

**OPEN RECORDS AND MEETINGS OPINION
2018-O-23**

DATE ISSUED: December 10, 2018

ISSUED TO: Dakota Center for Independent Living

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from S. Paul Jordan asking whether Dakota Center for Independent Living violated N.D.C.C. § 44-04-18 by failing to properly respond to a records request within a reasonable time.

FACTS PRESENTED

On September 17, 2018, Mr. S. Paul Jordan sent a letter to the Dakota Center for Independent Living (DCIL) outlining various grievances and providing:

The 2016 Form 990 on the DCIL lists 98 percent of its funding as coming from public funds, which raises such questions as whether any public funding comes from public entities and what percentage may come from public entities. Therefore, I request a copy of the minimum number of records necessary in the possession of the DCIL that will show just what percentage of public funded the DCIL has received in 2018 that came from public entities. I also request written notification if no records exist and the legal authority used if information is withheld.¹

Mr. Royce Schultze, the executive director of the DCIL, replied to Mr. Jordan's request in a letter, dated October 1, 2018, informing Mr. Jordan that he is in possession of the most recent Form 990 2016 and that the next 990 form would not be completed until the end of December.² Mr. Jordan provided a copy of the envelope the response was mailed in that provided a postmark date of the letter being sent on October 4, 2018.³

¹ Letter from S. Paul Jordan to Royce Schultze, Exec. Dir., Dakota Center for Indep. Living (Sept. 17, 2018).

² Letter from Royce Schultze, Exec. Dir., Dakota Center for Indep. Living, to S. Paul Jordan (Oct. 1, 2018).

³ Envelope from Dakota Center for Indep. Living, to S. Paul Jordan (postmarked Oct. 4, 2018).

ISSUES

1. Whether the DCIL's response to Mr. Jordan's records request was proper.
2. Whether the DCIL unreasonably delayed responding to Mr. Jordan's records request.

ANALYSIS

Issue One

"Upon request for a copy of specific public records, [a public entity] shall furnish the requester one copy of the public records requested."⁴ Mr. Jordan's vague request does not point to a "specific public record."⁵ Nevertheless, Mr. Schultze provides that he "read Mr. Jordan's letter several times because I was unsure of what he was asking but my understanding in the last paragraph...is Mr. Jordan wanted to know what percentage of our funding comes from public entities and by public entities I think he was talking about our federal and state grants."⁶ This would have been shown in the next 990 form which would not be available until the end of 2018.⁷ This was communicated to Mr. Jordan.⁸ The open records law is limited to records in the possession of a public entity and a public entity is not required to create or compile a record that does not exist.⁹ Based on the vague request of Mr. Jordan, I find the interpretation of the DCIL as reasonable and the response provided therefore to be proper.

⁴ N.D.C.C. § 44-04-18(2).

⁵ Requests for information or questions posed by a requestor are not considered a request for a record; rather the open records law requires a request to reasonably identify a "specific public record." N.D.A.G. 2014-O-22; N.D.A.G. 2007-O-07. Mr. Jordan has a history of putting "record" in front of what would otherwise be considered a request for information. Such requests still do not identify a specific public record.

⁶ Email from Royce Schultze, Exec. Dir., Dakota Center for Indep. Living, to Office of Att'y Gen. (Oct. 26, 2018, 4:36 PM).

⁷ *Id.*

⁸ Letter from Royce Schultze, Exec. Dir., Dakota Center for Indep. Living, to S. Paul Jordan (Oct. 1, 2018).

⁹ N.D.C.C. § 44-04-17.1(16) (definition of "record" in open records law applies to that "which is in the possession or custody of a public entity"); N.D.C.C. § 44-04-18(4); N.D.A.G. 2014-O-22.

Issue Two

Response to record requests must be provided within a reasonable time.¹⁰ Mr. Schultze is not sure of the exact day the DCIL received Mr. Jordan's letter, dated September 17, 2018, but presumes it would have been received within "a day or two" from this date.¹¹ It therefore would be reasonable to assume Mr. Schultze provided a response within two weeks. Mr. Schultze provides that it was never the intent to delay responding, but at the time of the records request, the DCIL was not fully staffed, dealing with end of the fiscal year reports, and responding to another request from Mr. Jordan.¹² Although I recognize the inopportune time of the records request, coupled with the short staff of the DCIL and dealing with this prolific and persistent requestor, I find a two week delay in responding that no records were available to be unreasonable.¹³

CONCLUSIONS

1. The DCIL's response to a vague request from Mr. Jordan that did not identify a specific record was proper.
2. The DCIL failed to respond to a records request within a reasonable time.

¹⁰ N.D.C.C. § 44-04-18(8).

¹¹ Email from Royce Schultze, Exec. Dir., Dakota Center for Indep. Living, to Office of Att'y Gen. (Oct. 26, 2018, 4:36 PM).

¹² Emails from Royce Schultze, Exec. Dir., Dakota Center for Indep. Living, to Office of Att'y Gen. (Oct. 26, 2018, 4:36 PM and Oct. 29, 2018, 12:23 PM). Mr. Jordan also alleges that because the DCIL refuses to accept email record requests from him, that it is contributing to the delay. The open records law does not require entities to accept email requests for records, as long as this is communicated to the requestor and alternative means are available to make the record requests. See N.D.A.G. 2016-O-08 (if a public entity no longer wishes to use its email account to receive open record requests, the entity should inform senders the account is no longer in use and provide information on alternative options). The DCIL informed Mr. Jordan that it would no longer be receiving his requests via email, but was accepting the record requests by mail. If Mr. Jordan does not wish to go through the mail, he can make record requests in person or by telephonic means as allowed pursuant to N.D.C.C. § 44-04-18(2). Mr. Jordan chose to continue sending requests via mail versus in person or by telephone.

¹³ In the future, I would recommend the Dakota Center for Indep. Living reply to Mr. Jordan that his request does not identify any specific records and ask for clarification within a reasonable time.

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STEPS NEEDED TO REMEDY VIOLATION

Mr. Jordan received a response to the records request and therefore no further action is required.

Wayne Stenehjem
Attorney General

sld
cc: S. Paul Jordan