsibility to permanently maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss that recognition; cite to and provide relevant language.

N.D. CENT. CODE § 54-46-08.1 (2001). Preservation of records found to be archival resources. *The official or department head concerned and the state archivist shall review any records determined to be subject to final disposition under section 54-46-08. Any records found to be of permanent value for research, reference, or other use appropriate to document the organization, function, policies, and transactions of government must be transferred to the state archivist for preservation as archival resources.*

N.D. CENT. CODE § 55-02.1-0 (2000). Archival resources defined. *As used in the chapter, “archival resources” means those noncurrent public records which are no longer essential to the functioning of the agency of origin and which the state archivist determines to have permanent value for research, reference, or other use appropriate to document the organization, function, policies, and transactions of government.*

Additional comments:

8. Whether or not a supporting source of law can be identified, does the office/officer acknowledge responsibility to permanently maintain government information?

Yes
 No

- a. If "Yes," briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

See Item D.7.a above.

Additional comments:

9. Has the office/officer undertaken any special initiatives or projects involving "permanent public access" of government information?

Yes
 No

- a. If "Yes," briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

The state has ongoing microfilming projects, extensive collections of archival material in original format, and is working on options for electronic storage.

Additional comments:

Information on the "State Information Technology Advisory Committee" responsible for state-wide technology planning is found at <http://www.state.nd.us/itd/planning/committ.html>. Significantly, the committee addresses electronic government services for citizens and businesses.

"STATE INFORMATION TECHNOLOGY ADVISORY COMMITTEE (NDCC 54-59-07)

MEMBERSHIP

CIO, ITD, non-voting
Commissioner of Higher Education

PURPOSE

The committee shall advise the department regarding statewide information technology planning, including providing electronic government services for citizens and businesses, developing technology infrastructure to support economic development and work force training, and developing other statewide information technology initiatives and policy. (NDCCC 54-59-07)

MEETINGS

The committee will meet quarterly."

Relevant to options considered for electronic storage is information found on North Dakota Information Technology Department website (<http://www.state.nd.us/itd/records/edms.html>):

Electronic Document Management System (EDMS)

“ITD has purchased and installed FileNET Panagon Content Services as a base for a statewide Electronic Document Management System (EDMS). The system will provide state employees with the ability to store documents and information in electronic format. Stored information may be searched, displayed, printed, or routed by authorized personnel. The intent of the system is to provide a common toolset of technologies and common point of access to information.

An EDMS is a collection of enabling technologies used to manage records and information. Common components include:

- Document Management – Provides for storage of desktop and business application documents. Includes viewer technology that allows users to look at stored documents without access to the original application. Enables users to find documents based on indexes or via text-based searching.
- Imaging – Provides access to legacy documents, documents created outside the organization, and documents with specialized requirements (i.e. signatures, seals). Access is via indexes or by text search using text files created using OCR (Optical Character Recognition).
- COLD (Computer Output to Laser Disk) – Provides access to computer-generated documents and reports. Includes the ability to cross-index information for dynamic access. Also enables users to store computer-generated documents with a form overlay, replicating the appearance of a computer-generated form (i.e. 1040's, 1099's).
- Electronic Forms – Provides the ability to automate data gathering and capture activities. Electronic forms can be completed and submitted electronically. As part of the forms design, validations, calculations, and comparisons to expected results can be used to improve the accuracy of submitted data. Auto fill capabilities pull information from existing data sources or user profiles and automatically place the information in the form. When an e-form is submitted, the data can be reviewed or can be written to the business application database, eliminating data entry activities. Record copies of the form can be automatically indexed and stored in the EDMS system. E-forms can also be used as templates to automate the capture of information submitted on traditional paper forms.
- Workflow – Enables the automation of business processes. Workflow software can be configured to automate routing, reviews, and approvals and can initiate additional or subsequent business processes.
- Data Repository – Stores commonly used information needed to enable automated indexing and autofill of electronic forms.

Current Applications

EDMS technology is currently being used successfully within state government by several agencies including the Workers Compensation Bureau, Bank of North Dakota, and the State Tax Department.

