

**OPEN RECORDS AND MEETINGS OPINION
2017-O-09**

DATE ISSUED: November 1, 2017

ISSUED TO: Office of Attorney General

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 Office of Attorney General violated N.D.C.C. § 44-04-18 by unreasonably delaying access to records.

FACTS PRESENTED

The Office of Attorney General received a request for records from S. Paul Jordan on September 18, 2017.¹ That same day, the Office of Attorney General responded by mailing requested records and directing Mr. Jordan to its website to access additional responsive records.²

ISSUE

Whether the Office of Attorney General responded to a request for records within a reasonable time.³

¹ The date on the top of the letter requesting records was Sept. 15, 2017, a Friday, though the Office of Attorney General did not receive it until Sept. 18, 2017, the following Monday. See Letter from S. Paul Jordan to Liz Brocker, Public Information Officer, Office of Attorney General (Sept. 15, 2017, date stamped upon receipt on Sept. 18, 2017).

² Response from Liz Brocker, Public Information Officer, Office of Attorney General, to S. Paul Jordan (Sept. 18, 2017).

³ The Public Information Officer who responds to open record requests for the Office of Attorney General is a different individual than the Assistant Attorney General who reviews alleged violations of open records law and drafts the opinions issued under N.D.C.C. § 44-04-21.1, which separation allows for an independent review for alleged violations of the law within the office.

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.”⁴ When a public entity receives a request for records, it must, within a reasonable time, either provide the records or explain why the records are not being provided.⁵ Whether records have been produced within a reasonable time will depend on the facts of a given situation.⁶ A delay may be appropriate for a number of reasons, including 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, balancing other responsibilities of the public entity that demand immediate attention, accessing the records requested, consulting with an attorney when there is reasonable doubt whether the records are open to the public, sorting out what has previously been provided to a requester, and seeking clarification on vague requests.⁷

In determining whether a response to a records request is made within a reasonable time, the open records law looks at when the public entity received the request, not the date on the top of the request, nor when the request was mailed.⁸ Here, the Office of Attorney General responded to Mr. Jordan’s request for records on the same day it received the request.⁹ This was not an unreasonable delay under the open records law.

Mr. Jordan also takes issue with being guided to the Office of Attorney General’s website to access additional records. In 2017, N.D.C.C. § 44-04-18(4) was amended to allow a public entity to direct a requester to a website to access records responsive to a

⁴ N.D.C.C. § 44-04-18(1).

⁵ N.D.C.C. § 44-04-18.

⁶ N.D.A.G. 2017-O-06; N.D.A.G. 2014-O-25; N.D.A.G. 2014-O-21; N.D.A.G. 2014-O-20; N.D.A.G. 2013-O-17.

⁷ N.D.A.G. 2017-O-06; N.D.A.G. 2014-O-25; N.D.A.G. 2014-O-21; N.D.A.G. 2014-O-20; N.D.A.G. 2014-O-06; N.D.A.G. 2013-O-17; N.D.A.G. 2013-O-15; N.D.A.G. 2012-O-07; N.D.A.G. 2010-O-04; N.D.A.G. 2008-O-08; N.D.A.G. 2004-O-05; N.D.A.G. 2003-O-21; N.D.A.G. 98-O-20; N.D.A.G. 98-O-04.

⁸ A public entity has a duty to timely review its incoming correspondence and check for record requests. N.D.A.G. 2016-O-08.

⁹ All letters received in the mail addressed to the Office of Attorney General are opened and date stamped during regular office hours on the day they are received.

request.¹⁰ It was therefore not a violation of open records law for the Office of Attorney General to point Mr. Jordan to its website for records.¹¹

CONCLUSION

The Office of Attorney General's response to a request for records on the same day it received the request was not an unreasonable delay.

Wayne Stenehjem
Attorney General

sld
cc: S. Paul Jordan

¹⁰ H.B. 1345, 2017 N.D. Leg. The law provides that if a requester does not have internet or computer access, a public entity should produce paper copies of the record. Mr. Jordan did not make this claim.

¹¹ Mr. Jordan also takes issue with the report that was provided in response to his request. The Office of Attorney General recently updated its mail tracking and case management system and reports run under the new software are different from previous reports Mr. Jordan received with prior record requests. The reports that are available with the new system were provided to Mr. Jordan. This information and explanation were relayed to Mr. Jordan in response to his record request. See Memorandum from Liz Brocker, Public Information Officer, Office of Attorney General, to Sandra DePountis, Assistant Attorney General (Sept. 28, 2017).