

**OPEN RECORDS AND MEETINGS OPINION  
2004-O-05**

DATE ISSUED: February 17, 2004

ISSUED TO: Grand Forks County Planning and Zoning Department

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. §44-04-21.1 from Gary Johnson asking whether the Grand Forks County Planning and Zoning Commission violated N.D.C.C. § 44-04-18 by failing to provide requested records within a reasonable period of time.

**FACTS PRESENTED**

On December 4, 2003, Mr. Gary Johnson requested copies of nine documents from the Grand Forks County Planning and Zoning Commission (Planning and Zoning Commission) as follows:

1. Planning and Zoning Commission minutes for its October 2003 meeting;
2. Grand Forks County Commission (County Commission) minutes for its October 2003, meeting;
3. Planning and Zoning Commission minutes for its November 2003 meeting;
4. County Commission minutes for its November 2003 meeting;
5. Grand Forks County Landfill Rules;
6. Mr. Laverne Berger's Excavation Permit(s);
7. Any documents transferring Blooming Township zoning authority for landfills to Grand Forks County;
8. County Commission Charter;

9. Code of Ethics for Grand Forks County Elected Officials.

In his request for this opinion filed with this office on December 6, 2003, Mr. Johnson stated that he made an oral request at the October 14, 2003, Planning and Zoning Commission meeting for a copy of the document relinquishing Blooming Township zoning authority to Grand Forks County. Mr. Johnson also alleges he made a prior oral request for the minutes of the Commission's October meeting in mid-November. In its response to this office, the Planning and Zoning Commission indicated that it does not recall Mr. Johnson making these requests and that, although he had asked for copies of tape recordings of the minutes, the first request he made for the zoning documents or the minutes was the December 4, 2004, written request. The Attorney General must base this opinion on the facts given by the public entity. N.D.C.C. § 44-04-21.1(1).

On December 16, 2003, the Planning and Zoning Commission provided Mr. Johnson with copies of items 1, 2, 4, 5, and 6. Letter from Carole McMahon, Zoning Administrator, to Mr. Johnson (Dec. 16, 2003). The zoning administrator informed Mr. Johnson that there were no documents transferring zoning authority from Blooming Township to Grand Forks County (item 7); that if any such documents once existed, they were lost in the 1997 Grand Forks flood; that Grand Forks County does not have a charter or code of ethics for elected officials (items 8 and 9); and that minutes of the November Planning and Zoning Commission meeting (item 3) were not yet available, but would be sent when completed. Id. Two days later, on December 18, Mr. Johnson was provided with a copy of those minutes. Twelve days (eight working days) elapsed from the time the request was submitted until copies of all records except the November 2003 Planning and Zoning Commission minutes were made available. The November 2003 minutes were provided two days later, i.e. 14 days (10 working days) after the December 4 request was made.

#### ISSUE

Whether the Planning and Zoning Commission violated N.D.C.C. § 44-04-18 by not providing copies of requested documents and an explanation of unavailable documents within a reasonable period of time.

#### ANALYSIS

When a public entity receives a request for records, it must, within a reasonable time period, either provide the records or explain why the records are not being provided. See N.D.C.C. § 44-04-18(7); N.D.A.G. 98-O-20. Although N.D.C.C. § 44-04-18 does not usually require an immediate response, the delay permitted will usually be measured in a

## OPEN RECORDS AND MEETINGS OPINION 2004-O-05

February 17, 2004

Page 3

few hours or days rather than several days or weeks. N.D.A.G. 2002-O-06. "Depending on the circumstances, a delay may be appropriate for a number of reasons, including excising closed or confidential information, consulting with an attorney when there is a reasonable doubt whether the records are open to the public, or balancing other responsibilities of the public entity that demand immediate attention." Id. Whether records have been provided within a reasonable time will depend on the facts of a given situation. N.D.A.G. 98-O-03.

