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OPEN RECORDS AND MEETINGS OPINION
2024-O-01

DATE ISSUED: January 3, 2024

ISSUED TO: Morton County - Board of Equalization

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 Board of Equalization (Board) violated N.D.C.C. §§ 44-04-18 by failing to respond to a record request.

FACTS PRESENTED

In June 2022, Ms. Jordan requested the Board's annual meeting publication notices¹ via an email to "all of the members of the [Board] also serving as Morton County Commissioners."² Commissioner Boehm handed a paper copy of the request to the Morton County Auditor, Ms. Rhone.³ Ms. Jordan did not receive a response to the request.⁴

ISSUE

Whether the Morton County Board of Equalization violated the open records law by failing to provide records.

ANALYSIS

Public entities must either provide or deny requests for records within a reasonable time.⁵ Past opinions issued by this office have stated, "[d]epending on the circumstances, a delay may be appropriate for a number of reasons, including excising closed or confidential information, consulting with an attorney when there is a reasonable doubt whether the records are open to

¹ N.D.C.C. § 57-02-52.

² Email from Karen Jordan to Morton Cnty. Bd. of Equalization (Nathan Boehm, Andrew Zachmeier, Ron Leingang, Jackie Buckley, and Raymond Morrell) (June 8, 2022, 10:21 PM).

³ Email from Dawn R. Rhone, Morton Cnty. Auditor, to Annique M. Lockard, Asst. Att'y Gen., Att'y Gen.'s Office (July 29, 2022, 3:52 PM).

⁴ *Id.*

⁵ N.D.C.C. § 44-04-18.

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the public, or balancing other responsibilities of the public entity that demand immediate attention.”⁶

Here, the Board acknowledges that the request “got overlooked and it was not fulfilled.”⁷ There is no indication the Board attempted to fulfill the request after this oversight was brought to their attention.⁸ The Board must provide a response to a request for records.⁹

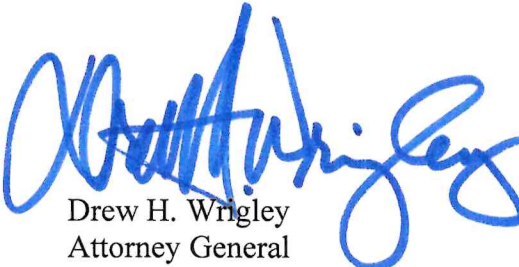
CONCLUSION

The Board did not respond to a request for records in violation of open records law.

STEPS NEEDED TO REMEDY VIOLATION

The Board must respond to Ms. Jordan’s request. The Board must provide the requested records to Ms. Jordan, free of charge, if they exist. Further, the Board is advised to revisit the open records requirements regarding timely responses to open records requests.

While I have every reason to expect the Board will remedy this situation, failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.¹⁰ Failure to take these corrective measures may also result in personal liability for the person or persons responsible for the noncompliance.¹¹



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Attorney General

cc: Karen Jordan

⁶ N.D.A.G. 2002-O-06; *see also* N.D.A.G. 98-O-20 *and* N.D.A.G. 98-O-04.

⁷ Email from Dawn R. Rhone, Morton Cnty. Auditor, to Annique M. Lockard, Asst. Att’y Gen., Att’y Gen.’s Office (July 12, 2022, 3:46 PM).

⁸ Email from Dawn R. Rhone, Morton Cnty. Auditor, to Annique M. Lockard, Asst. Att’y Gen., Att’y Gen.’s Office (July 29, 2022, 3:52 PM).

⁹ N.D.A.G. 2023-O-09.

¹⁰ N.D.C.C. § 44-04-21.1(2).

¹¹ *Id.*