

**OPEN RECORDS AND MEETINGS OPINION
2019-O-15**

DATE ISSUED: July 19, 2019

ISSUED TO: Belcourt School District #7

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Khara Laducer asking whether the Belcourt School District #7 violated N.D.C.C. § 44-04-18 by failing to provide copies of records within a reasonable time.

FACTS PRESENTED

On March 31, 2019, Ms. Khara Laducer made an open records request via email to the Belcourt School District #7 asking for "the recorded audio files from all BSD7 Board Meetings (regular and special) from September 2018 to current."¹ Ms. Laducer sent follow up emails on April 1, April 2, and April 12, 2019.² The records were provided to Ms. Laducer on April 15, 2019, but the records did not include the audio of an October 18, 2018, special meeting of the Belcourt School District Board of Education.³ The October 18, 2018, recording was made available to Ms. Laducer on May 24, 2019.⁴

¹ Email from Khara Laducer to Duane Poitra, Bus. Manager, Belcourt Sch. Dist. (Mar. 31, 2019, 1:58 PM).

² Emails from Khara Laducer to Duane Poitra, Bus. Manager, Belcourt Sch. Dist. (Apr. 1, 2019, 6:34 PM; Apr. 2, 2019, 4:10 PM); email from Khara Laducer, to Keith A. Lavallie, HR Dir., Belcourt Sch. Dist. (Apr. 12, 2019, 3:07 PM). Ms. Laducer contends she also sent a letter to Duane Poitra, Bus., Manager, Belcourt Sch. Manager, on Apr. 11, 2019. The School, however, denies ever receiving this letter. Letter from Meredith L. Vukelic, Att'y, Belcourt Sch. Dist., to Att'y Gen.'s Office (June 5, 2019). Opinions issued pursuant to N.D.C.C. § 44-04-21.1 must be based on the facts of the public entity.

³ Letter from Meredith L. Vukelic, Att'y, Belcourt Sch. Dist., to Att'y Gen.'s Office (June 5, 2019).

⁴ *Id.* See also email from Keith Lavallie, HR Dir., Belcourt Sch. Dist., to Khara Laducer (May 24, 2019, 7:01 AM).

ISSUE

Whether the Belcourt School District provided records responsive to a request within a reasonable time.

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.”⁵ A public entity must provide a response to a records request within a reasonable time.⁶ Whether records have been produced within a reasonable time will depend on the facts of a given situation.⁷ Numerous past opinions have detailed what would reasonably contribute to a delay in providing records, such as the need for attorney consultation when there is reasonable doubt whether the records are open to the public, the need to review large volumes of documents to respond to a request, or to excise closed or confidential information, and the availability and workload of staff who can respond to the request.⁸

The school received the request on Monday, April 1, 2019.⁹ It took two weeks to provide audio recordings of all but one of the meetings. The audio recording for the remaining October 18, 2018, meeting was made available to the requestor on May 24, 2019. The school gives several reasons for the delay.

At the time of the request, the School District was under an audit, and the Superintendent wanted all open record requests to go through her “to be cautious that nothing was disclosed that shouldn’t be due to the audit.”¹⁰ The Superintendent received the request for records on April 1, and the request was forwarded on April 4 to the Human Resources Director and then to the District’s IT employee who had

⁵ N.D.C.C. § 44-04-18(1).

⁶ N.D.C.C. § 44-04-18(8).

⁷ N.D.A.G. 2019-O-09.

⁸ N.D.A.G. 2019-O-09; N.D.A.G. 2017-O-10; N.D.A.G. 2017-O-06; 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.

⁹ Letter from Meredith L. Vukelic, Att’y, Belcourt Sch. Dist., to Att’y Gen.’s Office (June 5, 2019).

¹⁰ *Id.*

OPEN RECORDS AND MEETINGS OPINION 2019-O-15

July 19, 2019

Page 3

possession of the recordings and is responsible for copying the recordings to a disc.¹¹ The Superintendent was then out of the office April 4-5 and April 8-9, and the School Board placed the Superintendent on suspension on April 9, 2019.¹² Therefore school personnel did not know who was responsible for responding to the request.

