



NDTFFR Special Board Meeting Agenda

Thursday, June 14, 2018 – 9:00 am
Via Video or Teleconference
ND RIO Conference Room
3442 East Century Avenue
Bismarck, ND

1. **Call to Order and Approval of Agenda** – Vice Pres. Lech (Board Action)
2. **Records Request, Benefit Appeal #2018-1A** – Fay Kopp and Nici Meyer, AGO (Board Action)
3. **Executive Session - Attorney Consultation and Discussion of Proposed Settlement Offer, Benefit Appeal #2018-1A** - Nici Meyer, AGO
*Executive Session required for attorney consultation pursuant to NDCC 44-04-19.1.
4. **Adjournment**

Any person who requires an auxiliary aid or service should contact the Retirement and Investment Office at 701-328-9885 at least three (3) days before the scheduled meeting.

MEMORANDUM

Date: June 12, 2018
To: TFFR Board
From: Fay Kopp
Subject: Records Request, Benefit Appeal #2018-1A

- 1) On May 14, 2018, TFFR received a records request via email regarding Board appeal #2018-1A which was considered at the March 22, 2018 TFFR Board meeting, as follows:

"I am requesting any transcripts, records and minutes from my March 22, 2018 appeal before the TFFR Board."

This request has been reviewed by Nici Meyer and Anders Odegaard from the Attorney General's Office. It was determined that the public open records may be provided to the member which includes board agenda, board approved meeting minutes, and audio recording of the open portions of the March 22, 2018 TFFR Board meeting. No transcript of the meeting was created.

However, with regards to the confidential member records reviewed by the TFFR Board and the audio recording of the executive (closed) session regarding the member's appeal, according to the Attorney General's Office, in order to release this information to the member, the TFFR Board will need to approve its release or by court order. In addition, since the information is considered confidential, the member must also provide a written release.

The guidance from the Attorney General's Office is based on the following statutes:

NDCC 44-04-19.2(5)

5. All meetings of the governing body of a public entity that are not open to the public must be recorded electronically or on audiotape or videotape. The recording must be disclosed pursuant to court order under subsection 2 of section 44-04-18.11 or to the attorney general for the purpose of administrative review under section 44-04-21.1. The attorney general may not disclose to the public any recording received under this subsection and must return the recording to the governing body upon completion of the administrative review. The recording may be disclosed upon majority vote of the governing body unless the executive session was required to be confidential. Disclosure of the recording by a public servant except as provided in this subsection is a violation of section 12.1-13-01. All recordings under this subsection must be retained for a minimum of six months after the executive session that is the subject of the recording.

As the information is confidential 15-39.1-30(1) the information and records may be disclosed, under rules adopted by the board, only to:

- 1. A person to who the teacher has given written consent to have the information closed.*

On May 31, 2018, the member provided written authorization via email as follows:

"I hereby grant permission to release the executive session audio recording of the TFFR board meeting from the March 22, 2018 to myself and to legal counsel."

Board Action Requested on May 14 records request:

BOARD MOTION to approve or deny member's request to release confidential member records reviewed by the TFFR Board at the March 22, 2018 meeting including the audio recording of the executive (closed) session regarding Benefit Appeal #2018-1A to the member and legal counsel.

2) On June 1, 2018, TFFR received a records request via email regarding Board appeal #2018-1A, as follows:

"At this time I will request a copy of the agenda, minutes and audio of your upcoming special TFFR Board meeting regarding my appeal.

To avoid future complications, if an executive session takes place regarding my appeal, I am granting permission for the TFFR board to release the minutes and audio to myself and legal counsel. It is my desire that this request is acted upon at the special board meeting."

After review of this request by the Attorney General's Office, it was determined that the agenda, minutes, and audio recordings of open portions of meetings may be provided to the member.

However, if the Board decides to go into executive (closed) session for attorney-client consultation, TFFR is unable to release any records or audio recordings of the executive session related to attorney consultation pursuant to NDCC 44-04-19.1 and 44-04-19.2. Since state law prevents release of information related to attorney-client consultation, the TFFR Board cannot act on this portion of the member's records request and the audio recording cannot be sent.

No Board Action is required on the June 1 records request. Board information only.