

**OPEN RECORDS AND MEETINGS OPINION
2005-O-11**

DATE ISSUED: June 27, 2005

ISSUED TO: Grand Forks Historical Preservation Commission

CITIZEN'S REQUEST FOR OPINION

On May 6, 2005, this office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Eric Sondag asking whether the Grand Forks Historical Preservation Commission (Commission)¹ violated N.D.C.C. § 44-04-18 by failing to disclose records relating to the selection or funding process for the mitigation of his house.

FACTS PRESENTED

Mr. Sondag purchased a house from the city of Grand Forks. The house had been acquired by the city following the 1997 flood and was one of 29 properties to be preserved as having historical significance. A preservation covenant was recorded against the property requiring the owner to maintain the property in a historical condition for five years.

In a letter dated March 4, 2005, to the Grand Forks Office of Urban Development and the Commission, Mr. Sondag requested all correspondence between various local, state, and federal agencies regarding funding for and selection of his house as part of the historical mitigation process. He also asked for all correspondence with any architect, engineer, historical expert, or other consultant regarding the historical context of his home and its selection for a historical mitigation process.

According to the city, Peg O'Leary, coordinator for the Commission, informed the Commission of the request and proceeded to identify the information within the possession of the Commission. Ms. O'Leary searched all files, including computer files, for material requested by Mr. Sondag. On March 25, 2005, Ms. O'Leary wrote to Mr. Sondag to advise him that materials were available for him to review or obtain. All materials relating to the property maintained by the Commission were made available to Mr. Sondag for inspection. The records provided did not contain documents regarding the process used to select and fund the mitigation of his house. Mr. Sondag viewed the materials at the Commission office at approximately 9:00 a.m. on Friday, April 1, 2005. He marked several items for copying. Ms. O'Leary copied the requested material and mailed it to Mr. Sondag on Monday, April 4, 2005.

¹ Although the March 4, 2005, letter requesting records was addressed to both the Grand Forks Office of Urban Development and the Commission, Mr. Sondag limited his request for an opinion to whether the Commission violated the open records law.

ISSUE

Whether the Commission violated N.D.C.C. § 44-04-18 by not providing the requester records relating to the selection or funding process for the mitigation of his house.

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.” N.D.C.C. § 44-04-18(1). The Commission is a “public entity” subject to N.D.C.C. § 44-04-18, the open records law. N.D.C.C. § 44-04-17.1(12)(b) (public entity includes all commissions or agencies of political subdivisions). The open records law does not require a public entity to provide copies of a requested record it does not have. N.D.C.C. § 44-04-18(3); N.D.A.G. 2003-O-01.

According to the city, the Commission provided Mr. Sondag with access to all the records it had relating to Mr. Sondag’s property. It did not have records relating to the funding and selection process for Mr. Sondag’s house. The Attorney General’s opinion must be based on the facts provided by the public entity. N.D.C.C. § 44-04-21.1(1); N.D.A.G. 2005-O-02. Because the Commission did not have records relating to the funding and selection process for Mr. Sondag’s house, it did not violate N.D.C.C. § 44-04-18 when it failed to provide such documents.

CONCLUSION

It is my opinion the Commission did not violate N.D.C.C. § 44-04-18 by not providing the requester records relating to the selection or funding process for the mitigation of his house.

Wayne Stenehjem
Attorney General

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