

**OPEN RECORDS AND MEETINGS OPINION
2007-O-06**

DATE ISSUED: April 17, 2007

ISSUED TO: Burleigh County Commission

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Alexis Duxbury asking whether the Burleigh County Commission (Commission) violated N.D.C.C. § 44-04-18 by failing to provide all of the requested records in its possession and by failing to respond to her request for records within a reasonable time.

FACTS PRESENTED

On November 20, 2006, Alexis Duxbury attended a Commission meeting. Commissioners Schonert, Lembke, Woodcox, and Johnson attended the meeting in person and Commissioner Haakenson attended by telephone. During the meeting, Ms. Duxbury asked the Commission for all the records each commissioner received or sent concerning a proposed development known as Sundown Acres. After the meeting, Ms. Duxbury met briefly with each of the four commissioners present to specify that she was looking for e-mails regarding Sundown Acres that the commissioners may have sent or received during the weeks before the November 20 meeting. By the tenth day after her request, only Commissioner Haakenson had responded, prompting Ms. Duxbury to send the remaining four commissioners a certified letter on November 30 repeating her request. Between December 5 and December 8, Commissioners Lembke, Schonert, and Woodcox responded to Ms. Duxbury by providing copies of the records and Commissioner Johnson replied that he had nothing to give her.

Ms. Duxbury questions whether the commissioners provided her with all the e-mails in their possession because several e-mails she received indicated that they were sent to all of the commissioners and not all the commissioners provided copies of them to her. According to the commissioners, if an e-mail was not provided, it was because it had been deleted from their computers prior to her request.

ISSUES

1. Whether the Burleigh County commissioners provided copies of all of the requested records.

2. Whether the Commission provided copies of the requested records within a reasonable time.

ANALYSES

Issue One

“Upon request for a copy of specific public records, any entity . . . shall furnish the requester one copy of the public records requested.”¹ Ms. Duxbury received copies of e-mails from some of the commissioners that indicated they were sent to all of the commissioners. Not all of the commissioners provided copies of those e-mails to Ms. Duxbury. Therefore, Ms. Duxbury asserts that some of the commissioners did not turn over all of the e-mails that were in their possession. The Commission explained that all of the requested records were provided to Ms. Duxbury and that some of the commissioners had deleted all or some of the e-mails from their computers prior to her request. “In any opinion issued under this section, the attorney general shall base the opinion on the facts given by the public entity.”² Therefore, it is my opinion that the Commission provided copies of all of the requested e-mails that were in their possession at the time of the request.

Issue Two

A request need not be made in writing and may not be subject to unreasonable delay.³ Once a request for records is made to a public entity under N.D.C.C. § 44-04-18, the public entity must either provide the records or explain why the request is not being satisfied within a reasonable time.⁴ Also, once a request is made, no further action by the requester is necessary; the public entity has the responsibility to provide the requested records or explain why the records are not being provided.⁵ Whether the records have been provided within a reasonable time will depend on the facts of a given situation, but a delay of seven working days will be closely reviewed by this office.⁶

In past opinions, a significant delay in responding to a request for records has been found reasonable in circumstances where the request was for a large number of records, where closed or confidential information had to be excised, or where other

¹ N.D.C.C. § 44-04-18(2).

² N.D.C.C. § 44-04-21.1(1).

³ N.D.C.C. § 44-04-18(2). N.D.A.G. 2005-O-09; N.D.A.G. 2001-O-12.

⁴ N.D.C.C. § 44-04-18(7), (8). N.D.A.G. 98-O-04.

⁵ N.D.A.G. 98-O-20; N.D.A.G. 98-O-04.

⁶ N.D.A.G. 98-O-03; N.D.A.G. 2004-O-05; N.D.A.G. 2004-O-07.

responsibilities of the public entity demanded immediate attention.⁷ Here, the Commission has offered no explanation that would justify the lengthy delay in providing a response to Ms. Duxbury's initial verbal request. It took four of the commissioners six to eight days after the second request to provide a response. Ms. Duxbury was entitled to a timely reply to her verbal request for records. It is my opinion that the failure to respond for over two weeks, and only after an additional written request, was an unreasonable delay.

CONCLUSIONS

1. The Commission supplied the public records that were in its possession at the time of the request.
2. The Commission failed to provide records within a reasonable time.

STEPS NEEDED TO REMEDY VIOLATIONS

The unreasonable delay has been remedied to the greatest extent possible by providing the requested copies of records to Ms. Duxbury.

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Attorney General

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⁷ N.D.A.G. 2004-O-05.