

**OPEN RECORDS AND MEETINGS OPINION
2014-O-21**

DATE ISSUED: November 21, 2014

ISSUED TO: Mandan Police Department

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from S. Paul Jordan asking whether the Mandan Police Department violated N.D.C.C. § 44-04-18 by failing to produce a record within a reasonable time.

FACTS PRESENTED

On September 12, 2014, S. Paul Jordan emailed the Mandan Police Department's (MPD) Chief of Police, Dennis Bullinger, requesting "a copy of the MPD records showing what actions the MPD has taken within the past 24 hours regarding" a detached trailer and vehicle at a certain location in Mandan.¹ Chief Bullinger immediately performed a search and found a Complaint Report showing the trailer was tagged with a twelve hour tow warning earlier that day.² Within a half hour of receiving Mr. Jordan's request, Chief Bullinger sent a copy of Mr. Jordan's request and a copy of the Complaint Report to Mandan City Administrator, Jim Neubauer.³ Mr. Neubauer forwarded the Complaint Report and email from Chief Bullinger to Mr. Jordan on September 23, 2014.⁴

¹ Email from S. Paul Jordan to Chief Dennis Bullinger, Mandan Police Dep't (Sep. 12, 2014, 3:35 PM).

² Letter from Chief Dennis Bullinger, Mandan Police Dep't, to Sandra DePountis, Asst. Att'y Gen.'s (Nov. 4, 2014).

³ Email from Chief Dennis Bullinger, Mandan Police Dep't, to Jim Neubauer, Mandan City Admin. (Sep. 12, 2014, 3:59 PM).

⁴ Email from Jim Neubauer, Mandan City Admin., to S. Paul Jordan (Sep. 23, 2014, 10:17 PM).

ISSUE

Whether the Mandan Police Department responded to a record request within a reasonable time.

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.”⁵ 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.⁶ Whether records have been produced within a reasonable time will depend on the facts of a given situation.⁷

It took 11 days for Mr. Jordan to receive a copy of the requested record, a record that took less than a half hour for the MPD to locate. It appears there was confusion between Chief Bullinger and Mr. Neubauer, who was also in the process of responding to several requests by Mr. Jordan, as to who would be responsible for responding to the request. When asked about the delay, Chief Bullinger admits “I mistakenly assumed that Mr. Neubauer was forwarding the information to Mr. Jordan when in fact . . . Mr. Neubauer only required a courtesy copy and that I was to send the information directly to Mr. Jordan.”⁸

Such a mistake, although inadvertent, does not excuse the 11 day delay in responding to the request. I therefore find the MPD violated open records law when it failed to timely reply to a record request.

CONCLUSION

The Mandan Police Department failed to provide a copy of a requested record within a reasonable time.

⁵ N.D.C.C. § 44-04-18(1).

⁶ N.D.C.C. § 44-04-18(7) and (8).

⁷ N.D.A.G. 2014-O-06; N.D.A.G. 2013-O-17; N.D.A.G. 2013-O-15. A delay may be appropriate for a number of reasons, including the number of records requested, reviewing large volumes of documents to respond to a request, excising closed or confidential information, availability and workload of staff who can respond to the request, or balancing other responsibilities of the public entity that demand immediate attention.

⁸ See Letter from Chief Dennis Bullinger, Mandan Police Dep’t to Sandra DePountis, Asst. Att’y Gen (Nov. 4, 2014).

STEPS NEEDED TO REMEDY VIOLATION

S. Paul Jordan received the requested record. Therefore, there are no further corrective measures to be taken by the Mandan Police Department.

Wayne Stenehjem
Attorney General

sld/vkk