Other applications currently being investigated include:

- Bank of North Dakota - Check imaging system.
- Child Support Enforcement - System for improving efficiency of the remittance processing system and improve access to payment information and case files.
- Human Services – Automated forms processing and data entry.
- ITD – Replacement of COM (Computer Output Microfilm) system.
- Office of Management and Budget – Electronic storage of tax-related documentation.
- Tax Department – Automated storage of mainframe-generated form letters.
- Vital Records – County access to vital records.”

10. Has any litigation involving the office/officer resulted from the state's failure to “permanently” maintain government information?

Yes

No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

11. Discuss any unique circumstances in your state relevant to the office for technology and/or chief information officer.

E. STATE TECHNOLOGY PLANS

1. Does your state have a current official information technology plan (or equivalent)?

Yes

No

- a. If “Yes,” describe what government entity was responsible for creating the plan; cite to the source of its authority.

Information Technology Department;

N.D. CENT. CODE § 54-59-11 (2001). Information technology plans.

- b. If “Yes,” also provide complete bibliographic information about the plan; when was it published?

“North Dakota Statewide Technology Plan 2000,” Information Technology Department, 600 E. Boulevard Ave., Dept. 112, Bismarck, ND 58505.

- c. If “No,” skip this whole section.

Additional comments:

2. The technology plan covers which branches?

Executive

Legislative

Judicial

Administrative (applying to all agencies, no matter what branch of government)

Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

N.D. CENT. CODE § 54-59-11 (2001). Information technology plans.

Additional comments:

3. Does the current plan include a section on permanency and public accessibility of electronic government information?

Yes

No

a. If "Yes," cite to and provide relevant language of the plan.

Additional comments:

4. Discuss any unique circumstances in your state relevant to technology planning or the current information technology plan.

State agency technology plans are completed through an online web-based application named *PlanIT*.

F. STATE PRINTING OFFICE AND STATE PRINTER

1. Does your state have an official printing office (or equivalent) and/or an official printer (or equivalent)?

Yes
 No

a. If "Yes," provide the complete official name for the printing office and/or official printer; cite to the statute giving that information.

N.D. CENT. CODE § 46 (2001). Printing Laws.

b. If "No," skip this whole section.

Additional comments:

N.D. CENT. CODE § 46-01-01 (2001). Office of management and budget to purchase printing. *The authority to purchase and supervise all printing for the various state departments and agencies is vested in the state office of management and budget.*

2. Cite the "enabling" statute that created and defines the powers/responsibilities of the printing office/official printer.

N.D. CENT. CODE §§ 46-01 to 46-06 (2001).

Additional comments:

3. Does the printing office/official printer have power to promulgate administrative regulations?

Yes
 No

a. If "Yes," cite the body of administrative regulations promulgated by the printing office/official printer.

Additional comments:

4. The printing office/official printer has jurisdiction over which branches?

Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

However, this is not mandated.

Additional comments:

5. Briefly discuss the functions of the printing office/official printer. Then:

- a. Describe your state's use of in-house agency publishing and/or commercial publishing of government information.

N.D. CENT. CODE § 46-02-15 (2001). Where public printing shall be done. *Where practicable, all state, county, and other political subdivision public printing, binding, and blank book manufacturing, blanks, and other printed stationery, must be done in this state.*

- b. What percentage of official state government documents are printed by the printing office/official printer?

Approximately fifty percent.

- c. To what extent is the printing office/official printer involved in the electronic dissemination of government information?

No involvement.

Additional comments:

6. Are the powers/responsibilities of the printing office/official printer defined differently for electronic government information vis-à-vis print government information?

Yes
 No

- a. If "Yes," cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

7. Do applicable statutes/regulations for the printing office/official printer set forth powers/responsibilities relating to "permanent public access" of government information?

Yes
 No

- a. If "Yes," cite to and discuss any provisions/regulations that address those powers/responsibilities; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

All-inclusive in open records law.

8. Does any relevant source of law acknowledge in any way the state's responsibility to permanently maintain government information?

Yes

No

- a. If "Yes," briefly discuss that recognition; cite to and provide relevant language.

Through the State Library (see Section H of survey).

Additional comments:

9. Whether or not a supporting source of law can be identified, does the printing office/official printer acknowledge responsibility to permanently maintain government information?

Yes

No

- a. If "Yes," briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

Additional comments:

10. Has the printing office/official printer undertaken any special initiatives or projects involving "permanent public access" of government information?

