

**OPEN RECORDS AND MEETINGS OPINION  
2018-O-01**

DATE ISSUED: January 30, 2018

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 by charging excessive fees for records.

**FACTS PRESENTED**

On November 7, 2017, Mr. S. Paul Jordan sent a request for records to Sheriff Kyle Kirchmeier, Morton County Sheriff's Department, asking for certain arrest, detention, and confinement records.<sup>1</sup> A response from the Sheriff's Department was sent on November 13, 2017, explaining what records were available and ready for pickup, and the charge of \$30 associated with responding to the request.<sup>2</sup>

**ISSUE**

Whether the Morton County Sheriff's Department charged excessive fees in responding to an open records request.<sup>3</sup>

**ANALYSIS**

Section 44-04-18, N.D.C.C., contains the general laws outlining what a public entity may charge for responding to an open records request. However, the general laws "do not apply to copies of public records for which a different fee is specifically provided by

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<sup>1</sup> Letter from S. Paul Jordan to Kyle Kirchmeier, Sheriff, Morton Cnty. Sheriff's Dep't (Nov. 7, 2017).

<sup>2</sup> Response from Morton Cnty. Sheriff's Dep't to S. Paul Jordan (Nov. 13, 2017).

<sup>3</sup> Mr. Jordan further alleges Morton Cnty. violated the open records law by not providing a detailed breakdown of the charges associated with responding to his request. However, there is no such requirement in the open records law, N.D.C.C. ch. 44-04.

OPEN RECORDS AND MEETINGS OPINION 2018-O-01

January 30, 2018

Page 2

law.”<sup>4</sup> Subsection 4 of section 11-15-07, N.D.C.C., contains such a specific law and requires a sheriff to “charge and collect” a \$2 per page fee for “making a copy of any ... paper.”<sup>5</sup> Therefore, the Sheriff’s Department is authorized to charge \$2 per paper copy of a record in response to an open records request.<sup>6</sup> The Sheriff’s Department’s response to Mr. Jordan’s request included 17 pages and he was charged \$30.<sup>7</sup> The fees charged by the Morton County Sheriff’s Department to Mr. Jordan for his records requests were specifically provided by law and therefore no violation of the open records law occurred.

CONCLUSION

The Morton County Sheriff’s Department did not charge excessive fees for responding to an open records request.

Wayne Stenehjem  
Attorney General

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cc: S. Paul Jordan

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<sup>4</sup> N.D.C.C. § 44-04-18(2).

<sup>5</sup> N.D.C.C. § 11-15-07(4).

<sup>6</sup> See N.D.A.G. 2000-L-94 recognizing the specific charging provisions of N.D.C.C. § 11-15-07 will trump the general charging laws of N.D.C.C. § 44-04-18.

<sup>7</sup> Letter from Brian D. Grosinger, Morton Cnty. Asst. State’s Att’y, to Sandra L. DePountis, Asst. Att’y Gen. (Dec. 22, 2017). Morton Cnty. Sheriff’s Dep’t did not charge for any time spent locating or redacting the records under N.D.C.C. § 44-04-18(2).