

**OPEN RECORDS AND MEETINGS OPINION  
2014-O-17**

DATE ISSUED: November 5, 2014

ISSUED TO: City of Mandan

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from S. Paul Jordan asking whether the City of Mandan violated N.D.C.C. § 44-04-18 by charging an excessive fee for locating records in response to several requests.

**FACTS PRESENTED**

Mr. S. Paul Jordan sent numerous emails requesting records to the City of Mandan between July 9, 2014, and July 17, 2014.<sup>1</sup> On July 9, Mr. Jordan sent three emails to the City of Mandan requesting a copy of the City Commissioner's oath of office, a copy of records showing tax revenue from the sale of fireworks in 2013, and records of illegal fireworks reports from the Mandan Police Department.<sup>2</sup> The next day, Mr. Jordan sent two more emails requesting further police department records related to firework violations and complaints.<sup>3</sup> Mr. Jordan again requested records on July 17, 2014 from the City and police department involving a certain street address.<sup>4</sup> The City gathered the records responsive to the request and sent an email to Mr. Jordan, requesting payment of \$37.50 for the time it took in locating the records requested in all of the emails, and requesting payment before it would release the records.<sup>5</sup> The email

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<sup>1</sup> See Email from Jim Neubauer, Mandan City Adm'r, to S. Paul Jordan (July 23, 2014, 5:12 PM); see also Letter from Arlyn Van Beek, Mandan Mayor, to Sandra Voller, Asst. Att'y Gen. (Sep. 10, 2014).

<sup>2</sup> Emails from S. Paul Jordan to various representatives from the City of Mandan (July 9, 2014, 3:27 PM, 3:30 PM, and 3:38 PM).

<sup>3</sup> Emails from S. Paul Jordan to various representatives from the City of Mandan (July 10, 2014, 2:06 PM and 2:12 PM).

<sup>4</sup> Email from S. Paul Jordan to various representatives from the City of Mandan (July 17, 2014, 2:28 PM).

<sup>5</sup> Email from Jim Neubauer, Mandan City Adm'r, to S. Paul Jordan (July 23, 2014, 5:12 PM); see also Letter from Arlyn Van Beek, Mandan Mayor, to Sandra Voller, Asst. Att'y Gen. (Sep. 10, 2014).

explained it took 2.5 hours to gather the requested information; based on open record laws that allow an entity to charge \$25 per hour after the first hour, \$37.50 was due as payment before it would release the records.<sup>6</sup> Mr. Jordan argues the charge was excessive and the City should not be able to bundle the time it took for his requests into one locating charge.<sup>7</sup>

### ISSUE

Whether the City of Mandan charged excessive fees under open records law.

### ANALYSIS

“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>8</sup>

An entity may require payment before locating, redacting, making or mailing the copy. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour.<sup>9</sup>

A public entity may charge for the time it spends locating records “per request” after the initial hour.<sup>10</sup> This office has never addressed whether a series of emails from the same requester within a short time frame may be considered one request, or whether each email is considered a separate, distinct request, thus allowing a free hour of locating for each email.

The open records law was designed to provide access to publically available information for all citizens. The law, however, recognizes that a public entity should be compensated for the time it spends in responding to those requests that require more of its time and resources. Since April, the City had responded to 53 requests for records from Mr. Jordan free of charge.<sup>11</sup> The City began charging Mr. Jordan only after it had spent considerable time and resources in responding to his requests. Here, the City charged for the time it took responding to six emails, combining the time it spent in one

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<sup>6</sup> Email from Jim Neubauer, Mandan City Adm’r, to S. Paul Jordan (July 23, 2014, 5:12 PM).

<sup>7</sup> The scope of this opinion is limited to the fees charged by the City of Mandan.

<sup>8</sup> N.D.C.C. § 44-04-18(1).

<sup>9</sup> N.D.C.C. § 44-04-18(2) (emphasis added).

<sup>10</sup> See N.D.C.C. § 44-04-18(2).

<sup>11</sup> See Letter from Arlyn Van Beek, Mandan Mayor, to Sandra Voller, Asst. Att’y Gen. (Sep. 10, 2014).

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charge because the open record requests were received in a short period of time,<sup>12</sup> the requests related to the same subject matter, and responses to the requests were prepared at the same time.<sup>13</sup>

With regard to locating records, open records law allows for one free hour “per request.”<sup>14</sup> It is not further defined. In most circumstances there is a single request so it is easy to determine whether locating charges are necessary.

The allowance for one free hour for locating records insures that requesters are not charged for records that can be easily provided in under an hour. It strikes a balance between the public’s right to public records at a reasonable cost and the public entity’s right to be compensated for some of the time taken to fulfill larger requests. “Per request” does not necessarily mean “per contact,” whether by emails, telephone, letter, in person, or in writing. It is reasonable for a public entity to consider subject matter and timing when determining the location charge.

The allowance for one free hour to locate records was not meant to be exploited by overzealous requestors who could ultimately send dozens of emails each day, each requesting only one record, and thereby inundate an entity for weeks until it provides everything the requester desires. To do so would create an undue burden on public entities that goes against the purpose of allowing these entities to be compensated for extensive time it takes in responding to requests.

The City of Mandan did not violate open records law when it combined the time it spent responding to several emails received within a short time frame regarding the same subject matter, treating the emails as one records request.<sup>15</sup> The City of Mandan was also allowed, pursuant to N.D.C.C. § 44-04-18(2), to collect payment before releasing the records responsive to the request.

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<sup>12</sup> See letter from Jim Neubauer, City Administrator, to Sandra Voller, Asst. Att’y Gen. (Sep. 10, 2014) (The July 9 emails were received at 3:27 PM, 3:30 PM, and 3:38 PM, the July 10 emails were received at 2:06 PM and 2:12 PM, and the final request was received July 17 at 2:28 PM).

<sup>13</sup> Letter from Arlyn Van Beek, Mandan Mayor, to Sandra Voller, Asst. Att’y Gen. (Sep. 10, 2014). On July 9, Mr. Jordan made three requests about the same subject matter within eleven minutes. On July 10, he made similar requests in six minutes about the same subject matter.

<sup>14</sup> N.D.C.C. § 44-04-18(2).

<sup>15</sup> Mr. Jordan’s email requests were also hard to decipher. Mr. Jordan provides numerous accusations within his requests and also continually asks for information and legal conclusions instead of making clear requests for records. The City of Mandan fulfilled its duties under the open records law, and provided records and information to Mr. Jordan in a reasonable manner.

### CONCLUSION

It was not a violation of open records law when the City of Mandan treated several emails requesting records of a similar subject matter received in a short time as one request in computing the time it spent locating the records and charged accordingly.

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sld/cn/vkk