Yes

No

- a. If "Yes," briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

Additional comments:

11. Has any litigation involving the printing office/official printer resulted from the state's failure to "permanently" maintain government information?

Yes

No

- a. If "Yes," cite to and briefly discuss each case.

Additional comments:

12. Discuss any unique circumstances in your state relevant to the official printing office and/or official printer.

N.D. CENT. CODE § 46-02-20 (2001). In-plant print shops.
Services not provided and exceptions are stated here.

G. STATE ARCHIVES AND STATE ARCHIVIST

This section addresses your state's official archives and state archivist. If these responsibilities are by law under the auspices of your state library and state librarian, please move on to Section H.

1. Does your state have an official archives (or equivalent) and/or an official archivist (or equivalent)?

Yes
 No

- a. If "Yes," provide the complete official name for the archives and/or archivist; cite the statute giving that information.

N.D. CENT. CODE § 55-01 (2000 & Supp. 2001). State Historical Society.

N.D. CENT. CODE § 55-02.1 (2000 & Supp. 2001). Archival Resources; State Archivist.

- b. If "No," skip this whole section.

Additional comments:

2. Cite the "enabling" statute that created and defines the powers/responsibilities of the archives/archivist.

N.D. CENT. CODE § 55-02.1-03 (2000). Duties of state archivist. Source: 1977 N.D. Laws, ch. 502, § 3.

Additional comments:

3. Does the archive/archivist have power to promulgate administrative regulations?

Yes
 No

- a. If "Yes," cite the body of administrative regulations promulgated by the archive/archivist.

Additional comments:

N.D. CENT. CODE § 54-46 (2001). Records Management.

Records Management Division of the Information Technology Department has promulgated administrative regulations.

4. The archive/archivist has defined responsibilities for which branches?

Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

- a. Briefly explain your answer and cite to applicable statutes/regulations.

Executive branch is obligated to follow statutes; legislative and judicial branches may use services (and do use services).

Additional comments:

5. Briefly discuss the functions of the archive/archivist.

N.D. CENT. CODE § 55-02.1-03 (2000). Duties of state archivist. *The state archivist shall: 1) Establish and maintain a program for the selection and preservation of state records and advise in the establishment of programs for the selection and preservation of local records. 2) Give advice and assistance on problems concerning archival resources to any legislative, executive, or judicial officer of the state or any political subdivision of the state when so requested. 3) Be the official custodian of the archival resources of the state. 4) Receive all records transferred to the state archivist for retention as archival resources. 5) Assess, assemble, catalog, house, preserve, and service the archival resources of the state. 6) Make the archival resources in the custody of the state archivist available to serve the administrative and informational needs of state and local government and the people of the state.*

Additional comments:

6. Are the powers/responsibilities of the archive/archivist defined differently for electronic government information vis-à-vis print government information?

Yes

No

- a. If "Yes," cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

7. Do applicable statutes/regulations for the archive/archivist set forth powers/responsibilities relating to "permanent public access" of government information?

Yes

No

- a. If "Yes," cite to and discuss any provisions /regulations that address those powers/responsibilities; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

North Dakota open records laws are based on constitutional and statutory provisions; all records are open unless specifically restricted by statute.

8. Does any relevant source of law acknowledge in any way the state's responsibility to permanently maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss that recognition; cite to and provide relevant language.

Additional comments:

9. Whether or not a supporting source of law can be identified, does the archive/archivist acknowledge responsibility to permanently maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

Relevant is the “Electronic Records Management Guidelines,” prepared by the North Dakota Office of Management and Budget, Information Services Division, addressing the role of the State Archives. See <<http://www.state.nd.us/itd/records/ref.html>>.

Additional comments:

The above guidelines provide:

The State Archives’ Role in Preserving Electronic Records

“The State Archives is responsible for the care, maintenance, and reference use of state records with enduring value, regardless of media. The fragile nature of electronic media makes it imperative that archival considerations be incorporated into the design of the information system during its development stage. The State Archivist will work with agencies in the identification of historical information.

The State Archives will accept electronic records identified as having historical value or will cooperate with agencies in preserving and accessing electronic records maintained in agency custody. Because of the variety of formats of electronic records, issues of proprietary software and specialized hardware, decisions need to be made, in consultation with State Archives staff, as to whether to transfer records or maintain them in the agency of origin. If a transfer decision is made, the method, frequency, and format of the transfer must be determined cooperatively by the agency and State Archives staff.

