



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-15

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ISSUED TO: Cass County Sheriff's Office

CITIZEN'S REQUEST FOR OPINION

Benjamin Longlet requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Cass County Sheriff's Office violated N.D.C.C. § 44-04-18 by asking him to identify himself as the individual who submitted an anonymous open records request.

FACTS PRESENTED

On September 22, 2022, a request for records was submitted to the Cass County Human Resource Office (Human Resource Office).¹ The Cass County Sheriff's Office (Sheriff's Office) learned about the records request the following day.² According to the Sheriff's Office, "someone identifying as a freelance writer with a group called CODE 4 MEDIA requested all exit interviews, and all files from the Cass County Sheriff's Office of Professional Standards (OPS) for the last 12 months."³ The requester indicated all documents could be sent to a specific email address.⁴ After receiving the request, the Sheriff's Office began communicating with the Human Resource Office to start processing the request.⁵

On September 26, 2022, CODE 4 MEDIA submitted a revised request to the Human Resource Office, seeking "ALL exit interviews from past employees of the Sheriff's office, along with ALL OPS files from the time Sheriff Jahner took office in 2019."⁶

On September 30, 2022, the Sheriff's Office sent an estimate of the costs to CODE 4 MEDIA at the email address provided in its initial request.⁷ The cost estimate included the estimated time it

¹ Letter from Joel Stading, Captain, Cass. Cnty. Sheriff's Off., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Jan. 17, 2023).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

would take to search for the records and the estimated time needed for any redactions.⁸ Additionally, the estimate included payment instructions and specified the time by which payment had to be received in order for any work on the request to begin.⁹

On October 3, 2022, the Sheriff's Office received an email from a news reporter stating, "her agency, along with several other media outlets received documents from CODE 4 MEDIA which included some information from [the Sheriff's Office's] OPS file 2021-004."¹⁰ According to the Sheriff's Office, this file concerned an investigation involving a deputy who received an intimate image from a supervisor.¹¹ In its response to this office, the Sheriff's Office stated that OPS file 2021-004 had not been released through any open records request. Although CODE 4 MEDIA had requested the file, that request had not been fulfilled at the time CODE 4 MEDIA shared the information with various media outlets.¹² According to the Sheriff's Office, CODE 4 MEDIA made several negative comments to the news media about the 2021 investigation and the way it was conducted.¹³ In the days that followed, the Sheriff's Office was contacted by multiple media outlets seeking additional information.¹⁴ During one of those conversations, a news reporter informed the Sheriff's Office that members of CODE 4 MEDIA were identifying themselves as current and former deputies or employees of the Sheriff's Office.¹⁵

Because the Sheriff's Office was informed that current employees were identifying themselves as members of CODE 4 MEDIA and that possible policy violations might have occurred, it conducted a search of publicly available information related to the email address provided by CODE 4 MEDIA in its records request.¹⁶ The search revealed the name "BENJI L" was associated with the email address.¹⁷ Additional information showed that a current Cass County Reserve Deputy, identified as Benjamin Longlet, had previously used "BENJI L" as a nickname in the past.¹⁸ Based on this information, the Sheriff's Office opened an OPS inquiry investigation into Mr. Longlet.¹⁹

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

On October 14, 2022, the Sheriff's Office interviewed Mr. Longlet as part of the OPS investigation.²⁰ Prior to the interview, a "Garrity Notice" was read and signed by Mr. Longlet.²¹ During the interview, the Sheriff's Office asked Mr. Longlet whether he was a part of CODE 4 MEDIA.²² Mr. Longlet admitted to being a part of CODE 4 MEDIA and submitting the records request.²³ The Sheriff's Office contends the purpose of the interview was to investigate the potential policy violations and not because of the records request. The Sheriff's Office acknowledges the records request was still active at the time of Mr. Longlet's interview.²⁴

ISSUE

Whether the Cass County Sheriff's Office violated N.D.C.C. § 44-04-18 by inquiring into Mr. Longlet's identity as the individual behind an anonymous records request, during a separate internal investigation into potential policy violations.

ANALYSIS

"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."²⁵ All persons have a right to inspect records regardless of the purpose of the request or the requester's identity.²⁶ "A public entity . . . may not ask for the motive or reason for requesting the records or for the identity of the person requesting public records."²⁷ "Requiring such information may be a deterrent to someone who requests access to public records."²⁸

²⁰ *Id.*

²¹ Recording: Interview of Benjamin Longlet by Joel Stading, Captain, Cass. Cnty. Sheriff's Off. (Oct. 14, 2022) from approximately 0:38 to 1:02. A Garrity Notice is a legal advisement given to public employees, including law enforcement offices, informing them of their rights under the *Garrity v. New Jersey* Supreme Court decision which held public employees cannot be compelled, under threat of job loss, to make self-incriminating statements, and that such compelled statements are inadmissible in criminal proceedings. *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967).

