



STATE OF NORTH DAKOTA  
**OFFICE OF ATTORNEY GENERAL**

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ATTORNEY GENERAL

**OPEN RECORDS AND MEETINGS OPINION**  
**2025-O-17**

DATE ISSUED: December 5, 2025

ISSUED TO: City of Parshall

**CITIZEN'S REQUEST FOR OPINION**

Jeff McDougald requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the City of Parshall violated N.D.C.C. § 44-04-18 by charging a fee and requiring payment prior to providing requested records, by unreasonably delaying without providing a denial or reason for not providing records, and by improperly denying requested records.

**FACTS PRESENTED**

On June 24, 2022, the City of Parshall (City), received a request for records from “j d”<sup>1</sup>, asking for:

1. Copies of the services bill (water, sewer, garbage) from 11/1/2020 through 6/24/2022, for 306 1<sup>st</sup> St. NW/McDougald.
2. Record of any and all cost increases in the same time period of above mentioned services.
3. Record of actual cost that Circle Sanitation charges City of Parshall per month for each residential garbage tote or bin in use (garbage removal svc.).
4. Minimum cost of water service and how many gallons that provides.
5. Cost of additional water used, that is over the minimum water cost (if applicable).<sup>2</sup>

Mr. McDougald also requested information “on how [he] can access reading the meter for water usage at [his] address.”<sup>3</sup> The City informed Mr. McDougald on July 5, 2022, that the information was ready to be mailed to him and attached an invoice for the charges incurred for the copies and postage.<sup>4</sup> The City explained that the records would be mailed to him once he paid the fees.<sup>5</sup> The

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<sup>1</sup> Jeff McDougald’s email address is “j d” - when referencing his email correspondence with the City of Parshall and this office, “j d” means Mr. McDougald.

<sup>2</sup> Email from “j d” to Kelly Woessner, City Auditor, City of Parshall (June 24, 2022, 7:40 AM).

<sup>3</sup> *Id.*

<sup>4</sup> Email from Kelly Woessner, City Auditor, City of Parshall, to “j d” (July 5, 2022, 12:47 PM).

<sup>5</sup> *Id.*

total cost for the copies was \$5.25 for 21 pages of copies at 25 cents per page and postage in the amount of \$14.76 for a total invoice of \$20.01.<sup>6</sup>

Mr. McDougald contested the cost of the copies and postage and responded to the City stating that he did not want paper copies, but instead wanted the records provided via email.<sup>7</sup> On September 19, 2023, Mr. McDougald picked up the responsive records in person after paying \$5.25 for the cost of copying the records. There was no charge for postage.<sup>8</sup>

On May 2, 2023, the City received another email from Mr. McDougald requesting “every water bill for every water account in the [C]ity of Parshall for the dates of January 1, 2022, thru December 31, 2022.”<sup>9</sup> Upon advice of the City’s attorney, the City did not release the requested records based on concerns that providing the records would release confidential information.<sup>10</sup> It is unclear from the response provided by the City whether the denial, and the reasoning behind it, were communicated to Mr. McDougald.<sup>11</sup>

On August 9, 2023, Mr. McDougald hand delivered a request for records to the City:

1. Rules & regulations of getting on the agenda to speak at city council meetings. Include dates time & place of meetings for 2023.
2. Regular business hours of Parshall City Hall.
3. Record of denial of water service to 11 2<sup>nd</sup> St S.E. Parshall. Include all forms of records: e.g. phone, verbal, written pertaining to the city’s denial & or refusal.
4. Contact information for all city council members & the mayor of Parshall including phone numbers & email address.<sup>12</sup>

Mr. McDougald informed this office that he submitted an additional handwritten request on August 16, 2023, for an update on his August 9, 2023, records request asking the City to provide him an email “stating the reason for the city not giving me the information, as required by law.”<sup>13</sup> In their response to this office, the City replied that they did not receive a request on August 16, 2023, but explained that the records were already given to him and he has an outstanding bill for

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<sup>6</sup> Invoice #0103, City of Parshall (Jul. 5, 2022).

<sup>7</sup> Email from “j d” to Kelly Woessner, City Auditor, City of Parshall (Jul. 7, 2022, 6:25 PM).

<sup>8</sup> Letter from Kelly Woessner, City Auditor, City of Parshall, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Feb. 29, 2024).

<sup>9</sup> Email from “j d” to Kelly Woessner, City Auditor, City of Parshall (May 2, 2023, 7:37 AM).

