

**OPEN RECORDS AND MEETINGS OPINION
2017-O-10**

DATE ISSUED: November 3, 2017

ISSUED TO: City of Mandan

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 City of Mandan violated N.D.C.C. § 44-04-18 by unreasonably delaying a response to a request for records.

FACTS PRESENTED

S. Paul Jordan sent a request to the City of Mandan, dated June 24, 2017, for “a copy of the applicable City records listing the annual salary of Kristin N. Haug, I request a copy of a City record that lists when Kristen N. Haug first became employed by the City and I request a copy of a City record that lists the position Kristen N. Haug holds that is funded by the City.”¹ On July 18, 2017, the City of Mandan sent an email to Mr. Jordan stating that Kristin N. Haug is not an employee of the City and thus there were no records.²

ISSUE

Whether the City of Mandan responded to a request for records in 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.”³ 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.⁴ Whether

¹ Letter from S. Paul Jordan to Jim Neubauer, City Administrator, City of Mandan (June 24, 2017).

² Email from Jim Neubauer, City Administrator, City of Mandan, to S. Paul Jordan (July 18, 2017, 3:33 p.m.).

³ N.D.C.C. § 44-04-18(1).

⁴ N.D.C.C. § 44-04-18.

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

The City explains that at the time of Mr. Jordan's request it was busy with other business that demanded its attention including budget meetings with its Finance Committee and various departments during the last week of June, coordinating Fourth of July holiday preparations, and conducting interviews of and hiring a program coordinator.⁷

In addition, at the time of the request, the City was responding to numerous other requests for records sent by Mr. Jordan.⁸ The City reports receiving weekly requests from Mr. Jordan, totaling over 300 requests for records since 2014.⁹

This office previously recognized the City's attempt to work with this "prolific and persistent requestor" who inundates the City with numerous record requests.¹⁰ However, in this case, the City did not need to produce any records responsive to the request but merely had to provide a statement that no records existed. For that reason I conclude that the three-week delay in providing such a response was unreasonable.

⁵ 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.

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. 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.

⁷ Letter from Jim Neubauer, City Administrator, City of Mandan, to Sandra L. DePountis, Assistant Attorney General (Sept. 20, 2017).

⁸ Emails from Jim Neubauer, City Administrator, City of Mandan, to Sandra L. DePountis, Assistant Attorney General (Oct. 20, 2017, 9:05 a.m. and Sept. 28, 2017, 2:30 p.m.).

⁹ Emails from Jim Neubauer, City Administrator, City of Mandan, to Sandra L. DePountis, Assistant Attorney General (Oct. 20, 2017, 9:05 a.m. and Sept. 28, 2017, 2:30 p.m.).

¹⁰ N.D.A.G. 2014-O-25. See also N.D.A.G. 2014-O-22; N.D.A.G. 2014-O-21; N.D.A.G. 2014-O-17.

CONCLUSION

The City of Mandan failed to respond to a request for records within a reasonable time.

STEPS NEEDED TO REMEDY VIOLATION

Mr. Jordan received a response to the record request. Therefore, there are no further measures to be taken by the City of Mandan. I encourage the City of Mandan to review its obligations under the open records laws.

Wayne Stenehjem
Attorney General

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cc: S. Paul Jordan