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OPEN RECORDS AND MEETINGS OPINION
2023-O-07

DATE ISSUED: November 20, 2023

ISSUED TO: Morton County State's Attorney's Office

CITIZEN'S REQUEST FOR OPINION

Karen Jordan and S. Paul Jordan¹ requested an opinion from this office under North Dakota Century Code § 44-04-21.1 asking whether the Morton County State's Attorney's office violated N.D.C.C. § 44-04-18 by failing to provide a record.

FACTS PRESENTED

On March 14, 2022, Karen Jordan requested "a copy of the last utility bill you received from the city for [Mr. Kopyy's personal home address]."² He did not provide the record, so Mrs. Jordan asked again on May 16, 2022.³ On May 19, 2022, Mr. Kopyy replied in writing that the record requested was not a record of the Morton County State's Attorney's Office.⁴

ISSUE

Whether the Morton County State's Attorney violated the open records law by denying a request for his personal water bill.

ANALYSIS

The open records law does not require a public entity to create or compile a record that does not exist.⁵ A record is subject to the open records law only if it is in the possession of the public entity and was either received or prepared in connection to public business or is related to public business.⁶

¹ Emails to the State's Attorney's office regarding the water bill issue primarily are from Karen Jordan, but some are from S. Paul Jordan. Emails from both of them pertain to the same issue, so this opinion addresses any request for an opinion either has requested regarding this matter.

² Email from Karen Jordan to Morton Cnty. State's Att'y (Mar. 14, 2022, 10:28 PM).

³ Email from Karen Jordan to Morton Cnty. States Att'y (May 16, 2022, 10:09 PM).

⁴ Letter from Office of the Morton Cnty. State's Att'y to Karen Jordan (May 19, 2022).

⁵ N.D.C.C. § 44-04-18(4).

⁶ N.D.C.C. § 44-04-17.1(16).

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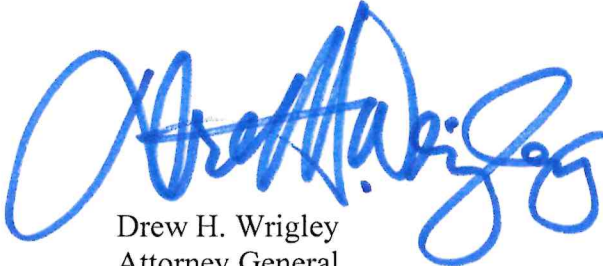
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A city water record is a public record of the City of Mandan and if requested from the city, could be provided to a requester, subject to the appropriate redactions regarding public employees under N.D.C.C. § 44-04-18.1 and prosecutors under N.D.C.C. § 44-04-18.3. The city water record is not, however, a record of the Morton County State's Attorney's office. As the elected State's Attorney for Morton County, Mr. Kopyy is responsible only for the records he creates and works with as the county States's Attorney. As a public official, he is not obligated to turn over personal records.

CONCLUSION

The Morton County State's Attorney did not violate the open records law by denying a request for his personal water bill.



Drew H. Wrigley
Attorney General

cc: Karen Jordan and S. Paul Jordan