

**OPEN RECORDS AND MEETINGS OPINION
2018-O-13**

DATE ISSUED: July 16, 2018

ISSUED TO: City of Sentinel Butte

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Richard Volesky asking whether the City of Sentinel Butte violated N.D.C.C. § 44-04-18 by failing to provide a response to a request for records.

FACTS PRESENTED

On April 12, 2018, Richard Volesky, editor of *Golden Valley News*, emailed the city auditor of Sentinel Butte requesting “a copy of the election announcement ad that was published in Dickinson (the newspaper clipping), or a copy of the affidavit of publication announcing the election.”¹ A follow up letter was sent by Mr. Volesky on April 27, 2018, regarding other record requests and again asking for “a newsprint copy, or affidavit of publication with the newspaper ad that announced the election and the available council positions.”²

ISSUE

Whether the City of Sentinel Butte properly responded to a request for records.

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 Records

¹ Email from Richard Volesky to City Auditor, Sentinel Butte (Apr. 12, 2018, 6:27p.m.).

² Letter from Richard Volesky to Kelli Allen, City Auditor, Sentinel Butte, (Apr. 27, 2018). Mr. Volesky received records responsive to his other requests, but did not receive any records or response to the election publication request. Letter from Richard Volesky to Office of Att’y Gen. (May 25, 2018).

³ N.D.C.C. § 44-04-18(1).

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must be provided to a requestor within a reasonable time.⁴ “A denial of a request for records ...must describe the legal authority...or a statement that a record does not exist, and must be in writing if requested.”⁵

The City of Sentinel Butte did not have any announcement or affidavit records responsive to Mr. Volesky’s request but failed to communicate this information to Mr. Volesky, as required by N.D.C.C. § 44-04-18(7), until prompted by this office.⁶

CONCLUSION

The City of Sentinel Butte violated open records law when it failed to inform the requestor that records did not exist in response to an open records request.

STEPS NEEDED TO REMEDY VIOLATION

The City of Sentinel Butte eventually notified Mr. Volesky that the record did not exist, so no further remedial measures are required.

Wayne Stenehjem
Attorney General

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cc: Richard Volesky (via email only)

⁴ N.D.C.C. § 44-04-18(8).

⁵ N.D.C.C. § 44-04-18(7).

⁶ Email from Kelli Allen, City Auditor, Sentinel Butte to Office of Att’y Gen. (June 25, 2018, 6:29 p.m.)