

**OPEN RECORDS AND MEETINGS OPINION
2014-O-22**

DATE ISSUED: November 26, 2014

ISSUED TO: Morton County Sheriff's 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 Morton County Sheriff's Department violated N.D.C.C. § 44-04-18 in its response to a records request.

FACTS PRESENTED

On August 29, 2014, S. Paul Jordan made a request to Sheriff Dave Shipman of the Morton County Sheriff's Department for records regarding the reason a Morton County Sheriff's deputy was at a particular address that week.¹ Later that day, Sheriff Shipman requested more information from Mr. Jordan in order to clarify the request for records.² On September 3, 2014, Mr. Jordan provided further information including a time and date an officer was present at the address and a general description of the officer.³ After receiving the additional information, Sheriff Shipman informed Mr. Jordan that a deputy sheriff was on the property to serve civil papers but the department does not keep copies of the civil papers it attempts to serve.⁴ Mr. Jordan criticizes the Department for not producing any records responsive to his request and questions whether the Department's response conforms to open records law.⁵

¹ Email from S. Paul Jordan to Dave Shipman, Morton Cnty. Sheriff (Aug. 29, 2014, 5:25 PM).

² Email from Dave Shipman, Morton Cnty. Sheriff, to S. Paul Jordan (Aug. 29, 2014, 5:34 PM).

³ Email from S. Paul Jordan to Dave Shipman, Morton Cnty. Sheriff (Sept. 3, 2014, 4:05 PM).

⁴ Email from Dave Shipman, Morton Cnty. Sheriff, to S. Paul Jordan (Sept. 3, 2014, 4:45 PM).

⁵ See Email from S. Paul Jordan to Dave Shipman, Morton Cnty. Sheriff (Sept. 4, 2014, 3:24 PM).

ISSUE

Whether the Morton County Sheriff Department's response to a request for records complied with 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 The open records law is limited to records in the possession of a public entity and a public entity is not required to create or compile a record that does not exist.⁷ The definition of "record" does not include "unrecorded thought processes or mental impressions."⁸ Questions posed by a requestor are not considered a request for a record; rather the open records law requires a request to reasonably identify a "specific public record."⁹

In response to inquiries from this office, the Sheriff's Department confirms it did not possess any records showing "why someone with the Morton County Sheriff's Department" was at a particular property.¹⁰ However, in an attempt to provide information to Mr. Jordan, Sheriff Shipman asked around the office and the record's secretary recalled there were civil papers attempted to be served at the particular address on the particular date.¹¹ This information was then relayed to Mr. Jordan via email.

The Sheriff's Department did not violate N.D.C.C. § 44-04-18 because it did not have records relating to Mr. Jordan's request. Sheriff Shipman went beyond the legal requirements of the open records law to give information to Mr. Jordan regarding his

⁶ N.D.C.C. § 44-04-18.

⁷ N.D.C.C. § 44-04-18(3); see also N.D.A.G. 2005-O-11; N.D.A.G. 2003-O-09; N.D.A.G. 2003-O-01.

⁸ N.D.C.C. § 44-04-17.1(16) (definition of "record").

⁹ N.D.A.G. 2007-O-07; N.D.A.G. 2006-O-09; N.D.A.G. 2003-O-08; N.D.A.G. 2003-O-04; N.D.A.G. 98-O-20

¹⁰ See Letter from Dave Shipman, Morton Cnty. Sheriff, to Sandra DePountis, Asst. Att'y Gen. (Oct. 27, 2014). Opinions issued by this office must be based on the facts given by the public entity. N.D.C.C. § 44-04-21.1.

¹¹ N.10.

inquiry,¹² because a public entity is not obligated to provide documents that do not exist or are no longer in its possession,¹³

CONCLUSION

The Morton County Sheriff Department's response to a request for records was consistent with the law because no records responsive to the request existed.

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¹² In a follow up email on Sept. 4, 2014, Mr. Jordan questions the Department's response and lack of records produced. Email from S. Paul Jordan to Dave Shipman, Morton Cnty. Sheriff (Sept. 4, 2014, 3:24 PM). In the future, if the Department continues to provide information not contained in an existing record, it should consider informing its requestor that no documents exist and it is merely providing information based on recollection.

¹³ N.D.A.G. 2007-O-07; N.D.A.G. 2006-O-09; N.D.A.G. 2005-O-11; N.D.A.G. 2003-O-01; N.D.A.G. 98-O-20.