

**OPEN RECORDS AND MEETINGS OPINION
2013-O-19**

DATE ISSUED: December 23, 2013

ISSUED TO: NDSU Research Park Ventures, LLC

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from C.T. Marhula asking whether NDSU Research Park Ventures, LLC, violated N.D.C.C. § 44-04-18 by failing to provide a copy of a requested record.

FACTS PRESENTED

On May 21, 2013, Mr. C.T. Marhula sent an email to Chuck Hoge¹ requesting a copy of a contract involving NDSU Research Park Ventures, LLC (Park Ventures), referenced at an NDSU Research and Technology Park meeting.² On June 7, 2013, Mr. Marhula received a letter from Park Ventures' attorney denying the record request on the grounds that Park Ventures "is not a public entity subject to the open meeting and record requirements found at N.D.C.C. § 44-04-17.1 et seq."³

ISSUE

Whether NDSU Research Park Ventures, LLC, violated open records law by denying a request for a record.

¹ Mr. Chuck Hoge is the Sec'y/Treasurer of NDSU Research Park Venture, LLC.

² See Email from C.T. Marhula to Chuck Hoge, Sec'y/Treasurer of NDSU Research Park Venture, LLC (May 21, 2013, 2:14 p.m.) (on file with author).

³ See Letter from Todd Zimmerman, Attorney, to C.T. Marhula (June 7, 2013) (on file with author).

ANALYSIS

All records and meetings of a public entity are open and accessible to the public unless otherwise specifically provided by law.⁴ A “public entity” includes entities that are created or recognized by state statute, or by an action of a political subdivision, to exercise public authority or perform a governmental function.⁵ Park Ventures denies its status as a renaissance fund organization created pursuant to N.D.C.C. § 43-63-07 or its agreement with the City of Fargo makes it a “public entity” subject to the obligations under the open records or meetings law.

In 1999, the Renaissance Zone Act was enacted under N.D.C.C. ch. 40-63 to allow cities to create a “renaissance zone” within their jurisdiction by applying to the North Dakota Division of Community Services (DCS).⁶ A city with a designated renaissance zone may also request approval from DCS to establish a renaissance fund organization (RFO).⁷ Pursuant to N.D.C.C. § 40-63-07(2), “[t]he purpose of a renaissance fund organization is solely to raise funds to be used to finance zone projects and other projects located in designated renaissance zones.” The City of Fargo applied for, and received approval to create, a renaissance zone within its jurisdiction and to establish an RFO.⁸

Park Ventures serves as the current RFO for Fargo and does not deny it was created by state statute under N.D.C.C. § 40-63-07.⁹ According to the May 27, 2008, agreement with Fargo, Park Ventures:

became incorporated on June, 2008 for the purpose of operating a renaissance fund corporation for the city of Fargo as provided in Chapter 40-63 of the North Dakota Century Code, to raise funds to be used to make investments in zone projects, and to provide financing to renaissance zone projects in a manner that will encourage capital and real

⁴ N.D.C.C. §§ 44-04-18, 44-04-19; N.D. Const. art. XI, §§ 5, 6.

⁵ N.D.C.C. § 44-04-17.1(13); see also N.D.A.G. 2008-O-29; N.D.A.G. 2006-O-05; N.D.A.G. 2006-O-02; N.D.A.G. 2005-O-02; N.D.A.G. 2003-O-08; N.D.A.G. 2001-O-16; N.D.A.G. 98-O-21

⁶ See N.D.C.C. ch. 40-63; see also N.D. Renaissance Zone Program Guidelines, produced by the N.D. Dep’t of Commerce.

⁷ N.D.C.C. § 40-63-07.

⁸ See Renaissance Zone Memorandum of Agreement between the N.D. Div. of Cmty. Servs. and the City of Fargo, N.D. (Dec. 28, 1999) (on file with author).

⁹ See Articles of Org., NDSU Research Park Ventures, LLC (May 27, 2008); and Letter from Todd Zimmerman, Attorney, to Attorney General’s office (July 29, 2013) (on file with author).

estate investment in the City of Fargo, [and] encourage the establishment of expansion of technology based businesses in the State of North Dakota.¹⁰

Chapter 40-63, N.D.C.C., recognizes governmental interests in establishing renaissance zones within a city's jurisdiction and raising funds to invest in approved zone projects. The functions performed by Park Ventures, as outlined in its Agreement with Fargo, are governmental functions.¹¹

Park Ventures is an RFO created by state statute, N.D.C.C. § 40-63-07, and performs the governmental functions of raising funds to finance and encourage expansion of business in the state of North Dakota for projects in Fargo's approved renaissance zone. Thus, it is my opinion that Park Ventures is a public entity subject to open records and meetings law. As such, any record in Park Ventures' possession relating to its role as an RFO is a public record unless otherwise provided by law.¹² Park Ventures' response to Mr. Marhula was incorrect because it failed to recognize that status and, therefore, violated N.D.C.C. § 44-04-18.

CONCLUSION

NDSU Research Park Ventures, LLC, is a public entity subject to open records and meetings law and must respond to the request for a record in a manner consistent with N.D.C.C. § 44-04-18.

STEPS NEEDED TO REMEDY VIOLATION

NDSU Research Park Ventures, LLC, must comply with all open record and meeting laws. NDSU Research Park Ventures, LLC, shall provide a copy of the contract requested by C.T. Marhula, free of charge, although it may redact any confidential or exempt information as provided by law.

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

¹⁰ See Agreement between City of Fargo and the NDSU Research Park Ventures, LLC (May 27, 2008).

¹¹ A "governmental function" is defined as 'an activity which is expressly or impliedly mandated or authorized by constitution, statute, or other law.' N.D.A.G. 92-06, quoting Ross v. Consumer Power Co., 363 N.W.2d 641, 661 (Mich. 1984).

¹² The requested record has not been reviewed by this office. It is the responsibility of the Research Park to review the record for any information that may be exempt or confidential by law.

reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.¹³ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁴

Wayne Stenehjem
Attorney General

slv/vkk

¹³ N.D.C.C. § 44-04-21.1(2).

¹⁴ Id.