The timing of the actual physical transfer of electronic records should be determined through the records scheduling process. State Archives personnel need to be involved early in the process to ensure that archival requirements are met. Special preservation measures are often required to preserve electronic records.

Electronic records may require conversion to a medium and format suitable to ensure long-term access and readability. All appropriate system documentation must accompany the transfer of

electronic records. A computer database without minimum documentation is useless because the contents cannot be read or interpreted.

Electronic records containing confidential information will, like other records containing confidential information, be under the same restrictions in the State Archives as they are in the agency of origin. Transfer to the State Archives does not affect statutory restrictions on access to confidential information.”

10. Has the archive/archivist undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes
 No

- a. If “Yes,” briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

Additional comments:

11. Has any litigation involving the archive/archivist resulted from the state’s failure to “permanently” maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss the circumstances of each case and its outcome, and provide citations to any court decisions.

Additional comments:

12. Discuss any unique circumstances in your state relevant to the official archive and/or official archivist.

H. STATE LIBRARY AND STATE LIBRARIAN

This section addresses your state’s official library and state librarian. There is no separate section that addresses the official law library and state law librarian, if any. If your state has an official library *and* an official law library (and/or official librarian *and* official law librarian), it may be appropriate to address those government entities and/or persons separately.

1. Does your state have an official library (or equivalent) and/or an official librarian (or equivalent)?

Yes
 No

- a. If "Yes," provide the complete official name for the library and/or librarian; cite to the statute giving that information.

North Dakota State Library; State Librarian
N.D. CENT. CODE § 54-24 (2001). State Library Commission.

- b. If "No," skip this whole section.

Additional comments:

2. Cite the "enabling" statute that created and defines the powers/responsibilities of the library/librarian.

N.D. CENT. CODE § 54-24-03 (2001). Powers and duties of state librarian.

Additional comments:

3. Does the library/librarian have power to promulgate administrative regulations?

Yes
 No

- a. If "Yes," cite the body of administrative regulations promulgated by the library/librarian.

Additional comments:

4. The library/librarian has defined responsibilities for which branches?

Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

- a. Briefly explain your answer and cite to applicable statutes/regulations.

N.D. CENT. CODE § 54-24-09 (2001). Distribution of certain state publications for certain libraries required.

Additional comments:

The North Dakota State Library collects state documents from all state agencies. The North Dakota State Library is the primary library to all state employees.

5. Briefly discuss the functions of the library/librarian.

N.D. CENT. CODE § 54-24-01 (2001). State library - State librarian appointed by the superintendent of public instruction . . . *The state librarian shall control the work and is the director of the state library . . .*

Additional comments:

6. Are the powers/responsibilities of the library/librarian defined differently for electronic government information vis-à-vis print government information?

Yes
 No

- a. If "Yes," cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

7. Do applicable statutes/regulations for the library/librarian set forth powers/responsibilities relating to "permanent public access" of government information?

Yes
 No

- a. If "Yes," cite to and discuss any provisions/regulations that address those powers/responsibilities ; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

N.D. CENT. CODE § 54-24-09 (2001). Distribution of certain state publications for certain libraries required.

Additional comments:

The North Dakota State Library collects and catalogs eight copies of documents produced by any state agency that is for public distribution.

8. Does any relevant source of law acknowledge in any way the state's responsibility to permanently maintain government information?

Yes
 No

- a. If "Yes," briefly discuss that recognition; cite to and provide relevant language.

N.D. CENT. CODE § 54-24-09 (2001). Distribution of certain state publications for certain libraries required. According to the statute, the office of management and budget shall arrange to deposit with the state library eight copies of all publications issued by all executive, legislative, and judicial agencies of state government intended for general public distribution.

Additional comments:

Note that, "Except for administrative or training materials (i.e. internal policy manuals, inter-office memoranda, forms, etc.), state documents, *in any format*, produced for, by, or in conjunction with a state agency are cataloged and housed at the North Dakota State Library by State Documents Services. These titles may be viewed on the Online Dakota Information Network (ODIN) and most titles are available for circulation." From State Documents Depository Program," <http://ndsl.lib.state.nd.us/StateDocdeposit.html> (emphasis added).

