

**OPEN RECORDS AND MEETINGS OPINION
2008-O-19**

DATE ISSUED: July 15, 2008

ISSUED TO: Foster County

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from First American CoreLogic asking whether Foster County violated N.D.C.C. § 44-04-18 by refusing to provide records within a reasonable time.

FACTS PRESENTED

On October 17, 2007, First American CoreLogic (CoreLogic) requested "an electronic copy of the real property data contained within the county tax roll and assessment roll."¹ On October 25, 2007, Foster County State's Attorney Paul Murphy responded in a letter saying:

I have reviewed your letter dated October 17, 2007. You are interpreting North Dakota law and I am curious if you [are] a licensed attorney in North Dakota? The day you spoke to our county employee, he seriously misquoted you the price of \$94.00.²

The Foster County auditor responded separately to CoreLogic on October 25, 2007, stating that electronic records were not available because he had no access to the taxation computer program that held the records.³ He did suggest the possibility that paper copies of the record could be made at a rate of \$1 per page, resulting in a charge of \$808.⁴ However, the letter explained that the Foster County treasurer could not

¹ Nov. 20, 2007, letter from Brad R. Bohrer, Senior Counsel, First American CoreLogic, to the Honorable Wayne Stenehjem, North Dakota Attorney General.

² Oct. 25, 2007, letter from Paul Murphy, Foster County State's Attorney, to Brad R. Bohrer, Senior Counsel, First American CoreLogic.

³ Oct. 25, 2007, letter from Roger Schlotman, Foster County Auditor, to Brad R. Bohrer, Senior Counsel, First American CoreLogic.

⁴ Id.

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provide the paper copies until after October 1, 2008, because of the tax collection season and because “her staff of 1.5 people does not have extra time for public service to out of state businesses.”⁵

CoreLogic contacted Foster County by telephone on October 30 and November 1, 2007, asking for copies of the tax and assessment rolls but did not receive the copies. CoreLogic asserts that Foster County did not respond to its request for records within a reasonable time.

Foster County has most of the requested information in two electronic databases. The two databases are maintained by a private software company, Software Innovations. This company also wrote the programs that allow Foster County to use the data for various purposes.

ISSUE

Whether Foster County responded to CoreLogic’s request for an electronic copy of the tax and assessment rolls within a reasonable time.

ANALYSIS

Every person has a right to inspect or receive a copy of any open public record.⁶ The motive and identity of the person requesting an open record are generally irrelevant; the right of access belongs to all persons equally.⁷ A request for electronic records maintained in a database is no different than a request made for traditional paper records. Copies of paper or electronic records should be provided within a reasonable time and the requester may be charged any applicable fees allowed by statute.⁸ “Whether a response has been provided within a reasonable time will depend on the facts of a given situation.”⁹

Foster County’s responses to CoreLogic by both the state’s attorney and the auditor suggest that, because CoreLogic is an out-of-state business and the request was made by an attorney who is not licensed in North Dakota, it does not have a right to copies of Foster County records. Both suggestions are erroneous. A person’s licensure status, or the fact that a business is based out of state, cannot be used as grounds to deny or delay providing records that are open to the public. Doing so uses the identity of the

⁵ Id.

⁶ N.D.A.G. Letter to Tomac (July 17, 1991); N.D.A.G. 2006-O-15; N.D.A.G. 2005-O-12.

⁷ N.D.A.G. 2005-O-12; N.D.A.G. 98-F-13; N.D.A.G. 81-130.

⁸ See N.D.C.C. § 44-04-18

⁹ N.D.A.G. 2005-O-05; N.D.A.G. 2003-O-09.

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requester as a condition to providing records within a reasonable time, which is a violation of the open records law.¹⁰

In response to CoreLogic's request for electronic copies of the tax and assessment rolls, Foster County only offered to provide paper copies and suggested it would take approximately one year to provide the copies. Although the open records law does not usually require an immediate response, the delay permitted will usually be measured in a few hours or a few days rather than several days or weeks.¹¹ Foster County's intention to delay providing records to CoreLogic for approximately one year is well beyond a reasonable time frame. Although it may take a staff of 1.5 people some time to make paper copies of 800 records, it is inconceivable that it would take a year.

Foster County's estimate of the time it would take also ignores the fact that CoreLogic's request was for an electronic copy of the databases, not paper copies. Even though Foster County acknowledges that it does have two electronic databases containing most of the records requested by CoreLogic, it does not appear that Foster County investigated its ability to provide an electronic copy of the databases.¹² Only after this office became involved did the county consult with the software company it contracts with to provide computer support, Software Innovations, and discover that it could provide an electronic copy of the databases for approximately \$130.¹³

Foster County has not offered any reason for not providing an electronic copy of the databases, other than its assertion that CoreLogic only wants an electronic copy to avoid the \$808¹⁴ estimated cost for paper copies of the databases. A requester has a right to ask for access to or a copy of an electronic record in any available medium, including an electronic format.¹⁵ Thus, Foster County has an obligation to provide a copy of an electronic record in some meaningful format and cannot dismiss a request for an electronic copy merely because it is more cost efficient for the requester.

¹⁰ See generally N.D.A.G. 2005-O-12; N.D.A.G. 98-F-13; N.D.A.G. 81-130

¹¹ N.D.A.G. 2008-O-08.

¹² The software for the database is provided by Software Innovations.

¹³ Any cost Foster County incurs by having its software provider make an electronic copy can be passed on to CoreLogic because a public entity may charge a reasonable fee for providing the copies, including costs attributable to the use of information technology resources. N.D.C.C. § 44-04-18(2) & (3).

¹⁴ The \$800 fee comes from a charge of one dollar per page. Public entities may only charge fees that are allowed by statute. The statutorily allowed fee in N.D.C.C. § 44-04-18(2) is up to 25¢ per page.

¹⁵ N.D.C.C. § 44-04-18(4); See generally N.D.A.G. 2007-O-01.

Once CoreLogic made its request, Foster County was required by law to provide access to, or copies of, the requested records within a reasonable time.¹⁶ Rather than do this, it is apparent that Foster County raised extraneous concocted irrelevant obstacles to providing the records. Thus, it is my opinion that Foster County violated N.D.C.C. § 44-04-18 by failing to respond to a request for records within a reasonable time or in a manner consistent with the open records law.

CONCLUSION

It is my opinion that Foster County did not respond to CoreLogic's request for an electronic copy of the tax and assessment rolls within a reasonable time or in a manner consistent with the open records law.

STEPS NEEDED TO REMEDY VIOLATION

Foster County must instruct its agent, Software Innovations, to make an electronic copy of the tax and assessment rolls and provide the copy to CoreLogic free of charge.

Failure to take the corrective measures 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. § 44-04-21.2.¹⁷ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁸

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¹⁶ See N.D.A.G. 2005-O-12.

¹⁷ N.D.C.C. § 44-04-21.1(2).

¹⁸ Id.