

**OPEN RECORDS AND MEETINGS OPINION
2019-O-02**

DATE ISSUED: April 11, 2019

ISSUED TO: City of Dickinson

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Nick Thornton asking whether the City of Dickinson violated N.D.C.C. § 44-04-18 by failing to respond to a records request within a reasonable time.

FACTS PRESENTED

On September 20, 2018, Mr. Thornton sent a records request for the personnel file of a police officer to the Dickinson Police Department's Records Supervisor.¹ The request was forwarded to the City of Dickinson's Human Resources (HR) Department Coordinator, who began scanning some of the records responsive to the request that same day.² The HR Coordinator did not work on the request again until September 28, 2018.³ During the intervening time, the HR Coordinator had other workload and responsibilities, and was out of the office at a conference for a few days. There was no communication with the requestor until September 28, 2018, and then only after the requestor asked for a status update.⁴ The HR Coordinator asked for help from her assistant on October 1, 2018.⁵ The HR Department finished scanning, reviewing and redacting the records on October 3, 2018.⁶ The records were then forwarded to the City Attorney who provided a cost estimate to the requestor on October 5, 2018, and thereafter spent over seventeen hours the next two weeks reviewing the redactions made by HR staff.⁷ The City Attorney provided status updates to the requestor during

¹ Email from Nick Thornton, Att'y at Law, to Rebecca A. Hoff, Records Supervisor, Dickinson Police Dep't (Sept. 20, 2018, 2:41 PM).

² Letter from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Oct. 29, 2018).

³ Letter from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Oct. 29, 2018); email from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Feb. 15, 2019, 7:26 PM).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Letter from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Oct. 29, 2018).

this time.⁸ The City ultimately provided 163 pages of records and 80 minutes of video recording to Mr. Thornton between October 9 and October 18, 2018.⁹

ISSUE

Whether the City of Dickinson responded to a request for records within a reasonable time.

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.”¹⁰ When a public entity receives a request for records, it must, within a reasonable time, either provide the records or explain why the records are not being provided.¹¹ Whether records have been produced within a reasonable time will depend on the facts of a given situation.¹² A delay may be appropriate for a number of reasons, including reviewing large volumes of documents to respond to a request, excising closed or confidential information, availability and workload of staff who can respond to the request, balancing other responsibilities of the public entity that demand immediate attention, accessing the records requested, consulting with an attorney when there is reasonable doubt whether the records are open to the public, sorting out what has previously been provided to a requester, and seeking clarification on vague requests.¹³

According to the City, the delay was due to several factors. Although the request was for one personnel file, the file contained 225 pages of records and five electronic video recordings totaling approximately 80 minutes of footage. Because the employee was a law enforcement officer, the file was reviewed for confidential and exempt information.

⁸ *Id.* The City provides that it replied to over nineteen emails from Mr. Thornton.

⁹ *Id.* Six separate emails were sent with responsive records and a DVD was picked up by the requestor.

¹⁰ N.D.C.C. § 44-04-18(1).

¹¹ N.D.C.C. § 44-04-18. N.D.A.G. 2014-O-06.

¹² N.D.A.G. 2017-O-10; N.D.A.G. 2017-O-06; N.D.A.G. 2014-O-25; N.D.A.G. 2014-O-21; N.D.A.G. 2014-O-20; N.D.A.G. 2013-O-17.

¹³ N.D.A.G. 2017-O-10; N.D.A.G. 2017-O-06; N.D.A.G. 2014-O-25; N.D.A.G. 2014-O-21; N.D.A.G. 2014-O-20; N.D.A.G. 2014-O-06; N.D.A.G. 2013-O-17; N.D.A.G. 2013-O-15; N.D.A.G. 2012-O-07; N.D.A.G. 2010-O-04; N.D.A.G. 2008-O-08; N.D.A.G. 2004-O-05; N.D.A.G. 2003-O-21; N.D.A.G. 98-O-20; N.D.A.G. 98-O-04.

OPEN RECORDS AND MEETINGS OPINION 2019-O-02

April 11, 2019

Page 3

The City Attorney was consulted regarding the redactions¹⁴ and the IT department aided in reviewing and redacting the video.¹⁵

In addition, at the time of the request, the HR Department was understaffed and the HR Coordinator had out of state training, interviews, other open record requests, and Title VI Audit trainings. The City Attorney was also balancing other responsibilities including litigation matters, participation in arbitration, and drafting various policies and ordinances for the commission.

The request was received on September 20, 2018, and although the HR coordinator began initially scanning some of the files on this date, the next time any work was done on the request was September 28, 2018.¹⁶ The HR Coordinator did not inform the requester that there may be a delay in receiving the records due to her workload or a previously scheduled training.¹⁷ This led to the requester contacting the City asking about the status of his request.¹⁸ The City Attorney was not informed of the records request until September 28, 2018.¹⁹ The HR Coordinator did not ask for help from her assistant until October 1, 2018.²⁰ The requestor was not provided a cost estimate until October 5, 2018.²¹

I recognize that the request for records came during a very busy time for the HR Coordinator and that there were numerous responsive records. However, the City failed

¹⁴ The city explained that personnel files for law enforcement require more redactions than other employees due to the extensive background checks performed prior to employment and the numerous exceptions to the open records law applicable to law enforcement.

¹⁵ Letter from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Oct. 29, 2018).

¹⁶ Letter from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Oct. 29, 2018); email from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Feb. 15, 2019, 7:26 PM).

¹⁷ Letter from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Oct. 29, 2018); email from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Feb. 15, 2019, 7:26 PM).

¹⁸ Letter from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Oct. 29, 2018); email from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Feb. 15, 2019, 7:26 PM).

¹⁹ *Id.*

²⁰ Letter from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Oct. 29, 2018). See *generally* N.D.A.G. 2014-O-06 ("Although the law does not require it, if providing the records within a reasonable time is not feasible given the current work load of a public entity, consideration should be given to approving extra time or staff if resources are available.").

²¹ Letter from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Oct. 29, 2018); email from Janilyn Murtha, Att'y, City of Dickinson, to Nick Thornton, Att'y at Law (Oct. 5, 2018, 12:09 PM).

OPEN RECORDS AND MEETINGS OPINION 2019-O-02

April 11, 2019

Page 4

to inform the requester why the records were not being provided and no real action was taken for eight days after receiving the request.²²

CONCLUSION

The City of Dickinson failed to provide a response to an open records request within a reasonable time.

STEPS NEEDED TO REMEDY VIOLATION

The response to the request was ultimately provided and therefore no further action is required. The City of Dickinson should review its policies and procedures for responding to open record requests in order to more efficiently respond to requests and expedite these matters in the future.

Wayne Stenehjem
Attorney General

sld

cc: Nick Thornton (via email only)

²² Letter from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Oct. 29, 2018); email from Janilyn Murtha, Att'y, City of Dickinson, to Att'y Gen.'s Office (Feb. 15, 2019, 7:26 PM).