This office has determined there was an unreasonable delay in situations in which the period between the date of the request and the disclosure of the requested information was one month or more. See, e.g., N.D.A.G. 2003-O-19 (4 months); N.D.A.G. 2003-O-17 (89 days); N.D.A.G. 2002-O-03 (2 months); N.D.A.G. 98-O-20 (1.5 months), N.D.A.G. 2002-O-06 (1.5 months) and N.D.A.G. 2003-O-09 (1.5 months); N.D.A.G. 2002-O-08 (37 days); and N.D.A.G. 98-O-19 and N.D.A.G. 98-O-04 (1 month). Under most circumstances, a delay of a month in providing copies of requested records would be unreasonable. N.D.A.G. 2001-O-12.

Also, eleven days (seven working days) is an unreasonable delay when the only action needed is to inform an individual that a requested record does not exist. N.D.A.G. 2001-O-04. A recent decision of this office concluded that a delay of seven days (five working days) was not unreasonable in light of the circumstances of that particular request. N.D.A.G. 2003-O-21. In another opinion this office concluded a delay of 11 days (seven working days) was not unreasonable under the facts of that request. N.D.A.G. 98-O-03. A delay of seven working days, however, will be closely reviewed by this office. Id.

In this case it took from December 4, until mid-December to provide the records requested. Several factors regarding the records requested and the operations of the Planning and Zoning Commission lead to the conclusion that the delay was reasonable. First the minutes of the October and November Planning and Zoning Commission meetings had not been prepared at the time the records request was submitted.<sup>1</sup> The practice of the Planning and Zoning Commission was to have the Secretary transcribe the minutes to reflect all of the meeting discussion. The secretary needed a certain amount of time in which to prepare transcripts of the October and November meetings. The October meeting transcript was 24 pages. Second, the secretary is a part-time employee, who works 20 hours a week, three days a week, and who had other responsibilities. See N.D.A.G. 2002-O-06 ("Depending on the circumstances, a delay may be appropriate for a number of reasons, including . . . balancing other responsibilities of the public entity that demand immediate attention"). Third, although the planning and zoning commission was

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<sup>1</sup> Because minutes must be kept of all open meetings and are records subject to section 44-04-18, N.D.C.C. § 44-04-21(2), draft minutes should usually be prepared and available before the next regular meeting of the public entity. N.D.A.G. 98-O-04.

not required to do so,<sup>2</sup> it sought to obtain records it did not have and verify from other departments of Grand Forks County government if certain records existed. Fourth, three working days after the open records request was submitted, Mr. Johnson called and the secretary advised him of the actions being taken in response to his request. Finally, draft minutes of the meeting were provided to Mr. Johnson the same day they were completed. For these reasons, it is my opinion that the delay in providing the requested copies was reasonable.

### CONCLUSION

Given the facts in this case, the Planning and Zoning Commission provided the records requested and an explanation of why certain records were not provided within a reasonable time as required by N.D.C.C. § 44-04-18.

Wayne Stenehjem  
Attorney General

Assisted by: Michael J. Mullen  
Assistant Attorney General

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<sup>2</sup> “Public entity” means all “[p]ublic or governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state and any entity created or recognized by . . . state statute . . . to exercise public authority or perform a governmental function.” N.D.C.C. § 44-04-17.1(12)(b). Thus, a county planning and zoning commission is a public entity for purposes of the open records law because it is a governmental board or agency of a political subdivision (the county) and it is created or recognized by statute, i.e., N.D.C.C. ch. 11-33, to exercise public authority or perform a governmental function. It is a separate public entity from other agencies of the county. As such, it was under no obligation to obtain records it did not have or verify whether records existed, from other agencies of the county. N.D.A.G. 2004-O-01 (the open records law does not require a public entity to provide copies of a requested record it does not have); N.D.A.G. 2003-O-01; cf. N.D.A.G. 2003-O-09 (a public entity is not required to create or compile a record that does not exist).