

**OPEN RECORDS AND MEETINGS SUMMARY OPINION
2021-O-11**

DATE ISSUED: November 8, 2021

ISSUED TO: City of Oberon

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 City of Oberon violated N.D.C.C. § 44-04-18 by failing to respond to a record request within a reasonable time.

FACTS PRESENTED

On March 22, Mr. Ploium contacted this office regarding a records request to the City of Oberon. He explained that he had requested meeting agendas, minutes, and bills for 2020 from the Oberon City Auditor on January 4, 2021.¹ After receiving no response, on March 8, 2021, Mr. Ploium hand-delivered another request for the meeting agendas, minutes, and bills from 2020 through March 8, 2021.²

On March 26, 2021, this office reached out to Oberon's City Auditor regarding Mr. Ploium's records request.³ Oberon's City Auditor, at that time, Tristan Demarce, informed this office that he had received Mr. Ploium's request but was new to the position, unfamiliar with the requested records, and would get the requested records to Mr. Ploium as soon as he could.⁴ Mr. Demarce indicated that he would work on Mr. Ploium's request over the weekend and stay in contact with Mr. Ploium regarding the status of his request.⁵

On April 29, 2021, Mr. Ploium still had not received any of the records or heard from Oberon so he contacted this office again and requested an opinion.⁶ On

¹ Letter from Corey Ploium to Oberon City Auditor (Mar. 8, 2021). (At that time, the Oberon City Auditor was Tristan DeMarce.) The January 4, 2021, request is outside the timeframe that may be reviewed by our office.

² *Id.*

³ Letter from Att'y Gen.'s Office to Corey Ploium (Mar. 26, 2021).

⁴ *Id.*

⁵ *Id.*

⁶ Letter from Corey Ploium to Att'y Gen.'s Office (Apr. 29, 2021).

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May 6, 2021, this office sent a letter to Oberon's Mayor requesting a response within 15 days to Mr. Ploium's allegations that the open records law was violated.⁷ To date, no written response to that letter has been received.

On or about May 27, 2021, this office reached out to Oberon, eventually reaching the new Mayor, Robert Santos, to confirm if the letter had been received and ask whether the city was going to respond. Mayor Santos told this office that he would follow up with the then-former auditor Mr. Demarce about Mr. Ploium's records request. On or about June 1, 2021, a representative from Oberon contacted this office explaining that they were working on complying with the records request. On July 1, 2021, this office again reached out to Mayor Santos about the lack of response to our letter dated May 6, 2021, and the status of the response to Mr. Ploium's request. Finally, during a telephone call on July 1, 2021, with this office, Mr. Ploium informed us that the city delivered the 2020 meeting agendas and minutes to him at his home. He further stated, the bills from 2020 through March 8, 2021, and the meeting agendas and minutes from January to March 8, 2021, have not been provided

ISSUE

Whether the City of Oberon timely responded to a request for records within a reasonable time.

ANALYSIS

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.⁸ Whether records have been produced within a reasonable time will depend on the facts of a given situation.⁹ Numerous past opinions outline situations in which a delay may be appropriate.¹⁰ A delay may be appropriate for a number of reasons, including reviewing large volumes of documents to respond to a request, excising

⁷ Letter from Att'y Gen.'s Office to Thomas Wetzel, Mayor, City of Oberon (May 6, 2021).

⁸ N.D.C.C. § 44-04-18.

⁹ N.D.A.G. 2019-O-02 (citing N.D.A.G. 2017-O-10); N.D.A.G. 2018-O-22(citing N.D.A.G. 2017-O-06); 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.

¹⁰ N.D.A.G. 2019-O-02. *See also*, 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.

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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.¹¹ Additionally, it is sometimes difficult for small public entities staffed with part-time employees to respond immediately to requests for records.¹² However, although certain circumstances may justify a brief delay, a public records request cannot be indefinitely ignored.¹³

Here, Mr. Ploium requested the meeting agendas, minutes, and bills from 2020 through present via hand-delivery on March 8, 2021. Oberon took until between June 1 – July 1, 2021, to partially respond to his request by providing the 2020 minutes and agendas. The requested 2020 - March 8, 2021 bills, and meeting minutes and agendas for 2021 through March 8, 2021, to date, still have not been provided. It has taken over six months to respond only partially to a records request.

This office recognizes that Oberon has had turnover in auditors during the time this request has been pending, and appreciates that, when members of this office were able to contact a city official¹⁴, the officials attempted to comply with the request. Although the constant turnover may allow for some delay in the provision of records, it took over three months to produce part of the requested bills and over six months to provide meeting minutes and agendas. This is a blatant violation of the open records laws. It is my opinion Oberon's on-going delay in fully responding to Mr. Ploium's request is unreasonable and violates N.D.C.C. § 44-04-18.

¹¹ N.D.A.G. 2019-O-02; N.D.A.G. 2017-O-10; 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.

¹² N.D.A.G. 2013-O-17.

¹³ *Id.*

¹⁴ To date, no written response from Oberon to the letter dated May 6, 2021, has been received by this office. Accordingly, for Oberon's response this Opinion relies on phone calls with Mayor Santos and Oberon's latest part-time auditor, Wanda.

CONCLUSION

The City of Oberon failed to provide a response to a records request within a reasonable time.

STEPS NEEDED TO REMEDY VIOLATION

Oberon must promptly provide the requested bills from 2020 through March 8, 2021, and meeting minutes and agendas for 2021 through March 8, 2021, to Mr. Ploium free of charge. Further, I strongly encourage Oberon to access the resources on the Attorney General's website regarding their duties and responsibilities under the open records law and to further review its policies and procedures for responding to open record requests in order to more efficiently respond to requests and expedite these matters in the future.

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. § 44-04-21.2.¹⁵ It may also result in personal liability for the person or persons responsible for the noncompliance.¹⁶

Wayne Stenehjem
Attorney General

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cc: Corey Ploium

¹⁵ N.D.C.C. § 44-04-21.1(2).

¹⁶ *Id.*