In addition, during this time, Governor Burgum suspended two School Board members. In the weeks prior to the suspensions, the school was “overwhelmed with many community, election, legislative bills, and safety matters” leaving the school employees “consumed by various matters that had to be attended to.”¹³ Finally, the school was uncertain how to handle the open records requests, and other issues, because the School Board “moved to amend its policy on retaining an attorney, with that amendment resulting in a prohibition against anyone seeking legal advice on behalf of the School District, except upon motion and majority approval of the School Board at a Board meeting.”¹⁴ This action was later reversed, but left the school without the ability to seek legal advice to aid in responding to the request.

School personnel provided Mrs. Laducer the records they knew could be disclosed on April 15, 2019. This included recordings of all meetings between September 2018 and March 31, 2019, except for the October 18 meeting recording.¹⁵ Ms. Laducer was informed that open record requests had to be run by the superintendent, that there were legal issues, and that certain employees who were necessary to aid in responding to the request were unavailable.¹⁶

The school questioned whether the October 18 recording could be disclosed as the meeting implicated various legal issues, including an issue involving payment to the requestor of this opinion.¹⁷ The school wanted to consult with an attorney before releasing the recording. However, when the records were provided to the requestor on

¹¹ *Id.* The IT employee who had access to the records was on leave at various times on Apr. 8, 10, and 11. Email from Meredith L. Vukelic, Att’y, Belcourt Sch. Dist., to Att’y Gen.’s Office (June 20, 2019, 8:12 AM).

¹² Letter from Meredith L. Vukelic, Att’y, Belcourt Sch. Dist., to Att’y Gen.’s Office (June 5, 2019).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Email from Meredith L. Vukelic, Att’y, Belcourt Sch. Dist., to Att’y Gen.’s Office (June 20, 2019, 8:12 AM).

¹⁶ Letter from Meredith L. Vukelic, Att’y, Belcourt Sch. Dist., to Att’y Gen.’s Office (June 5, 2019); see also email from Keith Lavallie, HR Dir., Belcourt Sch. Dist., to Khara Laducer (Apr. 15, 2019, 6:58 AM).

¹⁷ Letter from Meredith L. Vukelic, Att’y, Belcourt Sch. Dist., to Att’y Gen.’s Office (June 5, 2019).

OPEN RECORDS AND MEETINGS OPINION 2019-O-15

July 19, 2019

Page 4

April 15, 2019, no explanation or legal authority was provided regarding the school's withholding of the October, 18, 2018, recording.¹⁸ It was only after the requestor asked about the missing recording that the school explained the need for legal consultation about the release of the recording.¹⁹ The October 18, 2018, recording was made available to the requestor on May 24, 2019, almost two months after the request.

CONCLUSIONS

Based on the foregoing facts, it is my opinion that the Belcourt School District violated open records law by failing to provide legal authority to withhold a record and by unreasonably delaying access to a record for almost two months.

STEPS NEEDED TO REMEDY VIOLATION

Because all of the records were ultimately provided, no further action is necessary. I do urge the Belcourt School District to utilize the materials available on the Office of Attorney General's website on how to appropriately respond to record requests.

Wayne Stenehjem
Attorney General

sld

cc: Khara Laducer (via email only)

¹⁸ *Id.*; Emails from Meredith L. Vukelic, Att'y, Belcourt Sch. Dist., to Att'y Gen.'s Office (June 20, 2019, 8:12 AM and 9:18 AM).

¹⁹ Letter from Meredith L. Vukelic, Att'y, Belcourt Sch. Dist., to Att'y Gen.'s Office (June 5, 2019); Emails from Meredith L. Vukelic, Att'y, Belcourt Sch. Dist., to Att'y Gen.'s Office (June 20, 2019, 8:12 AM and 9:18 AM).