State Of North Dakota
Information Technology Department
Acknowledgment Of Secrecy Provision - 2015

Much of the information processed by the Information Technology Department (ITD) is of a confidential nature and must be treated as such by all ITD employees. N.D.C.C. § 54-59-16 specifically provides that, as to information processed for other agencies, “ITD is subject to the same restrictions and penalties regarding the dissemination of this information as the entity involved." The federal government and some state agencies have very specific laws pertaining to secrecy and divulgence of information. For example, both state and federal tax laws make it a crime to divulge or make known, in any manner, any information set forth in tax returns or records. That means you cannot give out <u>any</u> information, including the taxpayer's name, identification number, business code or business address. The penalties for violation of state and federal laws for unlawful disclosure of such information include heavy fines and lengthy imprisonment for disclosure of information. A taxpayer is also authorized by federal law to bring a civil action for damages against the person making an unauthorized disclosure. The state and federal penalty provisions are attached for you to review.

North Dakota’s financial institutions law, income tax law, sales and use tax law, estate tax law and property tax law contain very stringent provisions regarding what information is confidential. These provisions of the law are contained in North Dakota Century Code (N.D.C.C.) § 57-35.3-12 of the financial institutions tax law, in N.D.C.C. § 57-38-57 of the income tax law, N.D.C.C. §§ 57-39.2-23 and 57-40.2-13 of the sales and use tax law, N.D.C.C. § 57-37.1-22 of the estate tax law and N.D.C.C. §§ 11-18-02(7) and 57-05-11 of the property tax law. Similar penalties are prescribed in N.D.C.C. § 57-01-14 for the unauthorized disclosure of information regarding any taxpayer that is furnished or disclosed by the United States Secretary of the Treasury, including the Internal Revenue Service, to the Office of State Tax Commissioner.

The statutes are also specific in reference to the secrecy of certain information from the Health Department, Worker's Compensation, Social Service Board, Protection and Advocacy (P&A), and others. In most instances, violation of the provisions are subject, at a minimum, to a large fine and immediate discharge from employment.

Except as provided in § 54-59-16, and except as provided herein with respect to tax information, all open records requests for information shall be directed to the appropriate state agency or department for response. All open records requests made by the state auditor under N.D.C.C. § 54-10-22.1 for confidential financial institutions tax, income tax, sales and use tax, estate tax, and property tax information shall be directed to the Office of State Tax Commissioner. In all instances, requests received by employees of ITD will be referred to ITD’s Chief Information Officer (CIO) or Deputy CIO & Director of ITD, who will forward the requests to the appropriate state agency or department for reply. The state agency or department, if information is needed to answer questions presented, may request the necessary data from the CIO or Deputy CIO & Director of ITD of the Information Technology Department.

Penalties

Penalties for unauthorized disclosure of any tax return or tax return information provided by the United States Internal Revenue Service to the North Dakota Office of State Tax Commissioner are set forth below and will be read and acknowledged annually by all ITD employees who are authorized access to such information.

United States Internal Revenue Code

Section 7213(a)(2). State And Other Employees. - It shall be unlawful for any officer, employee, or agent, or former officer, employee, or agent, of any State (as defined in section 6103(b)(5)) or any local child support enforcement agency to disclose to any person, except as authorized in this title any return or return information (as defined in section 6103(b)) acquired by him or another person under section 6103(d) or (1) (6). Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

Section 7213A. Unauthorized inspection of returns or return information. - (a) Prohibitions. . . . (2) It shall be unlawful for any person (not described in paragraph (1)) willfully to inspect, except as authorized in this title, any return or return information acquired by such person or another person under a provision of section 6103 referred to in section 7213(a)(2). **(b) Penalty. In general.** Any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding $1,000, or imprisonment of not more than 1 year, or both, together with costs of prosecution.

Section 7431. Civil Damages for Unauthorized Inspection or Disclosure Of Returns And Return Information. (a) In General. . . . Inspection or disclosure by person who is not an employee of United States. If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such a person in a district court of the United States. **(b) No Liability for Good Faith but Erroneous Interpretation.** No liability shall arise under this section with respect to any inspection or disclosure (1) which results from a good faith, but erroneous, interpretation of section 6103 or (2) which is requested by a taxpayer. **(c) Damages.** In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of (1) the greater of - (A) $1,000 for each act of unauthorized inspection or disclosure of a return or return information with respect to which such defendant is found liable, or (B) the sum of - (i) the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure, plus (ii) in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus (2) the costs of the action. **(d) Period for Bringing Action.** Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized disclosure.