9. Whether or not a supporting source of law can be identified, does the library/librarian acknowledge responsibility to permanently maintain government information?

Yes

No

- a. If "Yes," briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

N.D. CENT. CODE § 54-24-09 (2001). Distribution of certain state publications for certain libraries required.

Additional comments:

10. Has the library/librarian undertaken any special initiatives or projects involving "permanent public access" of government information?

Yes

No

- a. If "Yes," briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

Cataloged state documents for access by the public.

Additional comments:

11. Has any litigation involving the library/librarian resulted from the state's failure to "permanently" maintain government information?

Yes

No

- a. If "Yes," cite to and briefly discuss each case.

Additional comments:

12. Discuss any unique circumstances in your state relevant to the state library and/or state librarian.

The collection at the State Library, via ILL, serves individual citizens throughout North Dakota.

I. STATE DEPOSITORY LIBRARY LAWS

States often have a depository library program patterned after the federal model for disseminating federal government publications.

1. Does your state have a “depository library program,” as referred to in the paragraph above?

Yes
 No

- a. If “Yes,” cite your state’s depository library law statutes and the administrative regulations that supplement them.

N.D. CENT. CODE § 54-24-09 (2001). Distribution of certain state publications for certain libraries required.

- b. If “No,” skip this whole section.

Additional comments:

2. Do the depository library statutes/regulations address electronic government information separately vis-à-vis print government information?

Yes
 No

- a. If “Yes,” cite to and briefly discuss statutes/regulations addressing electronic government information; how is it treated differently?
- b. If “No,” explain whether or not the statutes/regulations have been construed to cover electronic government information?

Additional comments:

N.D. CENT. CODE § 54-24-09 (2001). Distribution of certain state publications for certain libraries required. According to the statute, “State publications refer to any informational materials regardless of format, method of reproduction, or source, originating in or produced with the imprint of, by the authority of, or at the total or partial expense of, any state agency . . .”

Note that: “Except for administrative or training materials (i.e. internal policy manuals, inter-office memoranda, forms, etc.), state documents, *in any format*, produced for, by, or in conjunction with a state agency are cataloged and housed at the North Dakota State Library by State Documents Services. These titles may be viewed on the Online Dakota Information Network (ODIN) and most titles are available for circulation.” From State Documents Depository Program,” <<http://ndsl.lib.state.nd.us/StateDocdeposit.html>> (emphasis added).

3. Do any depository library statutes/regulations assure “permanent public access” of electronic government information?

Yes
 No

- a. If “Yes,” cite to and discuss any provisions/regulations that address “permanent public access”; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

4. Do the depository library statutes/regulations or any other source of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens' access to government information or acknowledge the state's responsibility to permanently maintain public records?

Yes

No

- a. If "Yes," cite to and provide relevant language.

Additional comments:

5. Have depository libraries as a whole undertaken any special initiatives or projects involving "permanent public access" of government information?

Yes

No

- a. If "Yes," briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

Additional comments:

6. Please determine the absolute number or percentage of titles:

5% Formerly distributed in print, now distributed exclusively in electronic format.

10% Never before distributed, now distributed in electronic format.

Additional comments:

7. Discuss the depository library program's effectiveness and actual accomplishments in disseminating, preserving and providing access of electronic government information?

Additional comments:

J. COOPERATIVE ARRANGEMENTS

One can imagine any number of cooperative arrangements to assure "permanent public access." A well-known example is the partnership between the Texas Electronic Depository program (involving the Texas State Library and Archives Commission) and the University of North Texas Libraries (see description for program C304 at Computers in Libraries 2002 on the Information Today website). A hypothetical example of a less formalized cooperative arrangement is where a state's highest court relies on the state bar association to publish the court's decisions.

1. To secure PPA, has any state agency or other government entity (judicial, legislative or executive) partnered with any not for profit, educational, or for profit organization outside of government?

Yes
 No

- a. If "Yes," describe each partnership, noting whether it is funded by a grant or through a government appropriation; give a brief history and summary of accomplishments.

Additional comments:

2. Does the state rely on any cooperative activities that are not actually formalized?

Yes
 No

- a. If "Yes," describe each relationship and cooperative activity; give a brief history and a summary of accomplishments.