²² Recording: Interview of Benjamin Longlet by Joel Stading, Captain, Cass. Cnty. Sheriff's Off. (Oct. 14, 2022) from approximately 4:42 to 14:43.

²³ *Id.* from approximately 8:57 to 8:59.

²⁴ Letter from Joel Stading, Captain, Cass. Cnty. Sheriff's Off., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Jan. 17, 2023).

²⁵ N.D.C.C. § 44-04-18(1); *see also* N.D. Const. art. XI, § 6.

²⁶ N.D.A.G. 2009-O-02, *citing* N.D.A.G. 2006-O-15, N.D.A.G. 2005-O-12, N.D.A.G. 98-F-13.

²⁷ N.D.C.C. § 44-04-18(2).

²⁸ N.D.A.G. 2009-O-02 (quoting 2006-O-15).

Here, the Sheriff's Office initially received a request for records from a group identifying itself as CODE 4 MEDIA.²⁹ In response, the Sheriff's Office provided a cost estimate without requiring the group to disclose its identity or its reason for the request.³⁰ The subsequent investigation was prompted by a third-party news reporter informing the Sheriff's Office that individuals associated with CODE 4 MEDIA were claiming to be current and former employees, and by the Sheriff's Office discovery that CODE 4 MEDIA had shared information from OPS file 2021-004 with multiple media outlets despite the file not being released through an open records request.³¹ These circumstances led the Sheriff's Office to initiate an internal investigation into potential policy violations.³² As part of the internal investigation, the Sheriff's office used publicly available information to identify Benjamin Longlet, a reserve deputy as the individual who likely was behind the CODE 4 MEDIA.³³ The Sheriff's Office maintains that Mr. Longlet's interview was undertaken solely in the context of investigating potential policy violations and "had nothing to do with CODE 4 MEDIA'S open records request."³⁴

In fact, the Sheriff's Office had already issued a cost estimate and provided payment instructions to CODE 4 MEDIA prior to the interview. While the records request remained active at the time of the interview, the Sheriff's Office was awaiting payment before fulfilling the request. Nothing in the record suggests that the interview interfered with, delayed, or otherwise impacted the processing of the records request, nor that the Sheriff's Office conditioned access to records based on the requester's identity or motives.³⁵

Although section 44-04-18 prohibits public entities from asking for the identity of a requester as part of fulfilling a public records request,³⁶ the statute does not prevent a public entity from conducting a legitimate internal investigation into potential misconduct by a sworn law enforcement officer. The Sheriff's Office handled CODE 4 MEDIA's records request in full compliance with N.D.C.C. § 44-04-18, and at no point during the open records process did the Office request or require the identity of the requester. The inquiry into Mr. Longlet's identity arose separately, based on third-party information and legitimate concerns about internal policy violations. Accordingly, under these circumstances, the Sheriff's Office did not violate N.D.C.C. § 44-04-18, and their actions were consistent with North Dakota law.

²⁹ Letter from Joel Stading, Captain, Cass. Cnty. Sheriff's Off., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Jan. 17, 2023).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

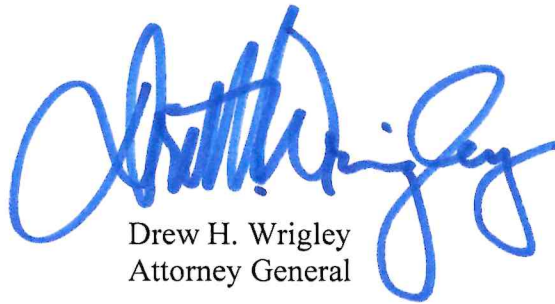
³⁴ *Id.*

³⁵ N.D.A.G. 2009-O-02 (finding a violation of the open records law where access to records was conditioned on the requester's identity or employer); N.D.A.G. 2008-O-19 (finding a violation where access was conditioned on requester's out-of-state status and attorney licensure).

³⁶ N.D.C.C. § 44-04-18(2).

CONCLUSION

The Sheriff's Office did not violate N.D.C.C. § 44-04-18 because any questions regarding Mr. Longlet's identity arose during a separate internal investigation and were not related to the open records request process.



Drew H. Wrigley
Attorney General

AMR/mjh

cc: Benjamin Longlet