



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

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**OPEN RECORDS AND MEETINGS OPINION**  
**2025-O-18**

DATE ISSUED: December 5, 2025

ISSUED TO: Williston Council for the Aging, Inc.

**CITIZEN'S REQUEST FOR OPINION**

Edward Ennis requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Williston Council for the Aging, Inc. violated the open meetings and open records laws by failing to notice meetings, failing to provide personal notice of meetings, and failing or refusing to provide requested records.

**FACTS PRESENTED**

The Williston Council for the Aging, Inc. (Council) is a private nonprofit corporation that provides a variety of services to individuals aged 60 or older in the Williston area, such as meal programs, transportation, outreach, and social activities.<sup>1</sup> The Council has a board of directors, an executive director, and four other staff members.<sup>2</sup> The Council receives funding from the following sources:

- 20% from federal programs such as Title III Aging Services and the Department of Transportation;
- 34% from state programs under the same titles;
- 27% from county mill levies in McKenzie, Williams, and Divide Counties;
- 1% from the City of Williston through the Star Fund grant opportunity;
- 2% from grants and foundations, including the United Way;
- 12% from private donations; and
- 4% from fees charged to patrons.<sup>3</sup>

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<sup>1</sup> *About the Williston Council for the Aging*, WILLISTON COUNCIL FOR THE AGING, <https://www.willistonseniors.org/about-us> (last visited Nov. 7, 2025).

<sup>2</sup> *Id.*

<sup>3</sup> Email from Ashlee Torgerson, Exec. Dir., Williston Council for the Aging Inc., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Jan. 5, 2023, 4:34 PM); Email from Ashlee Torgerson, Exec. Dir., Williston Council for the Aging, Inc., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Feb. 21, 2025, 2:25 PM).

According to the Council, it uses the county mill levies for operational expenses, including congregate and home-delivered meals, transportation services, and building maintenance.<sup>4</sup>

The Council claims it holds regular board meetings the third Monday of each month at the Williston Senior Center.<sup>5</sup> According to the Council, the only meetings held between September and November 2022 were its regular meetings on October 17 and November 21.<sup>6</sup> The Council denies holding any other meetings during that time.<sup>7</sup>

Between September and November 2022, Mr. Ennis made several requests to the Council for records, including documents related to the term expiration of Board President Darlene Benth. The Council states that it provided its bylaws and certain meeting minutes during this period. Mr. Ennis claims he was denied records specifically related to board elections and director term limits.

### ISSUES

1. Whether the Council is a “public entity” subject to North Dakota’s open meetings and open records laws.
2. Whether the Council violated N.D.C.C. § 44-04-20 by failing to give public notice of its meetings.
3. Whether the Council violated N.D.C.C. § 44-04-20 by failing to provide notice of its meetings to individuals who requested to receive notice.
4. Whether the Council violated N.D.C.C. § 44-04-18 by failing to provide copies of records.

### ANALYSIS

#### Issue One

The definition of “public entity” includes “[o]rganizations or agencies supported in whole or in part by public funds, or expending public funds.”<sup>8</sup> Thus, a nongovernmental organization, even if formed as a private non-profit corporation, may be a “public entity” if it is supported by public

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<sup>4</sup> Email from Ashlee Torgerson, Exec. Dir., Williston Council for the Aging Inc., to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Feb. 21, 2025, 2:25 PM).

<sup>5</sup> Email from Ashlee Torgerson, Exec. Dir., Williston Council for the Aging Inc., to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Jan. 5, 2023, 4:34 PM).

<sup>6</sup> Email from Ashlee Torgerson, Exec. Dir., Williston Council for the Aging Inc., to, Melissa J. Hamilton, Paralegal, Off. of Att’y Gen. (July 31, 2025, 2:24 PM).

<sup>7</sup> Email from Ashlee Torgerson, Exec. Dir., Williston Council for the Aging Inc., to Melissa J. Hamilton, Paralegal, Off. of Att’y Gen. (Aug. 8, 2025, 10:11 AM).

