



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
2025-O-04

DATE ISSUED: March 6, 2025

ISSUED TO: Harrison Township

CITIZEN'S REQUEST FOR OPINION

Ron Loctao requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Harrison Township violated N.D.C.C. § 44-04-18 by failing to properly respond to a request for records within a reasonable time.

FACTS PRESENTED

Ron Loctao sent an email to Harrison Township (Township) on November 23, 2022, requesting a copy of the Township's meeting minutes from January 2022 to August 2022.¹ After receiving no response to his initial request, Mr. Loctao sent a second email to the Township on December 4, 2022, requesting meeting minutes from January 2022 to December 2022.² Again after receiving no response from the Township, Mr. Loctao contacted this office for an opinion.³

On December 23, 2022, this office reached out to the Township regarding Mr. Loctao's records request.⁴ The Township informed this office that the Township's official mailing address is the email address where Mr. Loctao sent his records request.⁵ The Township explained the delay in responding to Mr. Loctao was caused by the unexpected resignation of the Township's treasurer who was responsible for overseeing the email account.⁶ The Township provided the minutes electronically to Mr. Loctao on January 6, 2023.⁷

¹ Email from Ron Loctao to Harrison Twp. (Nov. 23, 2022, 4:34 PM).

² Email from Ron Loctao to Harrison Twp. (Dec. 4, 2022, 10:05 PM).

³ Email from Ron Loctao to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Dec. 21, 2022, 9:24 AM); Email from Ron Loctao to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Dec. 21, 2022, 9:27 AM).

⁴ Email from Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen., to Jon Lochtowe, Chairman, Harrison Twp. (Dec. 23, 2022, 1:29 PM).

⁵ Letter from Cindy Whitesell, Clerk, Harrison Twp., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Jan. 6, 2023).

⁶ *Id.*

⁷ *Id.*

ISSUE

Whether the Harrison Township violated N.D.C.C. § 44-04-18 by failing to respond to a records request within a reasonable time.

ANALYSIS

A township is a political subdivision and is therefore a “public entity” subject to the open records and meetings law.⁸ A public entity must respond to an open records request within a reasonable time by either providing the requested records or by explaining the legal authority for not granting the request.⁹ The law does not usually require an immediate response, however, the delay permitted will usually be measured in a few hours or days rather than weeks.¹⁰ Depending on the circumstances, a delay may be reasonable for a variety of reasons, including “the number of records requested, 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, or balancing other responsibilities of the public entity that demand immediate attention.”¹¹ However once a request for records is made, “it is the responsibility of the public entity to respond to the request within a reasonable time and the requester is not required to contact the entity again to find out when the records will be provided or made available.”¹²

On November 23, 2022, Mr. Loctao sent an email to the Township requesting meeting minutes from January through August.¹³ When the Township did not respond, Mr. Loctao sent a follow up email on December 4, 2022, requesting meeting minutes from January through December¹⁴. The Township did not provide the requested records until January 6, 2023.¹⁵ The Township explains that the delay was caused by “the unexpected resignation of the [Township’s] [t]reasurer, who was responsible for overseeing the email [account].”¹⁶ However, a public entity is responsible for timely reviewing its incoming correspondence and checking for records requests.¹⁷ For example, the Township could have made other arrangements for managing its email account or set up an automated reply message with an alternative method for submitting requests to the Township after the treasurer’s resignation. It is not the requestor’s obligation to again contact the entity to find out

⁸ N.D.C.C. § 44-04-17.1(11), (13)(b).

⁹ N.D.C.C. § 44-04-18.

¹⁰ N.D.A.G. 2011-O-07, *citing* N.D.A.G. 2009-O-07; N.D.A.G. 2008-O-08; N.D.A.G. 2004-O-07; N.D.A.G. 2002-O-06; *see also* N.D.A.G. 2007-O-10.

¹¹ N.D.A.G. 2021-O-09, *citing* N.D.A.G. 2014-O-06; N.D.A.G. 2013-O-15; N.D.A.G. 2012-O-07; N.D.A.G. 2010-O-04.

¹² N.D.A.G. 2024-O-11 (*quoting* N.D.A.G. 2016-O-08).

¹³ Email from Ron Loctao to Harrison Twp. (Nov. 23, 2022, 4:34 PM).

¹⁴ Email from Ron Loctao to Harrison Twp. (Dec. 4, 2022, 10:05 PM).

¹⁵ Letter from Cindy Whitesell, Harrison Twp. Clerk, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Jan. 6, 2023).

¹⁶ *Id.*

¹⁷ N.D.A.G. 2016-O-08.

March 6, 2025

Page 3

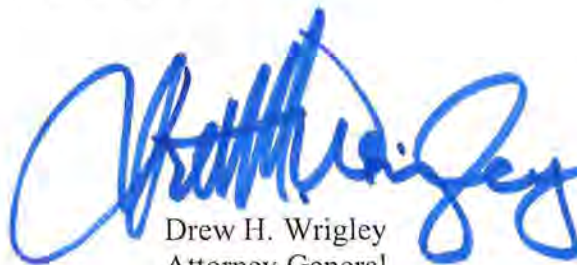
when the records will be provided or made available.¹⁸ The Township has provided no additional justification for the delay. Under these circumstances, a six-week delay before responding to Mr. Loctao's first request and over a month delay for the second request is unreasonable.¹⁹ Accordingly, it is my opinion the Township violated the open records law by failing to respond to an appropriate records request within a reasonable time.

CONCLUSION

The Harrison Township violated N.D.C.C. § 44-04-18 by failing to respond to a records request within a reasonable time.

STEPS NEEDED TO REMEDY VIOLATIONS

The Township has already taken steps to rectify its mistake by assigning more than one position to oversee the Township's email account. Mr. Loctao has received all the requested records, therefore no further corrective measures required.



Drew H. Wrigley
Attorney General

AMR/AML/mjh
cc: Ron Loctao

¹⁸ N.D.A.G. 2024-O-11.

¹⁹ N.D.A.G. 2022-O-12 (waiting over a month to provide minutes was an unreasonable delay); N.D.A.G. 2008-O-12 (finding a delay of more than a month in providing Township minutes was unreasonable); N.D.A.G. 2007-O-10 (finding a delay of four weeks to provide meeting minutes was unreasonable). N.D.A.G. 2002-O-06 (concluding that nearly a month and a half delay in providing minutes was unreasonable); N.D.A.G. 98-O-19 (failing to provide copies of minutes within a month was an unreasonable delay).