



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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OPEN RECORDS AND MEETINGS OPINION
2025-O-06

DATE ISSUED: March 7, 2025

ISSUED TO: Apple Creek Township

CITIZEN'S REQUEST FOR OPINION

Jamie Jacobson requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Apple Creek Township violated the open records and meetings laws by failing to properly notice a meeting and by failing to provide open records within a reasonable time.¹

FACTS PRESENTED

In June 2022, a resident filed a complaint with the Apple Creek Township ("Township") alleging Justin and Jamie Jacobson were in violation of an Apple Creek zoning ordinance.² The Township found a violation and issued a notice of violation to Justin and Jamie Jacobson on June 10, 2022.³ Justin and Jamie Jacobson requested a hearing on the violation of a zoning ordinance.⁴ The Township informed Justin and Jamie Jacobson that the hearing would be set for July 5, 2022, and would occur during the zoning board portion of the regular board meeting.⁵

The Township holds its regular meetings on the first Monday of each month.⁶ However, due to the Fourth of July holiday, the Township rescheduled the meeting for July 5, 2022.⁷ The meeting

¹ Ms. Jacobson also asked for an opinion about the Township's failure to provide records she requested in May and June of 2022. Because the alleged violations occurred more than 30 days before the request for an opinion was made, the request was not timely, and therefore this office is unable to issue an opinion on those alleged violations. N.D.C.C. § 44-04-21.1(1).

² Letter from Garrett D. Ludwig, Att'y, Apple Creek Twp., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Sept. 2, 2022).

³ Letter from Garrett D. Ludwig, Att'y, Apple Creek Twp., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Sept. 2, 2022); Letter from Garrett D. Ludwig, Att'y, Apple Creek Twp., to Justin & Jamie Jacobson (June 10, 2022).

⁴ E-mail from Jamie Jacobson to Garrett Ludwig (June 13, 2022, 9:44 PM).

⁵ Letter from Garrett D. Ludwig, Att'y, Apple Creek Twp., to Justin & Jamie Jacobson (June 22, 2022).

⁶ Letter from Garrett D. Ludwig, Att'y, Apple Creek Twp., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Sept. 2, 2022).

⁷ *Id.*

notice was published in the Bismarck Tribune and posted on the Township's website.⁸ The Township was unable to verify that the notice was posted at the school where the meeting was held.⁹

During the meeting, the Township held the public hearing on the Jacobson's zoning violation.¹⁰ At the hearing, a motion was made and approved to give the Jacobsons a 28-day extension to comply with the zoning ordinance or else the Jacobsons's failure to comply would result in a \$2,000 fine.¹¹

On July 6, 2022, Ms. Jacobson submitted a request for records to the Township.¹² According to Ms. Jacobson, she requested:

- The audio recording from the July 5, 2022, meeting.¹³
- "A copy of the publication receipt for the 2010 zoning ordinance or bylaws that were recorded publicly locally around March."¹⁴
- "Any other report, e-mail, and or note used to determine [the Township's] decision on [the Jacobson's] request for a zoning variance."¹⁵
- "A copy of [the Township's] order motioned on [at the July 5, 2022,] public hearing held after the public meeting."¹⁶

On July 15, 2022, Eric Richard, Apple Creek Board Supervisor, provided Ms. Jacobson the newspaper publication for the 2011 annual meeting notice regarding the zoning ordinances and explained there were three informational meetings in the summer of 2010 specifically discussing zoning within the Township.¹⁷ Mr. Richard also informed her the meeting minutes from 2010 through June 2022 were posted on the Township's website.¹⁸ On July 18, 2022, Mr. Richard emailed Ms. Jacobson notifying her that the unapproved meeting minutes from the July 5th

⁸ *Id.*

⁹ *Id.*

¹⁰ Minutes, Apple Creek Twp. (July 5, 2022).

¹¹ *Id.*

¹² E-mail from Jamie Jacobson to Off. of Att'y Gen. (July 13, 2022, 10:11 PM); E-mail from Jamie Jacobson to Eric Richard, Bd. Supervisor, Stephen Schnaible, Mark Springer, & Monte Sicble, Bd. Members, Apple Creek Twp. (July 6, 2022, 2:38 PM).

¹³ E-mail from Jamie Jacobson to Off. of Att'y Gen. (July 13, 2022, 10:11 PM).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* During the pendency of this request for an opinion, Ms. Jacobson submitted additional requests for records to the Township. This opinion only addresses the issues in Ms. Jacobson's original request for an opinion.

¹⁷ E-mail from Eric Richard, Bd. Supervisor, Apple Creek Twp., to Jamie Jacobson (July 15, 2022, 9:34 AM).

