



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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OPEN RECORDS AND MEETINGS OPINION
2025-O-13

DATE ISSUED: September 10, 2025

ISSUED TO: Mandan Public School District

CITIZEN'S REQUEST FOR OPINION

Karen Jordan requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether Harlow's School Bus Service violated N.D.C.C. § 44-04-18 by refusing to release school bus routes associated with their contract with the Mandan Public School District.

FACTS PRESENTED

Harlow's School Bus Service (Harlow's) is a private corporation hired by the Mandan Public School District (District) to provide student transportation services, specifically busing students to and from school.¹ Harlow's provided the contract between it and the District to this office.² Harlow's handles the majority of the busing for the District, which listed on its website that it transports nearly 1,800 students over twenty-five routes each day.³ The District pays Harlow's a fair market value to handle a majority of the transportation services.⁴

On May 18, 2022, Karen Jordan submitted a request through Harlow's website stating, "I request a copy of all school bus routes for the school buses that use 3rd St NW in Mandan between Collins Ave and 6th Ave NW."⁵ According to Ms. Jordan, Harlow's replied on May 18, stating, "We cannot share route information as it contains the address, name and drop off locations of students

¹ Letter from KrisAnn Norby-Jahner, Att'y, Vogel Law Firm, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (July 29, 2022).

² *Id.* Appendix A.

³ Mandan Public Schools, <https://www.mandan.k12.nd.us/en-US/transportation-9c75db0f> (last accessed Sept. 9, 2025).

⁴ Letter from KrisAnn Norby-Jahner, Att'y, Vogel Law Firm, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (July 29, 2022). *See* VALUE, Black's Law Dictionary (12th ed. 2024) "fair market value (18c) The price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction; the point at which supply and demand intersect." *See also*, N.D.A.G. 98-F-19 ("Thus, if a competitive bid or proposal process was used to award the contract and establish the reimbursement rates, the rates resulting from that process could be presumed to be 'fair market value.'").

⁵ Letter from Karen Jordan, to Drew Wrigley, Att'y Gen., Off. of Att'y Gen. (June 9, 2022).

that attend Mandan Public Schools.”⁶ Later on May 18, Harlow’s, again replied to the email that afternoon stating:

Harlow’s School Bus Service, Inc. is not a State or Federal entity. Asking to comply with Sec. 44-04-18 in this state’s Century Code has no bearing. We do however try to assist in any way possible to public or parent requests as it pertains to their children or safety concerns. *If you are looking for route detail, your request would need to go to the school district as we will not give that information out.*⁷

On May 19, 2022, Ms. Jordan then sent a follow up email to Harlow’s Vice President Jacob Iverson asking for an explanation of the denial. An automatic “out of office” reply was immediately sent back to her.⁸ A final email was sent from Ms. Jordan to Mr. Iverson on May 26th. Ms. Jordan received no response to this email.⁹ On June 9, 2022, Ms. Jordan wrote this office requesting an Attorney General opinion.¹⁰

ISSUE

Whether Harlow’s violated the open records laws by not providing the records requested.

ANALYSIS

Unless otherwise specifically provided by law, records of public entities are open to the public.¹¹ A school district is a public entity,¹² but a private business contracting with a school district is not necessarily a public entity. Because the public records law applies only to public entities, the threshold issue is whether - in this instance - Harlow’s is a public entity as defined under the law. “Public entity” is defined in N.D.C.C. § 44-04-17.1(13). In addition to public or governmental bodies, boards, bureaus, commissioners or agencies of the state or political subdivisions of the state, a public entity includes “[o]rganizations or agencies supported in whole or in part by public funds, or expending public funds.”¹³ The law defines an “organization or agency supported in whole or in part by public funds” as:

an organization or agency in any form which has received public funds *exceeding the fair market value* of any goods or services given in exchange for the public funds, whether

⁶ *Id.*

⁷ Email from Ken Bischof, Dir. of Operations, Harlow’s Sch. Bus Serv., to Karen Jordan (May 18, 2022, 2:57 PM). Emphasis added.