<sup>8</sup> N.D.C.C. § 44-04-17.1(13)(c).

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funds or expends public funds.<sup>9</sup> “Public funds” are defined as, “cash and other assets with more than minimal value received from the state or any political subdivision of the state.”<sup>10</sup> An organization is supported in whole or in part by public funds when it “receive[s] public funds exceeding the fair market value of any goods or services given in exchange for the public funds, whether through grants, membership dues, fees, or any other payment.”<sup>11</sup>

The Council receives approximately 27% of its total funding from county mill levies, specifically from McKenzie, Williams, and Divide Counties.<sup>12</sup> These counties levy taxes under N.D.C.C. § 57-15-56 to support senior services and centers.<sup>13</sup> To receive these funds, an organization must be incorporated as a nonprofit corporation and annually report its financial resources, budget, and intended use of the mill levy funds.<sup>14</sup>

The facts here are closely analogous to a 2003 opinion of this office, in which a senior center received county mill levy funds under N.D.C.C. § 57-15-56 and used them for transportation, meals, outreach, and maintenance.<sup>15</sup> This office concluded the organization was “supported by public funds” because there was “no specific contract with the county for specific services to be provided in exchange for the mill levy money.”<sup>16</sup>

While the Council asserts that it does not have “control” over the mill levy funds and that the counties reimburse allowable expenses under a contract, this does not change the nature of the support. Under N.D.C.C. § 44-04-17.1(9), an organization is “supported by public funds” when it “receive[s] public funds exceeding the fair market value of any goods or services” provided in return.<sup>17</sup> The mill levy funds are required by statute to be used for senior citizen services and programs under N.D.C.C. § 57-15-56, and the Council must submit an annual budget showing how the funds will be spent.<sup>18</sup> Limiting the purposes for which the funds may be spent does not create a contractual exchange of goods or services between the Council and the counties.

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<sup>9</sup> *Id.*

<sup>10</sup> N.D.C.C. § 44-04-17.1(14).

<sup>11</sup> N.D.C.C. § 44-04-17.1(10).

<sup>12</sup> In addition to the county mill levies, the Council receives funds from federal and state programs, such as Title III Aging Services grants, the United Way grant, and State Aid for Public Transportation through the North Dakota Department of Transportation, as well as donations. Consistent with N.D.A.G. 2002-O-09, these sources do not constitute “public funds” if received under reimbursement contracts for identified services of equivalent fair market value. However, the 27% received from mill levies alone is sufficient to determine that the Council is supported by public funds, regardless of whether these additional public sources are considered.

<sup>13</sup> N.D.C.C. § 57-15-56(1).

<sup>14</sup> N.D.C.C. § 57-15-56(2).

<sup>15</sup> N.D.A.G. 2003-O-02.

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

<sup>17</sup> N.D.C.C. § 44-04-17.1(10).

<sup>18</sup> N.D.C.C. § 57-15-56(1)-(2).

A portion of the funds support direct services such as congregate and home-delivered meals; however, these services benefit senior participants rather than the counties. The counties do not receive goods or services of equal value in return. The Council primarily uses the mill levy funds for operational expenses such as utilities, building maintenance, and supplies, further demonstrating that the funds function primarily as general financial support for the Council's operations rather than a direct exchange for specific services of equal value.<sup>19</sup> Consistent with prior opinions of this office, including the 2003 opinion involving a similar senior center, the Council's receipt and expenditure of mill levy funds without a specific contractual obligation to deliver specific services constitutes support by public funds.<sup>20</sup> Accordingly, the Council is supported by public funds and is therefore a public entity subject to North Dakota's open records laws.

## Issue Two

At issue is whether the Council violated N.D.C.C. § 44-04-20 by failing to provide public notice of its meetings.

