

**OPEN RECORDS AND MEETINGS OPINION
2007-O-12**

DATE ISSUED: September 5, 2007

ISSUED TO: Bismarck Park District

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Marlan "Hawk" Haakenson asking whether the Bismarck Park District violated N.D.C.C. § 44-04-18 by failing to provide records within a reasonable time.

FACTS PRESENTED

The Burleigh County Commission (Commission) met on February 21, 2007. At that meeting, Errol Behm, the Joint Parks Committee facilitator, appeared before the Commission to give a progress update. The Joint Parks Committee is made up of members from the Bismarck Park Board, the Burleigh County Park Board, the Burleigh County Water Resource Board, and the Burleigh County Commission. The purpose of the Joint Parks Committee is to resolve issues involving operations management and improvements for county-held facilities. Mr. Behm informed the Commission that the Joint Parks Committee was at an impasse on a particular issue and suggested that an additional special committee be created consisting of two Burleigh County commissioners, County Auditor Kevin Glatt, two Bismarck Park Board commissioners, and Bismarck Park District Director Steve Neu. The purpose of this special committee would be to work on negotiations between the Bismarck Park District (Park District) and the Commission for a management plan for all park and recreation facilities in the county.

The minutes of the February 21, 2007, meeting indicate that after hearing Mr. Behm's suggestion for an additional special committee, Commissioner Haakenson stated that the Commission would need to be able to compare costs to see if the county is getting the most for its dollar. He said he wanted to see costs of operations and maintenance expenditures and administrative costs, including salaries from the Park District. Mr. Behm stated that all the specifics Commissioner Haakenson requested would be available at the meeting of the special committee, if created. Ultimately, the

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Commission agreed to establish a special committee “to formulate a series of recommendations for the management of all park and recreation facilities in the county with a list of preferred alternatives for the County Commission to consider.”¹ Commissioner Haakenson appointed himself and Commissioner Armstrong as members of the special committee.

In a memorandum directed to the president of the Bismarck Parks and Recreation District on Burleigh County letterhead dated February 28, 2007, Commissioner Haakenson requested all operating and maintenance costs for Sibley Park, McDowell Dam, and Hoge Island Park, and all administrative costs including salaries and benefits of all Parks and Recreation District managers. In his memo, he explains that he wants the information in order to compare costs and states that “this comparison needs to be completed PRIOR to the meeting of the new Committee in order for the new Committee to craft the final draft of any offer(s) to the County Commission.”² He goes on to ask “[p]lease furnish this requested information A.S.A.P. so that we can expedite the process in an orderly fashion. . .”³

At approximately the same time the Park District received Commissioner Haakenson’s memorandum, Park District Director Neu and Burleigh County Auditor Glatt were attempting to schedule a meeting of the special committee. According to the Park District, they were unable to set a date for a meeting in February or March due, at least in part, to the unavailability of Commissioner Haakenson.

As of March 21, Commissioner Haakenson had not received the information requested in his February 28 memorandum so he repeated his request and informed the Park District that his request was “personal.” The Park District delivered the information, some of which required compilation of information from different sources, to the Burleigh county auditor on March 26.

ISSUE

Did the Bismarck Parks and Recreation District provide records to Commissioner Haakenson within a reasonable time?

¹ Burleigh County Commission minutes, February 21, 2007, meeting.

² February 28, 2007, memo from Marlan “Hawk” Haakenson to Mark Zimmerman. (Emphasis in original).

³ Id.

ANALYSIS

The open records law is violated when a public entity does not provide access to or copies of a record within a reasonable time.⁴ “Whether a response has been provided within a reasonable time will depend on the facts of a given situation.”⁵

According to the Park District, it delayed its response because it believed Commissioner Haakenson’s memorandum was not a request made under the open records law, but rather a directive from a member of the joint special committee regarding information he wanted to see before the first meeting of the special committee. The Park District relies on the statement in Commissioner Haakenson’s memorandum which begins: “[b]ased upon the minutes of the February 21, 2007 Burleigh County Commission meeting regarding the establishment of a Committee to formulate a series of recommendations for the management of all park and recreation facilities in the county. . .”⁶ The Park District also explains that due to the difficulty in scheduling a meeting, it believed it was reasonable to wait until the meeting was scheduled to complete the compilation of the requested information and provide it to Commissioner Haakenson and the other members.

At the time of the request, the Commission and the Park District had recently created a special committee to address the operations management and improvements for county-held facilities. Therefore, it was not unreasonable for the Park District to believe Commissioner Haakenson’s February 28 memorandum was a directive, as a member of the committee, regarding what records would be necessary to review before the first meeting. Given the relationship that recently had been formed between the Burleigh County Commission and the Park District with the special committee and Commissioner Haakenson’s position on it, the Park District’s delay in responding to Commissioner Haakenson’s was understandable.

When the Park District next heard from Commissioner Haakenson on March 21, he explained that he wanted the materials, even though a meeting had not been scheduled, and that the request was “personal.” The Park District, now aware of the misunderstanding, compiled⁷ the information requested within three working days and provided it to Commissioner Haakenson on March 26. Considering the facts in this

⁴ See N.D.C.C. § 44-04-18(8).

⁵ N.D.A.G. 2003-O-09; N.D.A.G. 2005-O-05.

⁶ February 28, 2007, memo from Marlan “Hawk” Haakenson to Mark Zimmerman.

⁷ A public entity is under no duty to compile a record (N.D.C.C. § 44-04-18(4)) and an entity may charge a reasonable fee for records requested under N.D.C.C. § 44-04-18(2).

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situation, the Park District's responses to Commissioner Haakenson's requests were not unreasonable and no violation of the open records law occurred.

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