Additional comments:

3. Does any state agency or other government entity secure "permanent public access" through any other type of cooperative arrangement?

Yes
 No

- a. Describe each cooperative arrangement; give a brief history and a summary of accomplishments.

Additional comments:

See also:

N.D. CENT. CODE § 54-24.1 (2001). Interstate Library Compact.

N N.D. CENT. CODE § 54-24.3 (2001). Regional Library Cooperatives.

N.D. CENT. CODE § 54-24.4 (2001). Library Coordinating Council.

K. FACTORS TO BE CONSIDERED IN FUTURE ADVOCACY OR REFORM EFFORTS

1. If "permanent public access" is neglected in your state, carefully examine existing public records statutes, freedom of information statutes, public access laws, etc., and respond to the following:
- If possible, cite to and discuss one or two specific places in statutes or other sources of law where the state legislature or a responsible agency might naturally insert basic reform language.
 - If specific places to insert reform language are not obvious, very briefly discuss what state agency or other government entity might naturally be made responsible for "permanent public access."

Additional comments:

2. Discuss known failed efforts in your state to achieve “permanent public access”; how might new efforts succeed?

Additional comments:

L. DIRECTORY

This section asks you to collect directory-type information for important state officials involved in the dissemination of government information.

Provide official contact information for:

1. State Chief Information Officer (or equivalent)

Curtis L. Wolfe
Chief Information Officer
Information Technology Department
600 East Boulevard Avenue, Department 112
Bismarck, ND 58505-0100
Telephone: (701) 328-3190
Fax: (701) 328-3000
E-Mail: itd@state.nd.us
<<http://www.state.nd.us/itd>>

- 1a. State Records Management Administrator

Becky Lingle
State Records Management Administrator
600 East Boulevard Avenue, Department 112
Bismarck, ND 58505-0100
Telephone: (701) 328-3585
Fax: (701) 328-3000
E-Mail: blingle@state.nd.us
<<http://www.state.nd.us/itd/records>>

2. State Printer

Steve Gerriets
Manager
Central Duplicating Service
600 E. Boulevard Avenue, Department 118
Bismarck, ND 58505-0420
Telephone: (701) 328-2779
Fax: (701) 328-2778
E-Mail: sgerriet@state.nd.us

<<http://www.state.nd.us/csd/duplicating>>

3. State Archivist

Gerald G. Newborg
State Archivist and Division Director
State Archives and Historical Research Library Division
State Historical Society of North Dakota
612 East Boulevard Avenue
Bismarck, ND 58505-0830
Telephone: (701) 328-2668
Fax: (701) 328-2650
E-Mail: archives@state.nd.us
<<http://www.state.nd.us/hist/sal.htm>>

4. State Librarian and/or State Law Librarian

Doris Ott
North Dakota State Librarian
North Dakota State Library
600 East Boulevard Avenue, Department 250
Bismarck, ND 58505-0800
Telephone: (701) 328-2492
Fax: (701) 328-2040
E-Mail: ndsladm@state.nd.us
<<http://ndsl.lib.state.nd.us>>

5. State Attorney General (on freedom of information act issues, etc.)

Wayne Stenehjem
Attorney General
Office of Attorney General
600 East Boulevard Avenue, Department. 125
Bismarck, ND 58505-0040
Telephone: (701) 328-2210
Fax: (701) 328-2226
E-Mail: ndag@state.nd.us
<<http://www.ag.state.nd.us>>

M. IMPORTANT STATE RESOURCES

Provide URLs or other finding information for:

1. Official state home page

<<http://discovernd.com>>

2. State agency portal

<<http://discovernd.com/government/agencies.html>>

- a. Does the portal have a searching capability similar to FirstGov?

Yes.

3. Legislative website

<<http://www.state.nd.us/lr>>

- a. Does the website cover the current year only?

No.

- b. Are services free or fee-based?

Fee-based for print or CD subscriptions.

4. Judicial websites

<<http://www.court.state.nd.us>>

5. Regulatory agency websites

<<http://discovernd.com/government/agencies.html>>

6. Freedom of Information Service Hotline

- a. Does the state have an ombudsman for freedom of information act issues?

See Item M.6.b, below.

- b. Is the state attorney general's office the public's contact for freedom of information act issues?

Yes.