

**OPEN RECORDS AND MEETINGS OPINION  
2006-O-12**

DATE ISSUED: July 25, 2006

ISSUED TO: Wayne Samdahl, Pembina County Sheriff

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Mr. Ron Hunter asking whether Wayne Samdahl, the Pembina County sheriff, violated N.D.C.C. § 44-04-18 by failing to provide a copy of a transcript of calls made to the county 911 dispatch office and by failing to adequately describe valid legal authority for denying Mr. Hunter a copy of receipts for confiscated weapons.

**FACTS PRESENTED**

On February 27, 2006, Ron Hunter made a written request for records to Sheriff Wayne Samdahl. Mr. Hunter asked for a transcript of "radio calls" from February 23 to February 25 and for a copy of receipts for weapons confiscated between December 1, 2005, and February 25, 2006. The sheriff did not provide a copy of a transcript of the calls requested by Mr. Hunter; rather, he replied in a letter that "a transcript of radio calls is not a record normally kept by this office," and further stated "[a]ll radio calls are recorded on a logger maintained by E-911." The calls are digitally recorded on a digital audio logger and stored in a special media format.<sup>1</sup>

With regard to the request for a copy of receipts for confiscated weapons, the sheriff stated "the records requested are exempt from the open records law because they are part of open cases or confidential mental health cases." Later, in response to questions from this office, the sheriff stated that no receipts for weapons confiscated between December 1, 2005, and February 25, 2006, existed.

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<sup>1</sup> On playback, the audio logger searches by date, time, and channel to locate the specified audio segment. The digital recording system cannot automatically convert audio to text; it must be manually transcribed.

## ISSUES

1. Whether the Pembina County sheriff violated N.D.C.C. § 44-04-18(2) when he did not provide the requester a copy of a transcript of calls made to the sheriff's department.
2. Whether the Pembina County sheriff's written denial of copies of receipts for confiscated weapons was sufficient under N.D.C.C. § 44-04-18(7).

## ANALYSIS

### Issue One:

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.<sup>2</sup> A public entity that receives a request for a copy of specific public records must furnish the requester one copy of the public records requested.<sup>3</sup> A "record" is defined in the open records law as:

[R]ecorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business.<sup>4</sup>

Therefore, generally the digital recordings of calls to the sheriff's office are open records. Although a call could be exempt if it contained active criminal investigative information.<sup>5</sup>

Mr. Hunter requested a copy of a transcript of calls made during a specific time period. The radio calls are not transcribed, rather, they are recorded digitally on a computerized system. As the sheriff explained, he does not normally keep a transcript of calls. And, a public entity is not required to create or prepare a record that does not exist.<sup>6</sup>

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<sup>2</sup> N.D.C.C. § 44-04-18(1).

<sup>3</sup> N.D.C.C. § 44-04-18(2).

<sup>4</sup> N.D.C.C. § 44-04-17.1(15).

<sup>5</sup> N.D.C.C. § 44-04-18.7.

<sup>6</sup> It is clear from Mr. Hunter's request that he was interested in the radio calls. Although the sheriff was not legally required to do so, it may have been helpful to explain to

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Therefore, it is my opinion that the sheriff's department did not violate N.D.C.C. § 44-04-18 by failing to provide Mr. Hunter with a transcript of calls because a transcript of those calls did not exist.

### Issue Two:

A denial of a request for records made under the open records law must describe the legal authority for the denial and must be in writing, if requested.<sup>7</sup> In N.D.A.G. 2004-O-11, I opined that giving an inaccurate reason for denying a record violates N.D.C.C. § 44-04-18.

In his response to Mr. Hunter, the sheriff said "the records requested are exempt from the open records law because they are part of open cases or confidential mental health cases."<sup>8</sup> In follow-up correspondence with this office, the sheriff explained that the receipts requested by Mr. Hunter did not exist. The claim that the requested records were confidential mental health information or "active criminal investigative information" was unfounded. Accordingly, it is my opinion that the sheriff violated N.D.C.C. § 44-04-18(7) by failing to describe valid legal authority for denying the request for receipts of confiscated weapons.

### CONCLUSIONS

1. The Pembina County sheriff did not violate N.D.C.C. § 44-04-18(2) by failing to provide a copy of a transcript of calls to the sheriff's department because no transcript of these calls exists.
2. The Pembina County sheriff's March 1, 2006, written denial of copies of receipts for confiscated weapons was not sufficient under N.D.C.C. § 44-04-18(7) because it failed to describe any valid legal authority for denying the request.

### STEPS NEEDED TO REMEDY VIOLATION

As stated in the opinion, there are no receipts of confiscated weapons. There is a list of confiscated weapons that was created by the sheriff at the request of the Pembina

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Mr. Hunter how the records were stored so Mr. Hunter could revise his request to obtain the records he was seeking.

<sup>7</sup> N.D.C.C. § 44-04-18(7).

<sup>8</sup> Letter from Sheriff Wayne Samdahl to Ron Hunter (March 1, 2006).

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County Commission for their review. The list has already been provided to Mr. Hunter. Therefore, no further remedy is required.

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