

**ATTORNEY GENERAL'S OPEN RECORDS AND MEETINGS OPINION  
No. 2000-O-11**

DATE ISSUED: September 1, 2000

ISSUED TO: Linda Cooksey, Killdeer Public School District Business Manager

**CITIZEN'S REQUEST FOR OPINION**

On July 20, 2000, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Jeanne Kukla asking whether the Killdeer Public School District violated N.D.C.C. § 44-04-18 by charging her a fee for copies of public records which exceeded the amount authorized in that statute for locating and copying public records.

**FACTS PRESENTED**

The Killdeer Public School District (District) received a number of open records requests in April of this year from a group called the Committee of Concerned Parents (Committee). Although the requests were initiated by more than one person, including Ms. Kukla, the requests were coordinated and submitted to the District by Penny Lee in the name of the Committee.

One of these coordinated requests was made in an April 18, 2000, electronic mail message to the District's business manager, which stated:

The Committee of Concerned Parents needs the following information:

. . .

2. A copy of the last three years – Total Salary Line Item Expenses.
3. A copy of the yearly expenses for the last three years and the budget for 2000-01.
4. What each person working at the school made per year for the last three years. . . . Also if you have this easily available the salary increase for each person on payroll [during the] 1999-2000 school year.

. . .

If any of these items are not available to us, would you please let me know. Thank you.

April 18, 2000, e-mail from Penny Lee to Linda Cooksey.

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On April 25, 2000, Ms. Kukla picked up 28 pages of records which were provided in response to the second and third items in the April 18 request. The next day, Ms. Lee picked up a spreadsheet which contained the information requested in the fourth item in the April 18 request.

When Ms. Kukla picked up the records on April 25, she was given a bill from the District to the Committee reflecting the cost of copying the records she received (three dollars) and two hours of labor at \$25.00 per hour "to prepare and compile requested information." At Ms. Kukla's request, the name on the bill was changed from the Committee to herself. At a July 12 meeting, the school board for the District reduced the labor charge in the bill to the actual cost of the business manager's time including salary and fringe benefits (\$13.53 per hour). The Board also approved an amendment to the bill to reflect the fact that Ms. Cooksey, the business manager, actually spent three and a half hours on the request, which had been reduced to two hours on the bill. Ms. Kukla received this revised bill on July 15, 2000.

In response to an inquiry from this office, the District's business manager explained the District's bill to Ms. Kukla:

The labor charges reflected [in the bill to Ms. Kukla] are based on the cost of my time in locating and compiling the 28 pages [provided to Ms. Kukla] plus the spreadsheet showing 3 years of wages for all employees. The charges are for requests listed on an e-mail dated 4/18/00 from Penny Lee. The billing was originally in the name of The Committee of Concerned Parents. Ms. Kukla came in and requested that I change the billing address to her name because she stated that she would be the one paying for it. I did as she asked.

Letter from Linda Cooksey to the Office of Attorney General (July 27, 2000).

Ms. Cooksey also explained the labor involved in responding to the fourth item in the April 18 request:

A spreadsheet showing 3 years of wages for both teacher and ancillary staff was part of the request. This is the item which took so long to compile. I did have the current year on computer; but did not have the 2 previous years on the computer. Therefore, I compiled a spreadsheet with the 3 years of information. Part of the information came from note cards that I keep on each employee. I could have copied the note cards and let it go from there; but I thought that it should look more official than copies

of note cards. This spreadsheet was left at the main office and picked up by Penny Lee the next day.

Letter from Linda Cooksey (emphasis added).

Ms. Kukla alleges that the labor charge on the bill did not reflect the labor needed to respond to her request. She further alleges that the labor charge by the District exceeded the amount authorized in N.D.C.C. § 44-04-18.

#### ISSUE

Whether the fee charged by the Killdeer Public School District for the records provided to Ms. Kukla and to the Committee for Concerned Parents was authorized under N.D.C.C. § 44-04-18.