¹⁸ *Id.*

meeting were available on the Township's website.¹⁹ That same day, Ms. Jacobson again requested the audio recording from the July 5th meeting, a copy of the Township's "motion decision," and receipt or proof that bylaws were published.²⁰

On August 10, 2022, the Township, through counsel, provided the July 5th audio recording, the approved meeting minutes from July 5th meeting,²¹ the publication of the 2011 annual meeting notice as previously provided, and a copy of the Apple Creek Township zoning ordinances to Ms. Jacobson.²² On August 16, 2022, Ms. Jacobson again requested all letters and emails regarding the Township's decision to refuse the Jacobson's request for a variance and receipt or proof the bylaws were published in 2011.²³ On August 25, 2022, the Township, through counsel, clarified that there were no bylaws adopted that year, only the zoning ordinances, and provided Ms. Jacobson all non-privileged correspondence between the Township and counsel regarding the Jacobson's violation of zoning ordinances and variance request.²⁴

¹⁹ E-mail from Eric Richard, Bd. Supervisor, Apple Creek Twp., to Jamie Jacobson (July 18, 2022, 3:03 PM).

²⁰ E-mail from Jamie Jacobson to Eric Richard, Bd. Supervisor, Apple Creek Twp. (July 18, 2022, 4:36 PM); Email from Jamie Jacobson to Eric Richard, Bd. Supervisor, Apple Creek Twp. (July 18, 2022, 5:18 PM). Based on the records provided by the Township, it appears Ms. Jacobson contacted Mr. Richard on July 25, 2022, stating that the 2011 publication was only a publication of the meeting and did not include the publication of bylaws. *See* E-mail from Jamie Jacobson to Garrett Ludwig (Aug. 16, 2022, 2:20 PM). However, a copy of Ms. Jacobson's July 25, 2022, email was not provided to this office.

²¹ The July 5, 2022, meeting minutes were approved by the Township at the August 1, 2022, meeting. *See* Minutes, Apple Creek Twp. (Aug. 1, 2022).

²² Letter from Garret D. Ludwig to Jamie Jacobson (Aug. 10, 2022). This letter ends with asking Ms. Jacobson to submit any additional requests in writing to the Township. North Dakota law clearly provides that "[a]n initial request" for a public record "need not be made in person or in writing." *See* N.D.C.C. § 44-04-18(2). This office has previously concluded a public entity may not require requests for records to be in writing under the pretext of clarification. N.D.A.G. 2008-O-08 (finding a violation of the open records law by asking the requester to put his request in writing); N.D.A.G. 2007-O-03 (finding a violation of the open records law by requiring the requester to fill out a request form); N.D.A.G. 2006-O-15 (finding a violation of open records law by implying to the requester that he must sign a form in order to obtain records); N.D.A.G. 2003-O-21 (finding a violation of open records law by requiring a request to be in made in writing and failing to clarify a written request was not a prerequisite to obtaining the record). This office does not reach this issue because the requester does not raise it. However, the Township should refrain from requiring any initial record requests be made in writing.

²³ E-mail from Jamie Jacobson to Garrett Ludwig, Att'y, Apple Creek Twp. (Aug. 16, 2022, 2:20 PM).

²⁴ Letter from Garrett D. Ludwig, Att'y, Apple Creek Twp., to Jamie Jacobson (Aug. 25, 2022).

On September 2, 2022, Ms. Jacobson informed this office and the Township she had received all responsive documents related to her July 6th records request.²⁵

ISSUES

1. Whether the Township provided notice of its July 5, 2022, regular meeting in substantial compliance with N.D.C.C. § 44-04-20.
2. Whether the Township responded to a records request within a reasonable time.

ANALYSIS

Issue One

Unless otherwise provided by law, public notice must be given in advance of all meetings of a public entity in substantial compliance with N.D.C.C. § 44-04-20.²⁶ A meeting notice must include “the date, time, and location of the meeting and, where practicable, the topics to be considered.”²⁷ Notice of regular meetings must be posted at the principal office of the governing body, if one exists, at the location of the meeting on the day of the meeting, and given to anyone who asks to receive notice of upcoming meetings.²⁸ Meeting notices must also be filed in the appropriate office or, at the time of this meeting,²⁹ posted on the public entity’s website.³⁰ For emergency or special meetings, notice must also be given to the public entity’s official newspaper and any

²⁵ E-mail from Jamie Jacobson to Off. of Att’y Gen. (Sept. 2, 2022, 12:03 PM); E-mail from Jamie Jacobson to Garrett Ludwig, Att’y, Apple Creek Twp. (Sept. 2, 2022, 12:06 PM).

²⁶ N.D.C.C. §§ 44-04-19, 44-04-20.

²⁷ N.D.C.C. § 44-04-20(2).

