

**OPEN RECORDS AND MEETINGS OPINION
2005-O-16**

DATE ISSUED: October 6, 2005

ISSUED TO: Mayor Marlo Tveter, City of Oakes

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Ms. Moe Bohannon of The Oakes Times, asking whether Marlo Tveter, the mayor of Oakes, North Dakota, violated N.D.C.C. § 44-04-18 by refusing to release a record.

FACTS PRESENTED

On Monday, July 25 the Oakes City Council held a special meeting. At the end of the meeting, Mayor Marlo Tveter distributed a letter marked "Confidential" to each council member. The letter is a one page document with a list of wages and the mayor's suggestions for raises. It also contains four statements, all regarding city business. Ms. Bohannon requested a copy of the letter from Mayor Tveter, but refused to give her one citing N.D.C.C. § 12.1-13-01.

ISSUE

Whether the open records law was violated when the mayor refused to provide a copy of the letter to the requestor.

ANALYSIS

All records of a public entity are public records, open and accessible for inspection. N.D.C.C. § 44-04-18. A record is subject to public inspection if it is in the possession of a public entity and prepared for use in connection with public business or contains information relating to public business. N.D.C.C. § 44-04-17.1(15). If existing records are not available when requested, a public entity has a duty under the open records law to provide access or copies of the records within a reasonable time. N.D.A.G. 2004-O-20; N.D.A.G. 2003-O-19. A record or meeting of a public entity may not be closed to the public without specific legal authority. N.D.C.C. §§ 44-04-18, 44-04-19; N.D.A.G. 2000-O-13.

The mayor denied Ms. Bohannon's request citing N.D.C.C. § 12.1-13-01. That statute makes it a class C felony for a public servant to knowingly disclose records that are made confidential by statute. Marking a record "confidential" is of no legal significance absent a state or federal law that expressly declares the record confidential. There is no statute that makes the information in the letter confidential.

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Mayor Tvetter explained to this office that he only had six copies of the record and he gave those to the six council members. He also appears to claim that because the record only contained suggestions and that he had no power to vote on spending bills, the record was not a public record. See Letter from Mayor Tvetter to this office (Aug. 29, 2005).

Whether the record contained only suggestions is irrelevant. Documents complete in themselves are "records" subject to the open records laws. N.D.A.G. 2005-O-06; 98-O-10. Cf. N.D.A.G. 2005-L-06 (a document containing preliminary financial information were "records" subject to the open records law even though the information in the record was subject to change). The record clearly concerned public business. It was a "record" in the possession of a public entity both when it was in the hands of the mayor and when it was given to city council members. N.D.C.C. § 44-04-17.1(15). It was therefore the responsibility of Mayor Tvetter to retrieve one of the letters he handed to the council members, make a copy, and give it to Ms. Bohannon and any one else who requested a copy. It is my opinion that Mayor Tvetter violated the open records law by failing to provide a copy of the document to Ms. Bohannon and others who requested a copy.

STEPS NEEDED TO REMEDY VIOLATION

Mayor Tvetter must provide a copy of the record to Ms. Bohannon and every person who requested it free of charge and he must provide a copy to be placed in the record of the city auditor. Anyone who wishes to review the record may do so, and if a copy is requested it must be provided free of charge.

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. N.D.C.C. §44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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