



STATE OF NORTH DAKOTA  
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**OPEN RECORDS AND MEETINGS OPINION**  
**2023-O-09**

DATE ISSUED: December 27, 2023  
ISSUED TO: Morton County Sheriff's Office

**CITIZEN'S REQUEST FOR OPINION**

Karen Jordan requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Morton County Sheriff's Office violated N.D.C.C. § 44-04-18 by failing to provide requested records.

**FACTS PRESENTED**

Beginning at least in March 2022, Karen Jordan sent Morton County Sheriff Kyle Kirchmeier several lengthy emails interspersed with allegations against various governmental entities. In one June 8, 2022, email, Karen Jordan requested that the Morton County Sheriff investigate the City of Mandan.<sup>1</sup> Sheriff Kirchmeier responded to this request by asking Ms. Jordan to come in and meet with an investigator to determine whether there was sufficient information to merit an investigation, or whether an investigation would have to be referred to another law enforcement agency.<sup>2</sup> On June 30, 2022, Ms. Jordan emailed Sheriff Kirchmeier another message including a request for a copy of "a report that should've been written."<sup>3</sup> Based on the context of the email, it seems Ms. Jordan was referring to a report of an investigation of the City of Mandan. Sheriff Kirchmeier did not respond to that request.

**ISSUE**

Whether the Morton County Sheriff's Office violated the open records law by failing to provide records.

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<sup>1</sup> Email from Karen Jordan to Kyle Kirchmeier, Sheriff, Morton Cnty. Sheriff's Off. (June 8, 2022, 9:02 PM).

<sup>2</sup> Email from Kyle Kirchmeier, Sheriff, Morton Cnty. Sheriff's Off., to Karen Jordan (June 15, 2022, 2:56 PM); Letter from Kyle L. Kirchmeier, Sheriff, Morton Cnty. Sheriff's Off., to Mary Kae Kelsch, Assistant Att'y Gen., Off. of Atty Gen. (Oct. 12, 2022).

<sup>3</sup> Email from Karen Jordan to Kyle Kirchmeier, Sheriff, Morton Cnty. Sheriff's Off. (June 30, 2022, 9:12 PM). *See also*, Letter from Kyle L. Kirchmeier, Sheriff, Morton Cnty. Sheriff's Off., to Mary Kae Kelsch, Assistant Att'y Gen., Off. of Atty Gen. (Oct. 12, 2022).

### ANALYSIS

The North Dakota open records law provides that a public entity must provide “one copy” of a specific public record when requested.<sup>4</sup> The public entity must either provide or deny the record in a reasonable time.<sup>5</sup> A public entity does not have to “create or compile a record that does not exist” and only has to search the records in its possession.<sup>6</sup>

The Morton County Sheriff does not have the record requested by Ms. Jordan.<sup>7</sup> However, the Sheriff did not promptly inform Ms. Jordan that the record did not exist. Sheriff Kirchmeier explains in his response to this office that no investigation was started because Ms. Jordan refuses to have the necessary pre-investigation conversation with the Sheriff’s Office.<sup>8</sup> The Sheriff further explains that, instead of cooperating with the Sheriff’s Office, Ms. Jordan continued to send emails complaining about the City of Mandan and making demands for an investigation. Sheriff Kirchmeier states he understood the voluminous June correspondence constituted status requests from Ms. Jordan rather than any open records requests.<sup>9</sup> I understand Sheriff Kirchmeier’s frustration; however, technically Ms. Jordan requested a record when she e-mailed “[i]f the only way I can learn anything is to request a copy of a report that should’ve been written, then a copy is what I’ll ask for under my right to receive it based on Art. I, Sec. 25(1)(1) in this state’s Constitution.” So the public entity was required to reply to that request in order to be compliant with the law.<sup>10</sup>

### CONCLUSION

The Morton County Sheriff’s Office did not inform the requester that a requested record did not exist.

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<sup>4</sup> N.D.C.C. § 44-04-18(2).

<sup>5</sup> N.D.C.C. § 44-04-18.

<sup>6</sup> N.D.C.C. § 44-04-18(4).

<sup>7</sup> Letter from Kyle L. Kirchmeier, Sheriff, Morton Cnty. Sheriff’s Off., to Mary Kae Kelsch, Assistant Att’y Gen., Off. of Atty Gen. (Oct. 12, 2022).

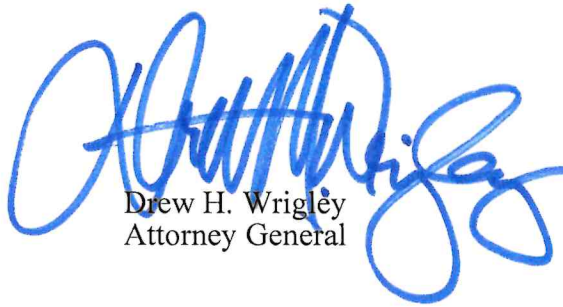
<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Email from Karen Jordan to Kyle Kirchmeier, Sheriff, Morton Cnty. Sheriff’s Off. (June 30, 2022, 9:12 PM).

STEPS NEEDED TO REMEDY VIOLATION

The Morton County Sheriff's Office should review its processes for responding to requests for records to make sure that if a record does not exist, the requester is informed promptly.



Drew H. Wrigley  
Attorney General

cc: Karen Jordan