

**OPEN RECORDS AND MEETINGS OPINION
2005-O-12**

DATE ISSUED: June 28, 2005

ISSUED TO: Oakes Park Board

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Mr. Dustin Olson asking whether the Oakes Park Board violated N.D.C.C. § 44-04-18 by failing to provide certain requested records.

FACTS PRESENTED

On May 25, 2005, Mr. Olson e-mailed the Oakes Park Board (Board) and requested copies of the Board's financial information. On May 30, 2005, Randy Entzminger, the Board member who monitors the Board's website, sent an e-mail to Mr. Olson requesting "official proof of permanent residency" and stating that the requested information would only be provided to permanent members of the Oakes community. Mr. Entzminger also invited Mr. Olson to the next meeting and asked that he provide a detailed list of any items he would like to review in advance of the meeting. It was his "personal opinion" that documents should not be made available without a specific request and without knowing the purpose of the request. In his letter to this office, Mr. Entzminger also stated that if Mr. Olson wanted this information, he should appear in person before the Board to make the request in order for the Board to identify him and be sure the information was not being sent abroad.

ISSUE

Whether the Board violated N.D.C.C. § 44-04-18 by requiring the requester to provide proof of residency and provide the request both in writing and in person before the Board.

ANALYSIS

All records of a public entity are open and accessible to the public unless otherwise specifically provided by law. N.D.C.C. § 44-04-18(1); N.D. Const. art. XI, § 6. A park district is a political subdivision as defined in N.D.C.C. § 44-04-17.1(10) and is therefore a public entity subject to the open records laws. N.D.C.C. §§ 44-04-17.1(10), 44-04-17.1(12)(b); N.D.A.G. 98-O-22.

Every person has a right to inspect or receive a copy of any open public record. N.D.A.G. Letter to Tomac (July 17, 1991). The motive and identity of the person requesting an open record are generally irrelevant; the right of access belongs to all persons equally. N.D.A.G. 1998-F-13; N.D.A.G. 81-130 (open records laws provide no

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discretion to public body over persons allowed to inspect open records). Further, “[a] request need not be made in person or in writing.” Id. (emphasis added); N.D.A.G. 2001-O-12.

Upon receiving a request for a copy of specific public records, an entity shall furnish the requester one copy of the public records requested. N.D.C.C. § 44-04-18(2). A record may not be denied unless a law provides that it is either exempt from the open records law or confidential. N.D.A.G. 98-F-13.

In this case, the Board advised Mr. Olson that he was not entitled to the records until he proved he was a resident, appeared in person to make the request, submitted a detailed list (presumably in writing) in advance of the meeting of the records requested, and disclosed the purpose of the request. In addition, it appears that once Mr. Olson did so, the Board intended to discuss the matter at its meeting and decide whether it would provide the records to Mr. Olson. As noted above, every person is entitled to copies of public records, regardless of citizenship or residency. Nor may a public entity require a request to be made in person or in writing. The motive of the person requesting the records is generally irrelevant. And, once a request for open public records is made, a public entity does not have discretion to decide whether the request is meritorious in the eyes of the public entity. A record may only be denied if a law specifically provides that the record is either exempt or confidential.

Once Mr. Olson made his request, the Board should have provided access to or copies of the requested financial information. Therefore, it is my opinion that the Board violated N.D.C.C. § 44-04-18 when it required Mr. Olson to provide proof of residency and provide the request both in writing and in person before the Board.

In his response to this office, Mr. Entzminger asked for guidance in responding to future requests for records. This office provides numerous informational tools to assist public entities with open record and meeting issues. Brochures containing an overview of the law will be provided to the Board and are available to anyone free of charge. The Attorney General’s website (www.ag.state.nd.us) has many resources, including all open records/open meetings opinions from 1997 to present and a comprehensive manual. Even a cursory review of any of those materials would have prevented these obvious violations of the open records law.

CONCLUSION

The Board violated N.D.C.C. § 44-04-18 by requiring the requester to provide proof of residency and provide the request both in writing and in person before the Board.

STEPS NEEDED TO REMEDY VIOLATIONS

The Oakes Park Board must provide Mr. Olson with the financial information he requested free of charge.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion 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. § 44-04-21.1. 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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