⁸ Letter from Karen Jordan, to Drew Wrigley, Att’y Gen., Off. of Att’y Gen. (June 9, 2022).

⁹ *Id.*

¹⁰ *Id.*

¹¹ N.D.C.C. § 44-04-18(1).

¹² N.D.C.C. § 44-04-17.1(11), (13).

¹³ NDCC 44-04-17.1(13)(c).

through grants, membership dues, fees, or any other payment. An exchange must be conclusively presumed to be for fair market value, and does not constitute support by public funds, when an organization or agency receives a benefit under any authorized economic development program.”¹⁴

Although the District uses public funds to pay Harlow’s, it pays fair market value for the services provided.¹⁵ Therefore, the organization is not supported by public funds for purposes of open records law and is not a “public entity.”¹⁶

Of course, even a private entity may be in possession of a record subject to the open records law because the definition of “records” includes “recorded information of any kind . . . which is in the possession of custody of a public entity or its agent”¹⁷ In *Forum Publ’g Co. v. City of Fargo*, the North Dakota Supreme Court said “[w]e do not believe the open-record law can be circumvented by the delegation of a public duty to a third party, and these documents are not any less a public record simply because they were in the possession of [an independent contractor].”¹⁸ If a public entity’s agent is a private entity, it is ultimately the public entity’s responsibility to produce public records in the agent’s possession.¹⁹

When Harlow’s received Ms. Jordan’s request, it responded on May 18, 2022, by telling her that they could not release the records that contain student information and also “[i]f you are looking for route detail, your request would need to go to the school district as we will not give that information out.”²⁰ Ms. Jordan evidently did not ask the District for the records. Because Harlow’s is not a public entity and Harlow’s directed Ms. Jordan to the public entity that has responsibility for complying with the open records law for these records, there was no violation of the open records law.

¹⁴ N.D.C.C. 44-04-17.1(10) emphasis added. *See also*, N.D.A.G. 98-O-23 (“An organization is not supported by public funds, under the statutory definition in N.D.C.C. § 44-04-17.1(9), if the funds the organization has received were provided in exchange for goods or services having an equivalent fair market value”).

¹⁵ *See* N.D.A.G. 2004-O-14 (finding a fair market value exchange for services did not constitute “support” for the purposes of open records laws). *See also*, N.D.A.G. 98-F-19 (“[t]hus, if a competitive bid or proposal process was used to award the contract and establish the reimbursement rates, the rates resulting from that process could be presumed to be ‘fair market value.’”).

¹⁶ N.D.A.G. 98-F-14; N.D.A.G. 2004-O-14.

¹⁷ N.D.C.C. 44-04-17.1(16).

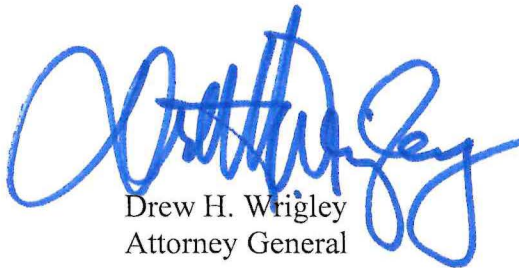
¹⁸ 391 N.W.2d 169, 172 (N.D. 1986).

¹⁹ *See* N.D.A.G. 2015-O-14 (finding a violation of the open records laws when failing to produce a record in the possession of its agent).

²⁰ Email from Ken Bischof, Dir. of Operations, Harlow’s Sch. Bus Serv., to Karen Jordan, (May 18, 2022, 2:57 PM).

CONCLUSION

It is my opinion that Harlow's provides services to the District at fair market value and is therefore not a public entity as defined under N.D.C.C. § 44-04-17.1(13). The District records in the possession of Harlow's may be subject to the open records law, but it is the ultimate responsibility of the District to provide a response. Despite being informed of this, the requester failed to request the records from the District.²¹



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Attorney General

MEO

cc: Karen Jordan

²¹ Because I have determined that Harlow's is not a public entity and the requester did not request the records from the District, it is unnecessary to address in this opinion whether the requested records are subject to the open records law.