²⁸ N.D.C.C. § 44-04-20(4). Townships usually do not have offices, and it does not appear the Township in this case has a principal office. Therefore, consistent with past opinions, this requirement would not apply. N.D.A.G. 2022-O-14; N.D.A.G. 2015-O-02; N.D.A.G. 2011-O-16. Additionally, no one requested to receive personal notice of the meeting.

²⁹ The notice requirement changed to require meeting notices be posted on the entity’s website if they have a website. S.B. 2232, 68th N.D. Legis. Assemb., Reg. Sess., 2023 N.D. Laws ch. 394, § 4.

³⁰ N.D.C.C. § 44-04-20(4). The notice requirement changed to require meeting notices be posted on the entity’s website if they have a website. S.B. 2232, 68th N.D. Legis. Assemb., Reg. Sess., 2023 N.D. Laws ch. 394, § 4. However, at the time of the Township’s meeting, the law required the Township to either file the notice with the county auditor or post the notice on its website. Thus, the Township’s posting the meeting notice on its website satisfied the notice requirements at the time the meeting.

representatives of the news media who requested to be notified of the special meetings.³¹ Opinions issued by this office must be based on the facts given by the public entity.³²

In this case, the meeting notice included the date, time, location, and an agenda with the topics to be considered, including the public hearing for the Jacobsons's ordinance violation. Ms. Jacobson alleges that the Township did not post the notice at the location of the meeting on the day of the meeting. The Township could not verify that the notice was posted at the location of the meeting on the day of the meeting. According to the Township, the July 5, 2022, meeting notice was published in the Bismarck Tribune.³³ Additionally, the Township posted the meeting notice and agenda on its website.³⁴ The Township does not have an office so the requirement to post notice at the "principal office" does not apply.³⁵ Thus, the only alleged deficiency in the notice is the Township's failure to post it at the location of the meeting. This office has previously determined that a public entity substantially complied with the notice requirements when it provided all the notice required by law except for posting the notice at the location of the meeting.³⁶ Accordingly, I find the Township posted notice of the July 5, 2022, meeting in substantial compliance with N.D.C.C. § 44-04-20.

Issue Two

"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."³⁷ 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.³⁸ 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.³⁹ A delay may be reasonable for a number 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

³¹ N.D.C.C. § 44-04-20(6).

³² N.D.C.C. § 44-04-21.1(1).

³³ Meeting notices only have to be published if a statute specifically requires publication. Thus, the requirements for noticing township meetings in N.D.C.C. ch. 58 are in addition to the notice requirements found in N.D.C.C. § 44-04-20. *See* N.D.A.G. 2015-O-03; N.D.A.G. 2012-O-04; N.D.A.G. 2011-O-16; N.D.A.G. 2009-O-18.

³⁴ Letter from Garrett D. Ludwig, Att'y, Apple Creek Twp., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Sept. 2, 2022).

³⁵ N.D.A.G. 2022-O-14, n.14; N.D.A.G. 2015-O-02; N.D.A.G. 2011-O-16.

³⁶ N.D.A.G. 2014-O-11; N.D.A.G. 2006-O-10; N.D.A.G. 2002-O-10; N.D.A.G. 98-O-09.

³⁷ N.D.C.C. § 44-04-18(1).

³⁸ N.D.C.C. § 44-04-18(2).

³⁹ 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.

responsibilities of the public entity that demand immediate attention.”⁴⁰ A public entity may seek clarification from the requester if a request is unclear.⁴¹

Ms. Jacobson e-mailed her records request to the Township on July 6, 2022.⁴² The Township waited until July 15th to partially respond to Ms. Jacobson’s request by providing the newspaper publication for the 2011 annual meeting notice.⁴³ According to the Township, the annual meeting notice was responsive because the zoning ordinances were adopted in 2011 and only informational meetings about the zoning ordinances were held in 2010.⁴⁴ Three days later, on July 18th, the Township informed Ms. Jacobson that the unapproved meeting minutes from the July 5th meeting were available on the Township’s website.⁴⁵ While it is not clear whether the Township provided a copy of its decision for an extension or if the meeting minutes served that purpose, the Township did not provide the unapproved minutes until July 18th, 12 days after Ms. Jacobson’s request.⁴⁶

Thereafter, Ms. Jacobson again requested the audio recording for the July 5th meeting, proof that bylaws were published, and all letters and emails regarding the Township’s decision to refuse the Jacobson’s request for a variance.⁴⁷ The Township did not provide the audio recording until August 10, 2022,⁴⁸ and did not provide the correspondence regarding the Jacobson’s violation of zoning ordinances and variance request until August 25, 2022.⁴⁹

⁴⁰ 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.

⁴¹ N.D.C.C. § 44-04-18(2).

