



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
www.attorneygeneral.nd.gov
(701) 328-2210

Drew H. Wrigley
ATTORNEY GENERAL

OPEN RECORDS AND MEETINGS OPINION
2022-O-12

DATE ISSUED: September 29, 2022

ISSUED TO: North Prairie Regional Water District

CITIZEN'S REQUEST FOR OPINION

Crystal Hendrickson requested an opinion under N.D.C.C. § 44-04-21.1 from this office regarding whether North Prairie Regional Water District violated N.D.C.C. § 44-04-20 by failing to properly notice a special meeting and failing to provide records within a reasonable time.

FACTS PRESENTED

The North Prairie Regional Water District Board (Board) held a special meeting on November 1, 2021.¹ On November 3, 2021, Crystal Hendrickson requested the minutes from that meeting. Ms. Hendrickson alleges the Board failed to provide notice of the meeting to its official newspaper, post notice on its website, and provide requested records.²

ISSUE

1. Whether the North Prairie Regional Water District provided notice of its November 1, 2021, special meeting in substantial compliance with N.D.C.C. § 44-04-20.
2. Whether the North Prairie Regional Water District provided records responsive to a request within a reasonable time.

ANALYSIS

Issue 1

Unless otherwise provided by law, public notice must be given before each meeting of a public entity.³ Meeting notices must be posted at the principal office of the governing body, if such an office exists, and at the location of the meeting on the day of the meeting. Meeting notices also

¹ Letter from John Bearman, Chairman, N. Prairie Reg'l Water Dist. Bd., to Annique M. Lockard, Ass't Att'y Gen., Att'y Gen.'s Office (received Dec. 20, 2021).

² E-mail from Crystal Hendrickson to Att'y Gen.'s Office (Nov. 10, 2021, 1:42 PM).

³ N.D.C.C. § 44-04-20.

OPEN RECORDS AND MEETINGS OPINION 2022-O-12

September 29, 2022

Page 2

must be filed in the appropriate office or posted on the public entity's website.⁴ For emergency or special meetings, notice also must be given to the public entity's official newspaper and any representatives of the news media who requested to be notified of the special meetings.⁵

Opinions issued by this office must be based on the facts given by the public entity.⁶ According to the Board, notice of the November 1, 2021, meeting was e-mailed to the newspaper on Friday, October 22, 2021.⁷ The following Monday, the Board's Office Manager/Billing Coordinator contacted the newspaper again about the meeting notice.⁸ The meeting notice was posted on the Board's website on October 22, 2021.⁹

Accordingly, it is my opinion the Board complied with the notice requirements of N.D.C.C. § 44-04-20 for its November 1, 2021, special meeting.

Issue 2

"Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours."¹⁰ A public entity must provide a response to a records request within a reasonable time.¹¹ Whether records have been produced within a reasonable time will depend on the facts of a given situation.¹² Numerous past opinions have detailed what would reasonably contribute to a delay in providing records. Examples of causes for reasonable delays include the need for attorney consultation when there is reasonable doubt whether the records are open to the public, the need to review large volumes of documents to respond to a request or to excise closed or confidential information, and the availability and workload of staff who can respond to the request.¹³ However, this office also has

⁴ N.D.C.C. § 44-04-20(4); *see also* N.D.A.G. 2021-O-07.

⁵ N.D.C.C. § 44-04-20(6); *see also* N.D.A.G. 2021-O-07.

⁶ N.D.C.C. § 44-04-21.1(1).

⁷ Letter from John Bearman, Chairman, North Prairie Reg'l Water Dist. Bd., to Annique M. Lockard, Ass't Att'y Gen., Att'y Gen.'s Office (received Dec. 20, 2021); E-mail from Karla Anderson, Office Manager/Billing Coordinator, N. Prairie Reg'l Water Dist., to legals@minotdailynews.com (Oct. 25, 2021, 11:28 AM).

⁸ Letter from John Bearman, Chairman, N. Prairie Reg'l Water Dist. Bd., to Annique M. Lockard, Ass't Att'y Gen., Att'y Gen.'s Office (received Dec. 20, 2021).

⁹ *Id.*

¹⁰ N.D.C.C. § 44-04-18(1).

¹¹ N.D.C.C. § 44-04-18(8); N.D.A.G. 2019-O-15.

¹² N.D.A.G. 2019-O-15; N.D.A.G. 2019-O-09.

¹³ N.D.A.G. 2019-O-15; N.D.A.G. 2019-O-09; N.D.A.G. 2017-O-10; N.D.A.G. 2017-O-06; N.D.A.G. 2014-O-25; N.D.A.G. 2014-O-21; N.D.A.G. 2014-O-20; N.D.A.G. 2014-O-06; N.D.A.G. 2013-O-17; N.D.A.G. 2013-O-15; N.D.A.G. 2012-O-07; N.D.A.G. 2010-O-04;

said in a previous opinion, a “two-week delay in providing one record is an unreasonable delay”.¹⁴

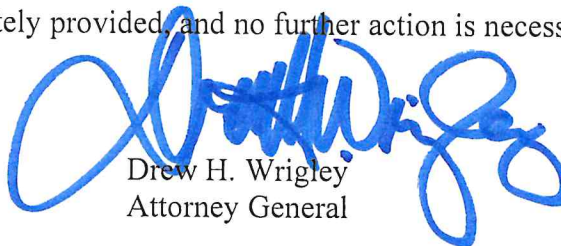
Ms. Hendrickson e-mailed her records request to the Board’s Board Office Manager/Billing Coordinator on November 3, 2021. The minutes were e-mailed to Ms. Hendrickson on December 13, 2021. The Board provided no explanation for the delay. While it does not appear the Board intentionally delayed responding to the request, waiting over a month to provide minutes is an unreasonable delay absent extenuating circumstances.

CONCLUSION

1. The Board provided proper notice of its November 1, 2021, special meeting in compliance with N.D.C.C. § 44-04-20.
2. The Board failed to provide the requested record within a reasonable time.

STEPS NEEDED TO REMEDY VIOLATION

The requested records were ultimately provided, and no further action is necessary.



Drew H. Wrigley
Attorney General

aml

cc: Crystal Hendrickson (via email only)

N.D.A.G. 2008-O-08; N.D.A.G. 2004-O-05; N.D.A.G. 2003-O-21; N.D.A.G. 98-O-20;
N.D.A.G. 98-O-04.

¹⁴ N.D.A.G. 2014-O-25.