

**OPEN RECORDS AND MEETINGS OPINION  
2017-O-06**

DATE ISSUED: August 23, 2017

ISSUED TO: Foster County Water Resource Board

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Lukas W. Croaker asking whether the Foster County Water Resource Board violated N.D.C.C. § 44-04-18 by unreasonably delaying access to records.

**FACTS PRESENTED**

On April 6, 2017, Randal Hoverson sent a request to the Foster County Water Board (Board) for “minutes of any and all meetings that have been conducted by the Foster County Water Board where there has been discussion of draining or of draining permits for any property located in Glenfield Township for the years 2014-2017.”<sup>1</sup> The Board’s secretary brought the request to the Board at its next meeting on April 11, 2017.<sup>2</sup> The Board instructed the secretary, who is employed part-time for the District, to search for the minutes and compile a response for Mr. Hoverson. The secretary searched through the minutes for an hour and a half but could not find any minutes discussing the requested draining permits.<sup>3</sup> The secretary made copies of all the meeting minutes, approximately 30 pages,<sup>4</sup> to give to the requester to prove no permits were approved and mailed a copy of the minutes to Mr. Hoverson on May 1, 2017.<sup>5</sup>

**ISSUE**

Whether the Board provided a response to requested records within a reasonable time.

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<sup>1</sup> Letter from Randal Hoverson to Foster Cnty. Water Bd. (Apr. 6, 2017)

<sup>2</sup> Letter from Doug Zink, Chairman, Foster Cnty. Water Bd., to Sandra L. DePountis, Asst. Att’y Gen. (May 8, 2017).

<sup>3</sup> Email from Bonnie Monson, Foster Cnty. Water Bd., to Sandra L. DePountis, Asst. Att’y Gen. (May 10, 2017, 6:38pm).

<sup>4</sup> *Id.*

<sup>5</sup> Letter from Doug Zink, Chairman, Foster Cnty Water Bd., to Sandra L. DePountis, Asst. Att’y Gen. (May 8, 2017).

## ANALYSIS

“Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours.”<sup>6</sup> When a public entity receives a request for records, it must, within a reasonable time, either provide the records or explain why the records are not being provided.<sup>7</sup> Whether records have been produced within a reasonable time will depend on the facts of a given situation.<sup>8</sup> A delay may be appropriate for a number of reasons, including reviewing large volumes of documents to respond to a request, excising closed or confidential information, availability and workload of staff who can respond to the request, balancing other responsibilities of the public entity that demand immediate attention, accessing the records requested, consulting with an attorney when there is reasonable doubt whether the records are open to the public, sorting out what has previously been provided to a requester, and seeking clarification on vague requests.<sup>9</sup>

This office previously explained “[a] public entity’s response to an open records request cannot be automatically extended until the next scheduled meeting of the governing body simply to enable the governing body to give its permission to release the records.”<sup>10</sup> “Providing access to records which are open to the public is a ministerial act which will not require action of a governing body in most cases.”<sup>11</sup> Therefore, there was no reason to delay the response for five days in order to bring the request before the Board at its next meeting.

In addition, as explained in past opinions, a violation occurs when a public entity delays informing a requester that records do not exist.<sup>12</sup> There is no evidence to suggest that

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<sup>6</sup> N.D.C.C. § 44-04-18(1).

<sup>7</sup> N.D.C.C. § 44-04-18.

<sup>8</sup> N.D.A.G. 2014-O-25; N.D.A.G. 2014-O-21; N.D.A.G. 2014-O-20; N.D.A.G. 2013-O-17.

<sup>9</sup> N.D.A.G. 2014-O-25; N.D.A.G. 2014-O-21; N.D.A.G. 2014-O-20; N.D.A.G. 2014-O-06; N.D.A.G. 2013-O-17; N.D.A.G. 2013-O-15; N.D.A.G. 2012-O-07; N.D.A.G. 2010-O-04; N.D.A.G. 2008-O-08; N.D.A.G. 2004-O-05; N.D.A.G. 2003-O-21; N.D.A.G. 98-O-20; N.D.A.G. 98-O-04.

<sup>10</sup> N.D.A.G. 2001-O-02. Similarly, “providing access to records generally does not require the approval, supervision, or action by a head of an agency.” N.D.A.G. 2010-O-04; N.D.A.G. 2006-O-15.

<sup>11</sup> N.D.A.G. 2001-O-02. See also N.D.A.G. 2006-O-15. Every state official and the employees of any department should know what records are exempted by statutes or case law. N.D.A.G. 2006-O-15.

<sup>12</sup> N.D.A.G. 2015-O-17; N.D.A.G. 2008-O-08; N.D.A.G. 2008-O-06, N.D.A.G. 2001-O-04.

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copying the meeting minutes here added to the delay in responding to Mr. Hoverson, however, although commendable for the secretary to provide the minutes, all that was required under open records law was to inform the requester that the records did not exist.<sup>13</sup>

Although I recognize that the individual compiling the request worked for the District on a part time basis, the Board provides no reasoning to justify the 25 day delay in responding to a request for records that took an hour and half to review and determine that no such record existed.

CONCLUSION

The Board failed to provide a response to the request for records within a reasonable time.

STEPS NEEDED TO REMEDY VIOLATION

Because a response was ultimately provided to Mr. Hoverson, no further action is required. I would, however, encourage the Board and District employees to access the resources on the Attorney General's website regarding their duties and responsibilities under the open records law.

Wayne Stenehjem  
Attorney General

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cc: Lukas W. Croaker (via email only)

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<sup>13</sup> N.D.A.G. 2015-O-17; N.D.A.G. 2008-O-08; N.D.A.G. 2008-O-06, N.D.A.G. 2001-O-04.