

**OPEN RECORDS AND MEETINGS OPINION
2016-O-20**

DATE ISSUED: September 23, 2016

ISSUED TO: City of Cooperstown

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Ron Dahl asking whether the City of Cooperstown violated N.D.C.C. § 44-04-18 by charging excessive fees for copies of requested records.

FACTS PRESENTED

On May 12, 2016, Ron Dahl sent an email to the auditor of the City of Cooperstown, explaining he was writing an article on Renaissance Zones in North Dakota and wanted to receive a copy “of all the meeting minutes” of the Cooperstown Renaissance Zone Committee (Committee) along with “all the applications, both those approved and disapproved.”¹ Mr. Dahl also requested “a copy of all the paperwork for new construction and remodels so that I can write about the effect that has on applications.”²

The auditor immediately began gathering all of the Committee’s meeting minutes.³ The auditor explains that since the Committee’s creation in 2008, the meeting minutes have been filed by individual projects rather than in a central file and only some minutes were kept electronically. In order to make sure that all of the requested meeting minutes were gathered, the auditor had to search through 19 paper files on various projects and applications, and cross reference with the electronic files.⁴

On May 16, 2016, the auditor emailed Mr. Dahl explaining that he could find information on the Renaissance Zone application and guidelines online and sent him links to access

¹ Email from Ron Dahl to Nancy Lunde, Cooperstown City Auditor (May 12, 2016, 5:00 pm).

² Id.

³ Letter from Nancy Lunde, Cooperstown City Auditor, to Sandra DePountis, Asst. Att’y Gen. (May 26, 2016).

⁴ Id.

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the information.⁵ She also provided Mr. Dahl with contact information of an individual who could answer questions on the application process. Finally, the auditor explained the charges that would be associated with responding to his record requests and informed Mr. Dahl she would be providing the information he requested that week. Mr. Dahl responded by limiting his request to only the 2015 meeting minutes and that he would “decide later what more [he] might need.”⁶

The auditor emailed Mr. Dahl two days later informing him that the meeting minutes were ready for him to pick up.⁷ The next day, Mr. Dahl asked for the records to be scanned electronically and emailed to him.⁸ Mr. Dahl was sent a bill for the records which included:

<u>Quantity</u>	<u>Description</u>	<u>Price</u>	<u>Amount</u>
1.5 [hours]	Research (1 st hour free)	\$25.00	\$12.50
22 [pages]	Copies	\$0.25	<u>\$5.50</u>
			\$18.00 ⁹

The auditor explained to Mr. Dahl the process she went through in order to locate the records.¹⁰ Mr. Dahl responded that the auditor should just throw the records away and he would come in and “do the job myself” by looking through the files and copying “whatever I want” with his own scanner.¹¹

⁵ Email from Nancy Lunde, Cooperstown City Auditor, to Ron Dahl (May 16, 2016 10:34 am).

⁶ Email from Ron Dahl to Nancy Lunde, Cooperstown City Auditor (May 16, 2016, 10:51 am).

⁷ Email from Nancy Lunde, Cooperstown City Auditor, to Ron Dahl (May 18, 2016, 2:34 pm).

⁸ Email from Ron Dahl to Nancy Lunde, Cooperstown City Auditor (May 19, 2016, 8:20 am).

⁹ Email from Nancy Lunde, Cooperstown City Auditor, to Ron Dahl (May 19, 2016, 12:50 pm) and attached Statement Bill.

¹⁰ Emails from Nancy Lunde, Cooperstown City Auditor to Ron Dahl (May 19, 2016, 9:46 am and 12:50 pm).

¹¹ Email from Ron Dahl to Nancy Lunde, Cooperstown City Auditor (May 19, 2016, 3:18 pm).

Mr. Dahl requests an opinion on whether the charges violate open records law.¹²

ISSUE

Whether the City of Cooperstown charged excessive fees under N.D.C.C. § 44-04-18 in responding to a records request.