<sup>10</sup> Letter from Kelly Woessner, City Auditor, City of Parshall, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Feb. 29, 2024).

<sup>11</sup> *Id.*

<sup>12</sup> Letter from Jeff McDougald to City of Parshall, (Aug. 9, 2023). Mr. McDougald also specified that he wanted all responses sent to his email account – toefishing@hotmail.com.

<sup>13</sup> Letter from Jeff McDougald to City of Parshall (Aug. 16, 2023).

those records.<sup>14</sup> The City further explained that Mr. McDougald was provided with paper copies of the records in response to his August 9, 2023, request numbers 1, 2, and 4 free of charge on September 21, 2023. The City did not have a “denial” to provide to Mr. McDougald in response to his request number 3 for documentation relating to his denial of water service, but they did send him an invoice for \$1,876.00 for water he received through the City water supply but without permission.

### ISSUES

1. Whether the City violated N.D.C.C. § 44-04-18 by charging unreasonable fees and requiring payment prior to providing records in response to Mr. McDougald’s June 24, 2022, request.
2. Whether the City violated N.D.C.C. § 44-04-18 by not providing a denial or reason for not providing records that may contain confidential or exempt information in response to Mr. McDougald’s May 2, 2023, request.
3. Whether the City violated N.D.C.C. § 44-04-18 by not providing the legal authority for the denial of records in response to Mr. McDougald’s August 9, 2023, request.

### ANALYSIS

#### Issue One

“A public entity may charge up to twenty-five cents per impression of a paper copy.”<sup>15</sup> “The entity may charge for the actual cost of postage to mail a copy of a record.”<sup>16</sup> “This section is violated . . . when a fee is charged in excess of the amount authorized in subsections 2 and 3.”<sup>17</sup>

When providing records under N.D.C.C. § 44-04-18, the public entity is allowed to charge a ‘reasonable fee’ and obtain payment of the fee in advance . . . . The definition of ‘reasonable fee’ limits a public entity to charging no more than the actual cost of making the copies, including labor, materials, and equipment.<sup>18</sup>

In response to the June 24, 2022, request, the City provided a copy of the invoice that listed the itemized cost to provide the responsive records, detailing twenty-one (21) pages of records, at a

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<sup>14</sup> Letter from Kelly Woessner, City Auditor, City of Parshall, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Feb. 29, 2024).

<sup>15</sup> N.D.C.C. § 44-04-18(2).

<sup>16</sup> *Id.*

<sup>17</sup> N.D.C.C. § 44-04-18(8).

<sup>18</sup> N.D.A.G. 2004-O-20, *citing* N.D.C.C. § 44-04-18(2); N.D.A.G. 98-O-22.

cost of twenty-five cents (.25) per copy, for a total of \$5.25.<sup>19</sup> The invoice also detailed postage in the amount of \$14.76, for sending the records by certified mail, restricted delivery, and return receipt.<sup>20</sup> There was no charge for the time spent locating and compiling the records although open records law permits these charges.<sup>21</sup>

In a past opinion of this office, when a requester did not specify whether he wanted electronic or paper copies of records, this office concluded that, “[w]ithout a specific request that electronic records be provided in electronic format at the time of the request, it was not unreasonable to provide paper [copies].”<sup>22</sup> Here, Mr. McDougald requested copies of records without specifying that he wanted electronic copies, so the fulfillment of the request with paper copies is reasonable.

The law also allows a public entity to require payment before locating, redacting, making, or mailing the copy.<sup>23</sup> This office has previously stated that “[a]n entity may require payment before making or mailing the copy.”<sup>24</sup> Here, the City supplied Mr. McDougald with an invoice for reasonable charges to fulfill his request. In accord with previous decisions of this office, it is my opinion that the City did not violate the open records law when they provided and billed for paper copies and required the payment before delivering the records to Mr. McDougald.

#### Issue Two

“[I]f confidential or closed information is contained in an open record, a public entity shall permit inspection and receipt of copies of the information contained in the record that is not confidential or closed, but shall delete, excise, or otherwise withhold the confidential or closed information.”<sup>25</sup> “In determining whether some of the information requested is exempt or confidential, [the City] should keep in mind that a public entity may not deny a request for an open record because the record also contains exempt or confidential information.”<sup>26</sup> “Rather, the entity is required to redact

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<sup>19</sup> Invoice #0103, City of Parshall (Jul. 5, 2022).