North Dakota Century Code

N.D.C.C. § 54-59-16 authorizes personnel of the ITD to receive information from the various agencies of the State of North Dakota for purposes of processing the information for those departments, and it further provides that "the department (ITD) is subject to the same restrictions and penalties regarding the dissemination of this information as the entity involved." Therefore, the penalty provisions of N.D.C.C. § 57-01-14 that apply to Office of State Tax Commissioner employees for the unauthorized disclosure of Federal IRS furnished tax information apply also to ITD employees. Section 57-01-14, N.D.C.C. states: "Except as authorized by the United States Internal Revenue Code of 1954, it shall be unlawful for the state tax commissioner or legal representatives to disclose to any person any return or return information opened to inspection by or disclosed by the United States secretary of the Treasury pursuant to section 6103 of the United States Internal Revenue Code of 1954 to him or any of his employees or legal representatives for the administration of the tax laws administered by him. For the purpose of this Section, the terms "return" and "return information" shall have the same meanings as are provided in section 6103 of the United States Internal Revenue code of 1954, and "state tax commissioner" and "any of his employees or legal representatives" shall include a former state tax commissioner and a former employee or legal representative of the state tax commissioner. Any person who violates this section shall be guilty of a class C felony as provided in N.D.C.C. § 12.1-13-01."

N.D.C.C. § 12.1-32-01(4) provides a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both to be imposed upon any person found guilty of a class C felony.

Health Insurance Portability and Accountability Act (HIPAA) Requirements

There are state and federal laws governing the use and disclosure of protected health information (PHI) by departments engaged in health care provision or payment. PHI is any information (paper or electronic) that:

(1) Is ‘owned’ by a HIPAA-covered agency,
(2) has one or more identifying characteristics, and
(3) relates to the health of the individual.

In the area of health care, the federal Health Insurance Portability and Accountability Act (HIPAA) mandates that state departments who are HIPAA covered entities follow strict requirements when handling protected health information (PHI). These covered agencies are: the Department of Human Services, the Department of Health, PERS, the ND Veterans Home, the Department of Corrections, the ND University System, the University of North Dakota, and ND State University.

Business associates of HIPAA covered entities must also follow some requirements. A business associate is an entity that performs activities for a HIPAA covered entity, where access to an individual's PHI is necessary. ITD is a business associate, because we provide technology services to HIPAA- covered agencies and have access to their clients' PHI.

- ITD employees can only access PHI for services necessary for the customer.
- ITD employees must report to their supervisor, any unauthorized use of PHI.
- If an ITD employee has intentionally, negligently, or mistakenly disclosed PHI to a person/organization not authorized to receive that information, the supervisor must inform the HIPAA covered entity that was impacted.
- Paper records containing PHI should be kept in locked files when not in use. Systems with electronic PHI should be made available only to authorized employees. Access to these systems should be password protected.
- If directed by a HIPAA covered entity, ITD can disclose PHI to a third party. However, employees must document each disclosure of PHI to the third party, per the HIPAA covered entity's instruction.
- Any subcontractors to whom ITD provides PHI on behalf of a HIPAA-covered entity, must agree to the same restrictions and conditions that apply to ITD with respect to such information;
- ITD must make its internal practices, books, and records relating to the use and disclosure of PHI on behalf of the covered entity available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining the HIPAA covered entity's compliance with HIPAA.

Family Educational Rights and Privacy Act (FERPA)
Family Policy Compliance Office (FPCO) Home

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
  - School officials with legitimate educational interest;
  - Other schools to which a student is transferring;
  - Specified officials for audit or evaluation purposes;
  - Appropriate parties in connection with financial aid to a student;
  - Organizations conducting certain studies for or on behalf of the school;
  - Accrediting organizations;
  - To comply with a judicial order or lawfully issued subpoena;
  - Appropriate officials in cases of health and safety emergencies; and
  - State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents

and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

Protection and Advocacy (P&A) Requirements
There are state laws (N.D.C.C. § 57-01-14 and N.D.A.C. § 65.5-01-03) and various federal laws governing the use and disclosure of confidential and privileged information by departments engaged in protecting and advocating the legal rights of North Dakotans with disabilities. These laws make any records and personally identifying information about individuals strictly confidential. In addition, as with all systems hosted by ITD, the data contained in the systems is the property of the state agency responsible for the P&A program.

I, the undersigned, have read and understand the secrecy provisions in the tax laws and other laws of the State of North Dakota, and the provisions of the United States Internal Revenue Code prohibiting disclosure of federally furnished tax information, and I understand that disclosure of information cited in these provisions could result in a fine and imprisonment and liability for civil damages and may result in immediate discharge from my employment.

I have also read and understand the penalties and the provisions for civil damages for unauthorized disclosure of information as specified in Sections 7213(a)(2), 7231A, and 7431 of the Internal Revenue Code and the penalty for unauthorized disclosure of information as specified in N.D.C.C. §§ 54-59-16 and 57-01-14.

I have also read and understand the requirements imposed on ITD when ITD is acting as a business associate of another agency under the HIPAA privacy rule., and understand that the disclosure of confidential information, including protected health information, is punishable under N.D.C.C.
§ 12.1-13-01.

I have also read and understand Federal law protects the privacy of student education records under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99).

Enter Employee ID Number and tab to Employee Name Field. This will automatically populate your employee name.

Employee ID Number	Employee Name

Click in the Signature Box to sign this document

Signature