

**OPEN RECORDS AND MEETINGS OPINION  
2009-O-07**

DATE ISSUED: June 4, 2009

ISSUED TO: Department of Human Services

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from John Ford asking whether the Department of Human Services violated N.D.C.C. § 44-04-18 by failing to provide copies of records within a reasonable time.

**FACTS PRESENTED**

On April 28, 2009, Mr. Ford went to the Department of Human Services (DHS) and requested a copy of all licenses held by PATH (Professional Association of Treatment Homes) of North Dakota, Inc., and issued by DHS for the time period of May 27, 2005, through February 28, 2006. Mr. Ford made his request to the Children and Family Services Division (CFS). CFS had one record that satisfied Mr. Ford's request.

Mr. Ford has pending lawsuits against DHS, so CFS immediately contacted the Legal Advisory Unit to insure that the record could be released without interfering with any lawsuits. The Legal Advisory Unit determined that the record was not part of any of the pending lawsuits and informed CFS that the record could be released to Mr. Ford. However, both CFS and the Legal Advisory Unit thought the other was going to inform Mr. Ford that the record could be picked up. Due to this misunderstanding, Mr. Ford was not contacted by anyone at DHS and told the record was ready.

On May 13, 2009, eleven business days later, Mr. Ford advised my office that he had not received the record he requested. My office contacted DHS and Mr. Ford was then mailed a copy of the record.

**ISSUE**

Whether DHS violated N.D.C.C. § 44-04-18 by failing to provide a copy of the record within a reasonable time.

### ANALYSIS

The open records law is violated when a public entity does not provide access to or copies of a record within a reasonable time.<sup>1</sup> Although N.D.C.C. § 44-04-18 does not usually require an immediate response, the delay permitted will usually be measured in a few hours or a few days rather than several days or weeks.<sup>2</sup> “Whether a response has been provided within a reasonable time will depend on the facts of a given situation.”<sup>3</sup>

Here, it took over two weeks to provide one record to Mr. Ford. In response to an inquiry from this office, the attorney for DHS acknowledged that the delay was due to a misunderstanding between staff members of DHS. Although the delay was not intentional, the fact remains that the record was not provided within a reasonable time. Therefore, it is my opinion that DHS violated N.D.C.C. § 44-04-18.

### CONCLUSION

DHS violated N.D.C.C. § 44-04-18 by failing to provide a copy of the record to Mr. Ford within a reasonable time.

### STEPS NEEDED TO REMEDY VIOLATION

Mr. Ford has already received the record he requested. Therefore, there is no further corrective measure to be taken by DHS.

Wayne Stenehjem  
Attorney General

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<sup>1</sup> See N.D.C.C. § 44-04-18(8); N.D.A.G. 2006-O-15.

<sup>2</sup> N.D.A.G. 2008-O-08; N.D.A.G. 2004-O-07; N.D.A.G. 2002-O-06.

<sup>3</sup> N.D.A.G. 2006-O-15; N.D.A.G. 2005-O-05; N.D.A.G. 2003-O-09.