

**OPEN RECORDS AND MEETINGS OPINION  
2008-O-12**

DATE ISSUED: June 23, 2008

ISSUED TO: Round Prairie Township

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Daryl Beard asking whether the Round Prairie Township violated N.D.C.C. § 44-04-18 by refusing to provide copies of records within a reasonable time.

**FACTS PRESENTED**

On October 16, 2007, Daryl Beard asked the Round Prairie Township clerk, Dan Anderson, for copies of all board meeting minutes from January 1, 2004, to the present. Mr. Beard did not receive any records. In a letter dated November 5, 2007, Mr. Beard requested an opinion from this office as to whether the open records law was violated. This office attempted to facilitate a resolution between the Township and Mr. Beard. At some point between November 5 and December 5, Mr. Beard received the 2005 and 2006 annual meeting minutes and the board of equalization minutes.<sup>1</sup>

Mr. Beard continued to ask the Township for minutes of its regular meetings and at some point was told that the Township does not hold regular monthly meetings, so those minutes do not exist. Mr. Beard asked the Township for a statement in writing to that effect, but he received nothing. Finally, on March 4, 2008, The Township informed Mr. Beard that the Round Prairie Township books, which included the meeting minutes, were stolen from Dan Anderson's vehicle in November of 2007.

**ISSUE**

Whether Round Prairie Township responded to a request for records within a reasonable time.

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<sup>1</sup> This office continually asked Round Prairie Township for details regarding Mr. Beard's request for records and was only provided vague and ambiguous responses.

## 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.”<sup>2</sup> Upon a request for a copy of specific public records, any public entity shall furnish the requester one copy of the public records requested.<sup>3</sup> When a request for records is denied by the public entity, the public entity must describe the legal authority for the denial and must put the denial in writing, if requested.<sup>4</sup> A request for copies must be granted or denied within a reasonable time.<sup>5</sup>

Whether records have been provided within a reasonable time will depend on the facts of a given situation.<sup>6</sup> In this instance, Mr. Beard requested four years of minutes. The breadth of a request may affect the time within which a public entity is required to respond to a request.<sup>7</sup> According to the Township, however, all of the minutes fit into one briefcase. Therefore, the quantity of records requested was not a contributing factor in the delay by the Township.

The Township explains that it did not provide copies to Mr. Beard because he had reviewed the minutes at a Township meeting. In a recent opinion, this office explained that the fact that minutes were published in the local newspaper did not justify a delay of four weeks in providing a copy of the minutes to a requester.<sup>8</sup> Similarly, even though Mr. Beard had access to the minutes at the meeting, he is nonetheless entitled to copies of them.<sup>9</sup>

Finally, the Township explains that Mr. Beard made his initial request during harvest and because the Township secretary is a farmer, he did not have time to stop harvest in order to go to town and make copies for Mr. Beard. Such circumstances may be considered when determining whether a response to a request for records is reasonable.<sup>10</sup> However, in this instance, the delay in getting the records for Mr. Beard extended well beyond harvest. The township failed to respond within a reasonable time to Mr. Beard’s request for copies even after being strongly encouraged to do so by this

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<sup>2</sup> N.D.C.C. § 44-04-18(1).

<sup>3</sup> See N.D.C.C. § 44-04-18(2).

<sup>4</sup> N.D.C.C. § 44-04-18(7). See N.D.A.G. 98-O-03.

<sup>5</sup> See N.D.C.C. § 44-04-18(8). See N.D.A.G. 98-O-04; N.D.A.G. 2003-O-19.

<sup>6</sup> N.D.A.G. 98-O-04.

<sup>7</sup> N.D.A.G. 2006-O-01.

<sup>8</sup> N.D.A.G. 2007-O-10.

<sup>9</sup> See N.D.C.C. § 44-04-18.

<sup>10</sup> See generally, N.D.A.G. 2004-O-07.

office. Thus, it is my opinion that Round Prairie Township violated the open records law by failing to provide copies of public records within a reasonable time.

#### STEPS NEEDED TO REMEDY VIOLATION

If the stolen minutes are recovered, copies shall be provided to Mr. Beard within seven days of any recovery free of charge. Mr. Beard shall not be charged for copies of any Township records he requests for one year.

Failure to take the corrective measures described in this opinion will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.<sup>11</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>12</sup>

Wayne Stenehjem  
Attorney General

Assisted by: Mary Kae Kelsch  
Assistant Attorney General

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<sup>11</sup> N.D.C.C. § 44-04-21.1(2).

<sup>12</sup> Id.