ANALYSIS

All records of a public entity are open and accessible to the public unless otherwise specifically provided by law.¹³ Certain charges are authorized under the open records law when responding to a request for records.¹⁴ A public entity may charge up to \$25 per hour for locating the requested records, excluding the initial hour.¹⁵ Similarly, a public entity may charge \$25 per hour for excising closed or confidential information, excluding the initial hour.¹⁶ These charges apply regardless of whether the request is for paper copies or electronic copies.¹⁷ The public entity may also charge \$.25 per page for a paper copy.¹⁸ An entity may require payment before making or mailing the copy.¹⁹

Generally, a public entity is not required to create or compile a record that does not exist.²⁰ Therefore, if a public entity has a record in only paper form, it is required by open records law to produce a paper copy of the record and is not required to provide the record in a different format, such as a scanned, electronic version.²¹ Conversely, with electronic records, N.D.C.C. § 44-04-18(4) recognizes that a “public entity is not

¹² Email from Ron Dahl to Att’y Gen.’s Office (May 22, 2016, 6:06 pm). Mr. Dahl also requested an opinion on whether the Committee’s meeting minutes were kept in accordance with N.D.C.C. § 44-04-21. Pursuant to N.D.C.C. § 44-04-21.1, this office may only review alleged violations of N.D.C.C. § 44-04-21 for those meetings which occurred within thirty days of the request for the opinion. No such meetings of the Committee took place during this time frame and this office therefore cannot address this issue.

¹³ N.D.C.C. § 44-04-18.

¹⁴ N.D.C.C. § 44-04-18(2).

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ N.D.C.C. § 44-04-18(4).

²¹ N.D.A.G. 2008-O-17 (recognizing open records law does not require a public entity to create a record that does not exist, including creating an electronic version of a paper record).

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required to provide an electronically stored record in a different structure, format, or organization,” but does require that “an electronically stored record...must be provided at the requester’s option in either a printed document or through any other available medium.”²²

Mr. Dahl’s original request for meeting minutes did not specify if he wanted electronic or paper records.²³ The auditor explains that some records were only available in paper form.²⁴ In responding to the request, the auditor copied the paper records and printed out copies of the electronic minutes.²⁵ It was only after fulfilling the request that Mr. Dahl requested the records be scanned in and emailed, to avoid the \$.25/page charge for paper records.²⁶ Without a specific request that the electronic records be provided in electronic format at the time of the request, it was not unreasonable for the auditor to provide paper records.

In his original request, Mr. Dahl requested all of the Committee’s meeting minutes. As previously explained, the auditor had to search through multiple years of project files to find the responsive records. It took an hour and a half to locate all the meeting minutes responsive to the request. Given the free hour pursuant to N.D.C.C. § 44-04-18, Mr. Dahl was charged for the remaining half hour it took to locate the responsive records. Only after an explanation of the charges for producing the records, did Mr. Dahl narrow his request to the 2015 meeting minutes. At this point, the auditor had already spent the time locating all the Committee’s meeting minutes responsive to the original request. The open records law recognizes that public entities should be compensated for the time incurred and materials used if copies are made in responding to record requests, as authorized by N.D.C.C. § 44-04-18. It is my opinion that the City of Cooperstown charged the amount allowed by N.D.C.C. § 44-04-18 for locating and copying the records.

²² N.D.C.C. § 44-04-18(4).

²³ Email from Ron Dahl to Nancy Lunde, Cooperstown City Auditor (May 12, 2016, 5:00 pm).

²⁴ Letter from Nancy Lunde, Cooperstown City Auditor, to Sandra DePountis, Asst. Att’y Gen. (May 26, 2016).

²⁵ Id. The auditor further explained that some minutes were copied front and back onto a single sheet, which helped offset the cost. See Email from Nancy Lunde, Cooperstown City Auditor, to Sandra DePountis, Asst. Att’y Gen. (June 1, 2016, 11:39 am).

²⁶ Email from Ron Dahl to Nancy Lunde, Cooperstown City Auditor (May 19, 2016, 8:20 am).

CONCLUSION

The City of Cooperstown did not violate open records law when it charged for the time it took to locate records, after the first hour, and for producing paper copies of requested records, in accordance with N.D.C.C. § 44-04-18.

Wayne Stenehjem
Attorney General

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cc: Ron Dahl (via email only)