

**OPEN RECORDS AND MEETINGS OPINION  
2015-O-08**

DATE ISSUED: April 28, 2015

ISSUED TO: Oberon Public School and School Board

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Corey Ploium asking whether the Oberon School Board violated N.D.C.C. § 44-04-19 by asking people to leave the room during an open meeting and whether the Oberon Public School violated N.D.C.C. § 44-04-18 by refusing to provide copies of meeting minutes.

**FACTS PRESENTED**

The Oberon School Board (Board) is in the process of collecting salary information of all faculty members.<sup>1</sup> Once the data is collected, the Board will review state policies and hopes to implement a new pay schedule based on the state policies and fairness. The Board held a special meeting on February 26, 2015, to discuss teacher contracts and possible changes to employee salaries and wages.<sup>2</sup> During the meeting, the Board asked two teachers who were in attendance to leave the room.<sup>3</sup>

On March 3, 2015, Corey Ploium requested the Board's minutes of two special meetings held in February from the Oberon Public School's Business Manager.<sup>4</sup> The Business Manager informed Mr. Ploium that she was not done with the meeting minutes and they would not be released until approved by the Board.<sup>5</sup>

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<sup>1</sup> Minutes, Oberon School Bd. (Feb. 13, 2015).

<sup>2</sup> Agenda, Oberon School Bd. (Feb. 26, 2015); Minutes, Oberon School Bd. (Feb. 26, 2015).

<sup>3</sup> Mr. Ploium alleges three people were asked to leave the room, two teachers and the school's head cook. Oberon School Board admits to asking the two teachers to leave the room but states the head cook left on her own volition. See Oberon Pub. School's response to request for information. Opinions issued by the Attorney General must be based on the facts given by the public entity. N.D.C.C. § 44-04-21.1.

<sup>4</sup> Letter from Corey Ploium to Oberon Pub. School Bus. Manager (Mar. 3, 2015).

<sup>5</sup> Accident/Incident Report, Oberon Elem. School (Effective Mar. 3, 2015).

## ISSUES

1. Whether the Oberon School Board violated N.D.C.C. § 44-04-19 by asking people to leave the room during a special meeting on February 26, 2015.
2. Whether the Oberon Public School violated N.D.C.C. § 44-04-18 by denying a request for meeting minutes.

## ANALYSIS

### Issue One

Unless otherwise provided by law, all meetings of a public entity must be open to the public.<sup>6</sup> The law is violated if a person is denied access to a meeting unless the access is due to lack of physical space.<sup>7</sup> Denial can be explicit or constructive.<sup>8</sup> It is a violation of open meetings law when members of the public are asked to leave an open meeting when there is no statutory authority for closing such meeting.<sup>9</sup> A governing body may hold an executive session to consider or discuss closed or confidential records.<sup>10</sup>

The Board denies it held an executive session during its February 26, 2015, special meeting, but rather just asked two teachers to leave the room so it could discuss confidential information.<sup>11</sup>

When asked what confidential information was considered, the Board explains that the discussion was about teacher salaries.<sup>12</sup> The Board discussed developing a fair pay scale based on education and years of service. It was a general discussion and did not

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<sup>6</sup> N.D.C.C. § 44-04-19.

<sup>7</sup> N.D.C.C. § 44-04-19(1).

<sup>8</sup> N.D.A.G. 2014-O-19; N.D.A.G. 2007-O-05.

<sup>9</sup> N.D.A.G. 2014-O-19; N.D.A.G. 2007-O-05.

<sup>10</sup> N.D.C.C. § 44-04-19.2. There must be legal authority to make a record exempt or confidential.

<sup>11</sup> Oberon Pub. School's response to request for information.

<sup>12</sup> Id., see Minutes, Oberon School Bd. (Feb. 26, 2015). Although this opinion does not address whether the School Board properly posted notice of the February 26, 2015, special meeting or the adequacy of the minutes, the Board should review the notice and meeting minute requirements found in N.D.C.C. § 44-04-20 and N.D.C.C. § 44-04-21.1, respectively.

involve any actual salary negotiations.<sup>13</sup> Without statutory authority, the Board cannot consider the discussions held during the February 26, 2015, special meeting to be confidential.<sup>14</sup> Therefore, it is my opinion the Board violated open meetings law when it asked two teachers to leave the room during an open meeting.

### Issue Two

“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>15</sup> 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.<sup>16</sup>

Disclosure of working papers and preliminary drafts can be delayed until work is discontinued on the draft or the draft is provided to a member of the governing body.<sup>17</sup> However, the law specifically provides that disclosure of draft minutes may not be conditioned on the approval of the minutes by the governing body.<sup>18</sup>

At the time of Mr. Ploium’s request, the meeting minutes were not yet prepared. A request for records may be denied if the record does not exist.<sup>19</sup> Therefore, it was not a violation to deny Mr. Ploium’s request at that time. However, once prepared, the minutes must be provided to him regardless of Board approval.<sup>20</sup>

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<sup>13</sup> But see N.D.A.G. 2000-O-09. Hettinger Public School Board was allowed to enter into an executive session for negotiation strategy and instruction to discuss salary changes in pending contract negotiations because to do so in public would have an adverse fiscal effect on the public entity. However, conversations related to job performance evaluations were outside the scope of the negotiation strategy and instruction and should have been discussed in an open meeting.

<sup>14</sup> N.D.C.C. § 44-04-19.2 requires that executive sessions be held to discuss confidential information and sets forth a procedure for closing a meeting.

<sup>15</sup> N.D.C.C. § 44-04-18(1).

<sup>16</sup> N.D.C.C. § 44-04-18.

<sup>17</sup> N.D.C.C. § 44-04-18(9).

<sup>18</sup> N.D.C.C. § 44-04-21(2).

<sup>19</sup> N.D.C.C. § 44-04-18(4).

<sup>20</sup> N.D.C.C. § 44-04-21(2). Once the draft minutes are prepared they must be provided pursuant to an open records request. Similarly, once the minutes are drafted, any notes used to draft the minutes are subject to disclosure if they exist. This office previously recognized that meeting notes that are used to prepare draft minutes are open records available to the public upon request after the draft minutes are completed. See N.D.A.G. 1998-O-04.

### CONCLUSIONS

1. The Oberon School Board violated the open meetings law when it requested people leave the room during an open meeting.
2. The Oberon Public School did not have to provide minutes that were not yet prepared.

### STEPS NEEDED TO REMEDY VIOLATIONS

The Oberon School Board must amend its February 26, 2015, meeting minutes to provide a detailed account of what was discussed during the meeting. Also, if it hasn't already done so, Oberon Public School shall provide copies of all February meeting minutes, along with any notes used in creating the minutes, to Mr. Ploium, free of charge. I would encourage the members of the Oberon School Board and the Oberon Public School's Business Manager to access the Attorney General's website for information regarding its responsibilities under the State of North Dakota's open records and meetings law.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued 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>21</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>22</sup>

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Attorney General

sld  
cc: Corey Ploium (via email only)

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<sup>21</sup> N.D.C.C. § 44-04-21.1(2).

<sup>22</sup> Id.