#### ANALYSIS

The District relies on the following provision as authority for the fee charged to Ms. Kukla:

Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. . . . The entity may charge a reasonable fee for making or mailing the copy, or both. An entity may require payment before making or mailing the copy, or both. . . . As used in this subsection, "reasonable fee" means the actual cost to the public entity of making or mailing a copy of a record, or both, including labor, materials, postage, and equipment, but excluding any cost associated with excising confidential or closed material under section 44-04-18.8. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records if locating the records requires more than one hour. . . .

N.D.C.C. § 44-04-18(2) (emphasis added).

This subsection authorizes two separate fees. The first fee is a fee for making copies of a requested record. This fee is limited to the actual cost to the public entity of making the copies, including the labor associated with making the copies. The second fee is for locating requested records when it takes the public entity longer than one hour to find the records that have been requested. This fee for locating records was added to N.D.C.C. § 44-04-18 in 1999. See 1999 N.D. Sess. Laws ch. 104, § 2. Ms. Kukla does

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not allege that the District's charge for copies was excessive. Rather, her allegations pertain to the fee charged by the District for locating the requested records.

Much of Ms. Kukla's objection to the fee charged by the District is based on the fact that the labor included in the bill was for responding to the fourth item in the April 18 request by Penny Lee rather than for making the copies of records which were picked up by Ms. Kukla on April 25. Apparently, the second and third items in the April 18 request reflect the records Ms. Kukla wanted to receive and picked up on April 25. She was not interested in the salary information requested in the fourth item of the April 18 request. However, there was no way for the District to know that only two of the items in the April 18 request were initiated by Ms. Kukla. Since all six items were included in the same request, which was made in the Committee's name by Ms. Lee, it was understandable and proper for the District to combine its bill for responding to all the items in the April 18 request. The bill was not changed from the Committee to Ms. Kukla until she requested the change.

The bill to Ms. Kukla states that the labor charge was for "prepar[ing] and compil[ing] requested information." This description conflicts with the fee in N.D.C.C. § 44-04-18(2) for "locating" requested records. The District's response to this office reveals that the District made a choice in responding to the fourth item in the April 18 request for salary information. The District could have provided a copy of the one-page note cards for each employee which would have indicated the salary paid to that employee for each year that he or she was employed by the District. Had the District simply provided copies of the note cards, it would have been able to recover its cost of providing the copies as well as impose a fee for locating all the note cards if locating the note cards took longer than one hour. Instead, the District unilaterally decided to compile two years' worth of salary information from these note cards into a computerized spreadsheet which was provided to Ms. Lee.

The Committee only asked for employee salaries for the last three years and not for a spreadsheet compiling that information. The District did not have to compile the spreadsheet in order to comply with the April 18 request, nor was it required to prepare the spreadsheet. See N.D.C.C. § 44-04-18(3) (a public entity is not required to compile a record which does not exist). Therefore, it is my opinion that the District violated N.D.C.C. § 44-04-18 by imposing the fee authorized in that section for locating records when the requested information could have been provided by making copies of records which already existed.

It appears that the intention of the District in preparing the spreadsheet was simply to be helpful and responsive to the Committee. Nonetheless, before charging the Committee for labor which was not required for the District to respond to the Committee's request,

the District was obligated to contact Ms. Lee to see whether the Committee was willing to pay the additional cost for compiling the spreadsheet.

#### CONCLUSION

It is my opinion that the fee charged by the Killdeer Public School District for the records provided to Ms. Kukla and to the Committee for Concerned Parents was not authorized under N.D.C.C. § 44-04-18.

#### STEPS NEEDED TO REMEDY VIOLATION

The District must cancel the portion of the bill to Ms. Kukla which reflects the fee for compiling the spreadsheet provided in response to the April 18 request by Penny Lee in the name of the Committee of Concerned Parents.

Failure to issue a notice of a meeting to take the corrective measure described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2. N.D.C.C. § 44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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