

**OPEN RECORDS AND MEETINGS OPINION
2014-O-25**

DATE ISSUED: December 31, 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 failing to produce a record within a reasonable time.

FACTS PRESENTED

S. Paul Jordan utilized the City of Mandan's website on September 29, 2014, to "Report a Concern" regarding an unmoved, parked car. On October 2, 2014, Jordan sent an email to Mandan City Administrator, Jim Neubauer, and to several other individuals including officers from the Mandan Police Department, requesting "a copy of all City records, to include all MPD records, which were generated as a result of the Report A Concern form that I completed and submitted on September 29, 2014."¹ After conferring with the Police Department, Mr. Neubauer emailed Mr. Jordan on October 17, 2014, providing the only record responsive to the request, a copy of the Police Department's Complaint Report.²

ISSUE

Whether the City of Mandan responded to a record request within a reasonable time.

¹ Email from S. Paul Jordan to Jim Neubauer, Mandan City Admin. (Oct. 2, 2014, 12:50 PM).

² Email from Jim Neubauer, Mandan City Admin., to S. Paul Jordan (Oct. 17, 2014, 2:38 PM).

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.”³ When a public entity receives a request for records, it must, within a reasonable time period, either provide the records or explain why the records are not being provided.⁴ Whether records have been produced within a reasonable time will depend on the facts of a given situation.⁵ A delay may be appropriate for a number of reasons, including the workload of staff who can respond to the request, balancing other responsibilities of the public entity that demand immediate attention, and the accessibility of the records requested.⁶

There are several reasons given for the City’s two week delay in providing Mr. Jordan with one record. At the time of the request, Mr. Jordan was inundating both the City of Mandan and the Mandan Police Department with requests for various records.⁷ The City of Mandan estimates Mr. Jordan has made approximately 136 separate requests for records since April 2014.⁸ Mr. Jordan’s requests can be difficult to decipher, leaving the City to guess what records Mr. Jordan is actually seeking.⁹ Finally, Mr. Jordan sends his requests to a variety of entities so it is hard to determine what entity is the subject of the request and who is responsible for responding.¹⁰ The City of Mandan created tables in order to stay organized and document when it received Mr. Jordan’s requests, and continually attempted to fulfill the numerous requests in a timely manner upon receipt.¹¹

³ N.D.C.C. § 44-04-18(1).

⁴ N.D.C.C. §§ 44-04-18(7), (8).

⁵ See N.D.A.G. 2014-O-21; N.D.A.G. 2014-O-20; and N.D.A.G. 2013-O-17.

⁶ See N.D.A.G. 2014-O-21; N.D.A.G. 2014-O-20; and N.D.A.G. 2013-O-17.

⁷ See Letter from Arlyn Van Beek, Mayor, City of Mandan to Sandra DePountis, Asst. Att’y Gen. (Dec. 2, 2014).

⁸ Id.

⁹ Id.

¹⁰ Here, for example, the record produced to Mr. Jordan by the City was actually a record of the Mandan Police Department. In past opinions, this office noted that a public entity does not have to provide a copy of a record that it does not possess. Each agency of a political subdivision is responsible only for records in its possession and not records in the possession of another agency, even if they are part of the same political subdivision. See N.D.A.G. 2010-O-02; N.D.A.G. 2007-O-11; N.D.A.G. 2005-O-13.

¹¹ See Letter from Arlyn Van Beek, Mayor, City of Mandan to Sandra DePountis, Asst. Att’y Gen. (Dec. 2, 2014).

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It is clear that the City of Mandan and the Mandan Police Department have generally attempted to work diligently with a prolific and persistent requestor to fulfill their duties under the open records law; however, I find that in this instance the two-week delay in providing one record is an unreasonable delay.

CONCLUSION

The City of Mandan failed to provide a copy of a requested record within a reasonable time.

STEPS NEEDED TO REMEDY VIOLATION

S. Paul Jordan received the requested record. Therefore, there are no further measures to be taken by the City of Mandan.

Wayne Stenehjem
Attorney General

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