



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

www.attorneygeneral.nd.gov

(701) 328-2210

Drew H. Wrigley
ATTORNEY GENERAL

OPEN RECORDS AND MEETINGS OPINION
2024-O-08

DATE ISSUED: September 11, 2024

ISSUED TO: Stanley Rural Ambulance District

CITIZEN'S REQUEST FOR OPINION

Adam Buss requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Stanley Rural Ambulance District (District) violated N.D.C.C. § 44-04-18 by failing to provide records.

FACTS PRESENTED

On March 10, 2022, Mr. Buss sent an email to Don Giese, then President of the District, requesting the following records:

...[R]ecords in regard to notification of suspected criminal activity and or arrests of one Adam J[.] Buss made to Stanley Ambulance Service or any of its board members in or around [M]ay of 2021.

- Records requested including any and all notification and communication regarding above via email, text messages and included attachments or documents, in person or over the telephone including dates and times when possible.

- First member of Stanley Ambulance Service board to be notified as well as that individual's source of information.

- Results of any investigation and outcomes.¹

Christopher Nyhus, the attorney for the District, responded to Mr. Buss's request, by letter, on April 4, 2022.² The responsive records provided to Mr. Buss were a screenshot of a text message between the board member and the president of the board at the time, and a link sent from the

¹ Email from Adam Buss, to Donald Giese, then President, Stanley Rural Ambulance Dist. (Mar. 10, 2022, 6:39 PM); Letter from Christopher J. Nyhus, Att'y at Law, Nyhus Law Firm, to Anniqne M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Sept. 28, 2022).

² Letter from Christopher J. Nyhus, Att'y at Law, Nyhus Law Firm, to Adam J. Buss (Apr. 4, 2022).

same board member to the president to criminal records in Wisconsin for an “Adam John Buss.”³ In the District’s response to Mr. Buss, Attorney Nyhus, clearly stated “[u]pon further inspection, it was discovered yet that same day that despite being identical names, and both individuals being from Wisconsin, the person with the enclosed criminal record was a different person than yourself.”⁴

On April 25, 2022, Mr. Buss emailed the District with a second request for the same records.⁵ Attorney Nyhus immediately emailed Mr. Buss to inform him that the District had provided the records to his initial request by mail using the mailing address he provided. Attorney Nyhus also attached a copy of the records previously provided by mail to Mr. Buss.⁶ On April 27, 2022, Mr. Buss responded to Attorney Nyhus contending that “not all information” he requested had been provided.⁷ Specifically, Mr. Buss wanted the board member’s “source of information.”⁸ On at least three occasions after that, Attorney Nyhus informed Mr. Buss that the District did not have any additional records to provide.⁹ However, Mr. Buss believes the District has additional documents that they are not providing.¹⁰

ISSUE

Whether the District’s response violated the open records law.

³ Letter from Christopher J. Nyhus, Att’y at Law, Nyhus Law Firm, to Adam J. Buss (Apr. 4, 2022); Letter from Christopher J. Nyhus, Att’y at Law, Nyhus Law Firm, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Sept. 28, 2022).

⁴ Letter from Christopher J. Nyhus, Att’y at Law, Nyhus Law Firm, to Adam J. Buss (Apr. 4, 2022).

⁵ Email from Adam Buss, to management@stanleyambulance.com (Apr. 25, 2022, 3:18 PM); Letter from Christopher J. Nyhus, Att’y at Law, Nyhus Law Firm, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Sept. 28, 2022).

⁶ Email from Christopher J. Nyhus, Att’y at Law, to Adam Buss (Apr. 25, 2022, 10:35 PM); Letter from Christopher J. Nyhus, Att’y at Law, Nyhus Law Firm, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Sept. 28, 2022).

⁷ Email from Adam Buss, to Christopher J. Nyhus, Att’y at Law, Nyhus Law Firm (Apr. 27, 2022, 10:15 AM); Letter from Christopher J. Nyhus, Att’y at Law, Nyhus Law Firm, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Sept. 28, 2022).

⁸ Email from Adam Buss to Christopher J. Nyhus, Att’y at Law, Nyhus Law Firm (Apr. 27, 2022, 10:15 AM).

⁹ Email from Christopher J. Nyhus, Att’y at Law, Nyhus Law Firm, to Adam Buss (May 6, 2022, 3:35 PM); Email from Christopher J. Nyhus, Att’y at Law, Nyhus Law Firm, to Adam Buss (May 9, 2022, 5:23 PM); Letter from Christopher J. Nyhus, Att’y at Law, Nyhus Law Firm, to Adam Buss (May 11, 2022).

¹⁰ Email from Adam James Buss, to Off. of Att’y Gen. (May 13, 2022, 4:02 AM).

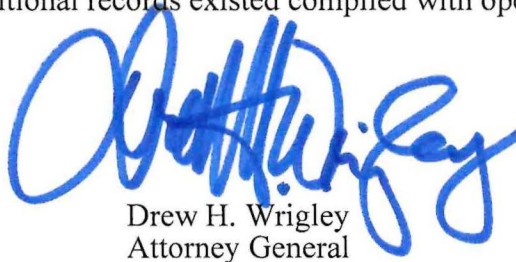
ANALYSIS

North Dakota open records law applies to all records¹¹ “in the possession of a public entity.”¹² A record means “recorded information of any kind.”¹³ The legal definition of record specifically “does not include unrecorded thought processes or mental impressions.”¹⁴ Public entities are not required to “create or compile” records that do not exist.¹⁵ Further, “. . . the public entity generally has no obligation to obtain records it does not have.”¹⁶

Here, Mr. Buss requested records and information regarding criminal history records. The District promptly provided the responsive records and an explanation that they had determined the criminal history was for another Adam J. Buss. The District had no duty to respond to Mr. Buss’s requests for information regarding who had informed the board member of the criminal history and, multiple times, informed Mr. Buss that they had no additional records to provide. This office is required by law to accept the “facts given by the public entity.”¹⁷ Public entities are only responsible for providing records that exist and that they have in their possession. Therefore, the District did not err in its responses to Mr. Buss that no additional records existed.

CONCLUSION

The District’s response that no additional records existed complied with open records law.



Drew H. Wrigley
Attorney General

AML/RS/mjh

cc: Adam Buss

¹¹ N.D.C.C. § 44-04-18. *See also* N.D.A.G. 2014-O-22; N.D.A.G. 2019-O-13; N.D.A.G. 2018-O-27.

¹² N.D.A.G. 2024-O-07; N.D.A.G. 2014-O-22, *citing* N.D.C.C. § 44-04-18(3), N.D.A.G. 2005-O-11, N.D.A.G. 2003-O-09, N.D.A.G. 2003-O-01; *see also*, N.D.A.G. 2019-O-13; N.D.A.G. 2018-O-27.

¹³ N.D.C.C. § 44-04-17.1(16).

¹⁴ N.D.C.C. § 44-04-17.1(16).

¹⁵ N.D.A.G. 2024-O-07; N.D.A.G. 2014-O-22, *citing* N.D.C.C. § 44-04-18(3); N.D.A.G. 2005-O-11; N.D.A.G. 2003-O-09; N.D.A.G. 2003-O-01; *see also*, N.D.A.G. 2019-O-13; N.D.A.G. 2018-O-27.

¹⁶ N.D.A.G. 2024-O-07; N.D.A.G. 2019-O-13, *citing* N.D.C.C. § 44-04-17.1(16); N.D.A.G. 2014-O-22; N.D.A.G. 2010-O-02; N.D.A.G. 2004-O-05.

¹⁷ N.D.C.C. § 44-04-21.1(1).