

**OPEN RECORDS AND MEETINGS OPINION
2013-O-17**

DATE ISSUED: November 8, 2013

ISSUED TO: City of Golva

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Richard Volesky asking whether Golva violated N.D.C.C. § 44-04-18 by unreasonably delaying access to records requested.

FACTS PRESENTED

On May 28, 2013, Mr. Richard Volesky sent a letter and email to the auditor of the City of Golva, Bobbie Maus, requesting expenditures and revenue reports for 2012 and 2013 and Golva's 2013 budget.¹ Ms. Maus replied by email on May 30, 2013, stating she would "deal with this after" tending to a personal matter.² After receiving no reply from Golva, Mr. Volesky renewed his records request on July 17, 2013.³

Mr. Volesky did not receive any records. In a letter, dated August 16, 2013, Mr. Volesky requested an opinion from this office as to whether the open records law was violated.⁴ This office intervened and attempted to facilitate a resolution between Mr. Volesky and Golva. It was only after prompting from this office that Ms. Maus contacted Mr. Volesky asking for clarification on his records request. Upon further clarification and several exchanges, Golva believes it properly responded to Mr. Volesky's records request as of

¹ See Letter and email from Richard Volesky, Editor/Office Mgr., Golden Valley News and Billings Cnty. Pioneer, to Bobbie Maus, Golva City Auditor (May 28, 2013).

² See Email from Bobbie Maus, Golva City Auditor, to Richard Volesky, Editor/Office Mgr., Golden Valley News and Billings Cnty. Pioneer (May 30, 2013).

³ See Letter from Richard Volesky, Editor/Office Mgr., Golden Valley News and Billings Cnty. Pioneer, to Bobbie Maus, Golva City Auditor (July 17, 2013).

⁴ See Letter from Richard Volesky, Editor/Office Mgr., Golden Valley News and Billings Cnty. Pioneer, to the Attorney Gen.'s office (Aug. 16, 2013).

August 26, 2013.⁵ Although no actual records were turned over, Ms. Maus gathered information from source documents she believed to be responsive to the records request, and forwarded the information on to Mr. Volesky in a series of emails.

ISSUE

Whether Golva responded to a request for records within a reasonable time as required by N.D.C.C. § 44-04-18.

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.”⁶ 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.⁷ Whether records have been provided within a reasonable time will depend on the facts of a given situation.⁸

Here, it took three months to respond to the request for records and then only after intervention from this office.⁹ The city auditor gives several reasons for the delay in

⁵ See Letter from Bobbie Maus, Golva City Auditor, to Asst. Attorney Gen. Sandra Voller (Sep. 3, 2013). There were several exchanges after August 26, 2013, in which Mr. Volesky alleges he did not receive the correct City budget. Opinions must be based on the facts given by the public entity. N.D.C.C. § 44-04-21.1(1). I therefore rely on the City’s representation that it provided all of the information requested as of August 26, 2013.

⁶ N.D.C.C. § 44-04-18(1).

⁷ N.D.C.C. § 44-04-18(7) and (8); N.D.A.G. 2013-O-15.

⁸ N.D.A.G. 2013-O-15 (“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, availability and workload of staff who can respond to the record request, sorting out what has previously been provided to a requestor, reviewing large volumes of documents to respond to a record request, the availability and accessibility of the records requested, or balancing other responsibilities of the public entity that demand immediate attention.”).

⁹ Ultimately, Ms. Maus decided to extract the requested revenue, expenditure, and budget figures from various Golva records and included those figures in email responses to Mr. Volesky. Under open record laws, Ms. Maus did not have to compile a new record, but only had a duty to provide a copy of records that were in Golva’s

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providing the requested records, including: tending to other responsibilities inherent with the part time job of being Golva's auditor, personal responsibilities and commitments, not regularly checking Golva's mail or email, not being aware of the responsibilities under open record laws, not understanding the records request, and forgetting about the records request.

Golva's explanation does not justify the three-month delay in providing a response to Mr. Volesky's repeated requests. Even though Ms. Maus does not check Golva's mail or email on a daily basis, there is a reply email from her verifying she received the records request as of May 30, 2013, two days after the initial request. If Ms. Maus was unclear on what records Mr. Volesky was requesting she should have contacted the requester for clarification in a timely manner.¹⁰

Ms. Maus justifies Golva's delayed response by questioning Mr. Volesky's motives behind his request.¹¹ As previously determined in numerous opinions, every person has a right to inspect or receive a copy of any open public record and the motive and identity of the person requesting an open record are generally irrelevant.¹² Once a request for open public records is made, a public entity does not have discretion to decide whether the request is meritorious in the eyes of the public entity and may only deny the request if a law specifically provides that the record is either exempt or confidential.¹³

Being unfamiliar with a city employee's obligations under open record laws also does not excuse the lengthy delay in providing requested records. Ms. Maus has been the auditor for Golva for over twenty years.¹⁴ This office, in past opinions, has recognized that "every state official and the employees of any department should know what records are excepted by statutes or case law decisions from the requirements . . . [of the open records] law."¹⁵ This office provides numerous informational tools to assist public entities with open record and meeting issues. The Attorney General's website¹⁶ has many resources, including comprehensive manuals and reference guides. Even a

possession. N.D.C.C. § 44-04-18(4) ("nothing in this section requires a public entity to create or compile a record that does not exist").

¹⁰ It was only after prompting from this office that Ms. Maus sought clarification, approximately three months later.

¹¹ Letter from Bobbi Maus, Golva City Auditor, to Asst. Attorney Gen. Sandra Voller (Sep. 3, 2013).

¹² See N.D.A.G. 2008-O-08; N.D.A.G. 2005-O-12.

¹³ Id.

¹⁴ See Letter from Bobbi Maus, Golva City Auditor, to Asst. Attorney Gen. Sandra Voller (Sep. 3, 2013).

¹⁵ N.D.A.G. 2008-O-08.

¹⁶ www.ag.nd.gov.

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cursory review of any of these materials would have prevented these obvious violations of the open records law.

It is sometimes difficult for small public entities staffed with part-time employees to respond immediately to requests for records. However, although certain circumstances may justify a brief delay, a public records request cannot be indefinitely ignored. It is my opinion Golva's three-month delay in responding to Mr. Volesky's request was unreasonable and violated N.D.C.C. § 44-04-18.

CONCLUSION

Golva violated open records law when failed to provide requested records within a reasonable time.

STEPS NEEDED TO REMEDY VIOLATION

Because the information responsive to the records request was ultimately provided, no further action is needed. I encourage the City Auditor¹⁷ to access the Attorney General's website for information regarding its responsibilities under the State of North Dakota's open record and meeting laws.

Wayne Stenehjem
Attorney General

slv/vkk

¹⁷ If Ms. Maus has retired, the City of Golva should provide information or training about the open records and open meetings law to her replacement.