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OPEN RECORDS AND MEETINGS OPINION
2025-O-09

DATE ISSUED: June 10, 2025

ISSUED TO: Tioga Airport Authority

CITIZEN'S REQUEST FOR OPINION

Kathleen Neset requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Tioga Airport Authority violated N.D.C.C. §§ 44-04-20 and 44-04-18 by not properly noticing its August 19, 2024, special meeting and by failing to provide open records within a reasonable time.

FACTS PRESENTED

The Tioga Airport Authority (Authority) held a special meeting on August 19, 2024, at the Tioga Airport Terminal.¹ The chairman of the Authority posted the agenda for the meeting at both the old and new terminals at the Tioga Airport on August 17, 2024.² The chairman attempted to email notice of the special meeting to the city auditor on August 19, 2024, but the chairman misspelled the auditor's email address, so the city auditor was not notified of the special meeting.³ Notice of the special meeting was not posted to the Authority's website because the website was not accessible to the public at that time.⁴ The Authority also did not notify the official newspaper of the special meeting.⁵

On August 29, 2024, Kathleen Neset made an open records request to the Authority.⁶ Neset requested copies of the public notices of the special meeting and any notification provided to the

¹ Email from Tioga Airport Auth. Adm'r, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Jan. 9, 2025, 1:19 PM); Special Meeting Agenda, Tioga Airport Authority (Aug. 19, 2024).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Letter from Kathleen Neset, Managing Member, Tioga Aero Ctr., to Drew Wrigley, Att'y Gen., Off. of Att'y Gen. (Oct. 31, 2024); Email from Tioga Airport Auth. Adm'r, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Jan. 9, 2025, 1:19 PM). In Neset's letter to this office, she also alleged a violation for failing to include recorded roll call votes in the minutes of the meeting. This allegation fell outside the thirty-day window in which an opinion may be requested for this type of violation.

Williston Herald.⁷ Neset also requested financial reports and the list of bills approved and paid by the Authority at the Authority's monthly meetings.⁸ In her request for this opinion, Neset stated that she had not received the requested records as of October 29, 2024.⁹ In response to questions from this office regarding whether the records were provided to Neset, the Authority did not claim that it had provided Neset with the records but instead stated, "Records were sent 8-29-24 at 10 am to city auditor."¹⁰

ISSUES

1. Whether the Authority provided notice of its August 19, 2024, special meeting in substantial compliance with N.D.C.C. § 44-04-20.
2. Whether the Authority provided records responsive to a request within a reasonable time.

ANALYSIS

Issue One

An airport authority is a political subdivision under N.D.C.C. § 44-04-17.1(11) and is therefore a public entity subject to open meetings law.¹¹ A governing body of a public entity must give advance notice of its meetings unless otherwise provided by law.¹² Notice of a meeting must be posted at the principal office of the governing body if such an office exists and at the location of the meeting on the day of the meeting.¹³ City-level bodies must provide notice of a meeting to the city auditor, and if the public entity has a website, it must post the notice on its website.¹⁴ For a special meeting, notice must also be given to the public entity's official newspaper.¹⁵ Notifying the official newspaper is an important requirement for special meetings because it compensates for the possibility that the public may not be aware of the special meeting.¹⁶

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Email from Tioga Airport Auth. Adm'r, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Jan. 9, 2025, 1:19 PM)).

¹¹ N.D.C.C. §§ 44-04-17.1(11), (13)(b); N.D.A.G. 2009-O-20.

¹² N.D.C.C. § 44-04-20(1).

¹³ N.D.C.C. § 44-04-20(4).

¹⁴ *Id.*

¹⁵ N.D.C.C. § 44-04-20(6).

¹⁶ N.D.A.G. 2016-O-17, *citing* N.D.A.G. 2010-O-07; N.D.A.G. 2005-O-20.

The Authority posted the agenda for the meeting at the location of the meeting.¹⁷ But the Authority admits that it did not provide notice to the city auditor or to the official newspaper.¹⁸ The Authority also admits that it did not post the notice to the Authority's website, but it asserts that the website was not publicly accessible at that time.¹⁹ Notably such a website failure is the type of malady cured by notice in the official newspaper. Due to the failure to provide notice of the special meeting to the city auditor and the official newspaper, it is my opinion that the Authority did not substantially comply with N.D.C.C. § 44-04-20 when providing notice of the August 19, 2024, special meeting.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."²¹ A public entity must respond to an open records request within a reasonable time.²² Whether the public entity responds within a reasonable time depends on the facts of the situation.²³

It is unclear what the Authority meant by "[r]ecords were sent 8-29-24 at 10 am to city auditor" when it responded to this office's inquiries. In any event, the Authority has not claimed that it provided Neset with the requested records, which is consistent with Neset's statement that she had not received the records as of two months after her request. The Authority also did not provide an explanation for the delay. It is therefore my opinion that the Authority violated N.D.C.C. § 44-04-18 by not responding to Neset's request within a reasonable time.

CONCLUSIONS

1. The Authority did not provide notice of its August 19, 2024, special meeting in substantial compliance with N.D.C.C. § 44-04-20 because it failed to notify the city auditor and official newspaper of the special meeting.
2. The Authority violated N.D.C.C. § 44-04-18 by not responding to an open records request within a reasonable time.

¹⁷ Email from Tioga Airport Auth. Adm'r, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Jan. 9, 2025, 1:19 PM).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ The requester asked if the actions taken in an improperly noticed meeting are valid. This office does not have authority to invalidate actions taken by a public entity at a meeting. Only a court may do that.

²¹ N.D.C.C. § 44-04-18(1).

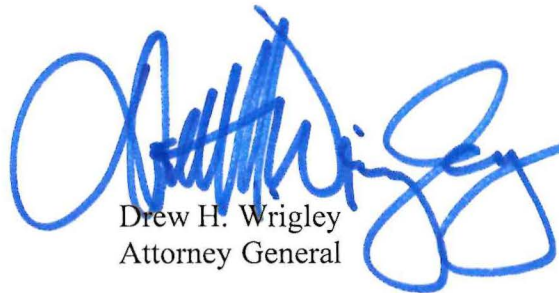
²² N.D.A.G. 2022-O-12, *citing* N.D.C.C. § 44-04-18(8); N.D.A.G. 2019-O-15.

²³ *Id.*, *citing* N.D.A.G. 2019-O-15; N.D.A.G. 2019-O-09.

STEPS NEEDED TO REMEDY VIOLATION

The Authority must provide minutes of the August 19, 2024, special meeting to Kathleen Neset and anyone else who requests them, free of charge. The Authority must also provide Kathleen Neset with copies of the records she requested, free of charge.

While I have every reason to expect the Tioga Airport Authority will remedy this situation, 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. § 44-04-21.2.²⁴ Failure to take these corrective measures may also result in personal liability for the person or persons responsible for the noncompliance.²⁵



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Attorney General

SRH/mjh

cc: Kathleen Neset

²⁴ N.D.C.C. § 44-04-21.1(2).

²⁵ *Id.*