⁴² E-mail from Jamie Jacobson to Eric Richard, Bd. Supervisor, Stephen Schnaible, Mark Springer, & Monte Sicble, Bd. Members, Apple Creek Twp. (July 6, 2022, 2:38 PM).

⁴³ Email from Eric Richard, Bd. Supervisor, Apple Creek Twp., to Jamie Jacobson (July 15, 2022, 9:34 AM).

⁴⁴ *Id.*

⁴⁵ E-mail from Eric Richard, Bd. Supervisor, Apple Creek Twp., to Jamie Jacobson (July 18, 2022, 3:03 PM). A public entity is not required to provide a copy of a record that is available on the public entity’s website or on the internet; however, the public entity must notify the requester that the record is available online and direct the requester to the website where it can be accessed. If the requester does not have reasonable access to the internet, then the public entity must produce paper copies but may charge the applicable fees permitted under the statute. *See* N.D.C.C. § 44-04-18(4).

⁴⁶ *Id.* However, the Township was not required to create a document to serve as the Township’s decision. *See* N.D.C.C. § 44-04-18(4) (“[N]othing in this section requires a public entity to create or compile a record that does not exist.”).

⁴⁷ Email from Jamie Jacobson to Garrett Ludwig, Att’y, Apple Creek Twp. (Aug. 16, 2022, 2:20 PM).

⁴⁸ Letter from Garrett D. Ludwig, Att’y, Apple Creek Twp., to Jamie Jacobson (Aug. 10, 2022).

⁴⁹ Letter from Garrett D. Ludwig, Att’y, Apple Creek Twp., to Jamie Jacobson (Aug. 25, 2022).

The Township's only explanation for the delay is that it was not clear what Ms. Jacobson was requesting.⁵⁰ The records provided by the Township show there was some confusion between the publication of bylaws versus zoning ordinances, however, the Township did not respond that records for publication of bylaws did not exist until August 25th. The Township did not provide clarifications or updates to Ms. Jacobson until she repeated her request for records. Thus, the Township has not offered an explanation that would justify the lengthy delay in providing the meeting minutes, audio recording, publication of the annual meeting notice, and emails pertaining to the Jacobson's zoning violation and request for a variance.

This office has previously concluded that a delay of nearly four weeks to produce 59 records with no explanation to the requester was unreasonable.⁵¹ Likewise, I find that a delay of nine days to provide the newspaper publication for the 2011 annual meeting notice, 12 days to direct Ms. Jacobson to the Township's website for minutes, five weeks to provide a single audio recording, and nearly seven weeks to produce a handful of emails is unreasonable under these circumstances.

CONCLUSIONS

1. The Township provided notice of its July 5, 2022, regular meeting in substantial compliance with N.D.C.C. § 44-04-20.
2. The Township did not provide the requested records within a reasonable time.

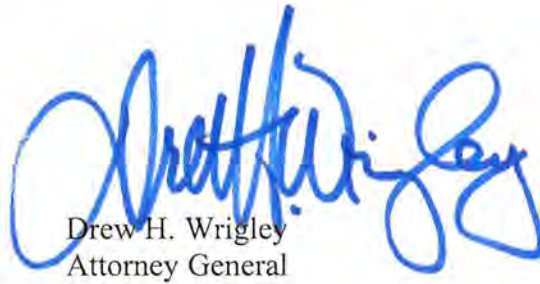
⁵⁰ Letter from Garrett D. Ludwig, Att'y, Apple Creek Twp., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Sept. 2, 2022).

⁵¹ N.D.A.G. 2023-O-04; *see also* N.D.A.G. 2022-O-12 (over a month delay to provide minutes was unreasonable); N.D.A.G. 2021-O-11 (a three month delay to partially respond to a request and over a six month delay to provide meeting minutes and agendas was a blatant violation of the open records laws); N.D.A.G. 2021-O-09 (a three week delay to provide 334 pages was unreasonable); N.D.A.G. 2019-O-02 (it was unreasonable delay when no real action was taken for eight days after receiving the records request); N.D.A.G. 2019-O-14 (a two month delay to respond that no records existed was unreasonable); N.D.A.G. 2019-O-15 (a delay of two months to provide one audio recording was unreasonable); N.D.A.G. 2009-O-07 (a two week delay to provide one record was unreasonable); N.D.A.G. 2004-O-20 (a delay of over three weeks to provide one copy of a draft ordinance was unreasonable); *but see* N.D.A.G. 2021-O-12 (finding a delay of one week to provide a year's worth of meeting minutes and agendas was not an unreasonable delay); N.D.A.G. 2003-O-21 (finding a five day delay to provide records was not unreasonable).

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STEPS NEEDED TO REMEDY VIOLATION

The Township has already provided Ms. Jacobson with all requested records. Accordingly, there are no further corrective measures required.



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cc: Jamie Jacobson