<sup>20</sup> *Id.* The City and Mr. McDougald have an extensive history of records requests, and given that history, using certified mail to deliver the records was reasonable to ensure Mr. McDougald received them, but this method should not be used to punish or deter requesters. *See* N.D.A.G. 2004-O-20 (“The fee for making copies should not be raised to punish or deter certain requesters.”).

<sup>21</sup> Letter from Kelly Woessner, City Auditor, City of Parshall, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Oct. 3, 2022).

<sup>22</sup> N.D.A.G. 2016-O-20.

<sup>23</sup> N.D.C.C. § 44-04-18(2).

<sup>24</sup> N.D.A.G. 2016-O-20, *citing* N.D.C.C. § 44-04-18(2) (“Without a specific request that the electronic records be provided in electronic format at the time of the request, it was not unreasonable for the auditor to provide paper records.”).

<sup>25</sup> N.D.C.C. § 44-04-18.10(2).

<sup>26</sup> N.D.A.G. 2005-O-06, *citing* N.D.C.C. § 44-04-18.10(1).

or excise the exempt or confidential information and disclose the rest of the record.”<sup>27</sup> Although the “water accounts” requested on May 2, 2023, may contain confidential information, this does not shield the remainder of the records from being open to the public. A “public entity may not deny a request . . . on the ground that the record also contains confidential information.”<sup>28</sup> It is my opinion that the City violated the open records law by refusing to release records because they may contain confidential information, when the records can be redacted and provided in accordance with North Dakota’s open records provisions.

### Issue Three

“A denial of a request for records made under [N.D.C.C. § 44-04-18] must describe the legal authority for the denial, or a statement that the record does not exist, and must be in writing if requested.”<sup>29</sup>

When a public entity denies a request for records, it must describe the legal authority for the denial. While a denial need not cite the specific statute that provides the basis for the exemption, the legal reason for the denial must be described. A denial of an open record request must indicate the entity’s specific authority for denying the requested record.<sup>30</sup>

Here, the City provided the four records Mr. McDougald requested on August 9, 2023. Although he did not receive a record called a “denial” of his request for a record of the City’s denial of water service to his property, he did receive an invoice for back water fees owed to the City. The invoice fulfilled his request for a record that explained why the City was denying his water service.

### CONCLUSIONS

1. The City did not violate N.D.C.C. § 44-04-18 by charging a reasonable fee and requiring payment prior to providing records in response to Mr. McDougald’s June 24, 2022, request.
2. The City violated N.D.C.C. § 44-04-18 by refusing to provide records because they may contain confidential information in response to Mr. McDougald’s May 2, 2023, request, when those records were able to be redacted.
3. The City did not violate N.D.C.C. § 44-04-18 because it provided the records requested by Mr. McDougald in response to his August 9, 2023, request.

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<sup>27</sup> N.D.A.G. 2005-O-06, *citing* N.D.C.C. § 44-04-18.10(2); N.D.A.G. 2004-O-23; N.D.A.G. 98-O-22.

<sup>28</sup> N.D.C.C. § 44-04-18.10(1).

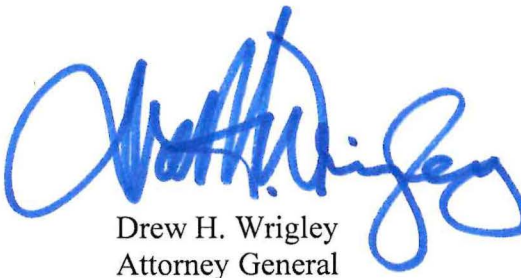
<sup>29</sup> N.D.C.C. § 44-04-18(7).

<sup>30</sup> N.D.A.G. 2022-O-01, *citing* N.D.C.C. § 44-04-18(7); N.D.A.G. 2004-O-11; N.D.A.G. 97-O-01; and N.D.A.G. 2015-O-17.

STEPS NEEDED TO REMEDY VIOLATION

The City must provide Mr. McDougald with copies of the “water accounts” after they have redacted any confidential or exempt information contained in the “water accounts.” The City must give Mr. McDougald one additional hour free of charge for redacting any confidential information from the records.

While I have every reason to expect that the City will remedy this situation in compliance with this opinion, failure to take the corrective measures described in this opinion within seven days of the date here 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.<sup>31</sup> Failure to take these corrective measures may also result in personal liability for the person or persons responsible for the noncompliance.<sup>32</sup>



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Attorney General

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cc: “j d” (via email only)  
D Humphrey (via email only)

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<sup>31</sup> N.D.C.C. § 44-04-21.1(2).

<sup>32</sup> *Id.*