Unless otherwise provided by law, public notice must be provided in advance of all meetings governed by the open meetings laws.<sup>21</sup> Mr. Ennis alleges that the Council held "secret meetings" between September 21, 2022, and November 21, 2022, to discuss Darlene Benth's term limit, and failed to provide public notice of these meetings.<sup>22</sup> The Council denies holding any secret meetings and states that it only held its regularly scheduled board meetings on October 17, 2022, and November 21, 2022, during that time.<sup>23</sup> Opinions must be based on the facts provided by the

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<sup>19</sup> According to the Council, of the \$166,450 in mill levy funds, \$43,000 is allocated to direct services (congregate and home-delivered meals), while \$123,450, which is over 70% of the total, is used for operational and maintenance expenses, including building rent, utilities, maintenance, office and kitchen supplies, and other general costs. This demonstrates that the bulk of the funds support general operations rather than specific, measurable services. *See* Email from Ashlee Torgerson, Exec. Dir., Williston Council for the Aging Inc., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Feb. 21, 2025, 2:25 PM).

<sup>20</sup> N.D.A.G. 2025-O-12 (finding a nongovernmental entity was a "public entity" to the extent it received and expended city sales tax funds, even though the funds were restricted to specific purposes, because the funds were not exchanged for goods or services of equivalent value); N.D.A.G. 2003-O-02.

<sup>21</sup> N.D.C.C. § 44-04-20(1).

<sup>22</sup> Email from Edward Ennis to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Feb. 16, 2023, 12:54 PM); Email from Edward Ennis to Alice Johnson, Paralegal, Off. of Att'y Gen. (Dec. 9, 2022, 10:19 AM).

<sup>23</sup> Email from Ashlee Torgerson, Exec. Dir., Williston Council for the Aging, Inc., to Melissa J. Hamilton, Paralegal, Off. of Att'y Gen. (Jul 31, 2025, 2:24 PM); Email from Ashlee Torgerson, Exec. Dir., Williston Council for the Aging Inc., to Melissa J. Hamilton, Paralegal, Off. of Att'y Gen. (Aug. 8, 2025, 10:11 AM).

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public entity.<sup>24</sup> Accordingly, because this office is told that the Council held no secret meetings, the Council did not violate the open meetings law.

### Issue Three

At issue is whether the Council violated N.D.C.C. § 44-04-20 by failing to provide notice of its meetings to individuals who requested to receive notice.

A public entity must provide notice of meetings in substantial compliance with N.D.C.C. § 44-04-20, which includes giving the notice “to anyone requesting the information.”<sup>25</sup> Mr. Ennis claims he verbally requested to be notified of the Council’s meetings.<sup>26</sup> The Council states that neither Mr. Ennis or any other individual made a request for personal notice of upcoming meetings.<sup>27</sup> Again, this office must issue opinions based on the facts provided by the public entity.<sup>28</sup> Accordingly, in the absence of a notice request by Mr. Ennis, the Council did not have a legal duty to personally notify him of the meeting.

### Issue Four

At issue is whether the Council violated N.D.C.C. § 44-04-18 by failing to provide requested records.

“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.”<sup>29</sup> “However, records of entities that are subject to the open records law merely because they are in part supported by public funds are limited to the records pertaining to the use of public funds.”<sup>30</sup>

Mr. Ennis requested various records, including meeting minutes, bylaws, and documents related to the expiration of Board President Darlene Benth’s term.<sup>31</sup> The Council provided bylaws and

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<sup>24</sup> N.D.C.C. § 44-04-21.1(1).

<sup>25</sup> N.D.C.C. § 44-04-20(5).

<sup>26</sup> Letter from Edward Ennis to Off. of Att’y Gen. (Nov. 28, 2022).

<sup>27</sup> Email from Ashlee Torgerson, Exec. Dir., Williston Council for the Aging Inc., to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Jan. 5, 2023, 4:34 PM).

<sup>28</sup> N.D.C.C. § 44-04-21.1(1).

<sup>29</sup> N.D.C.C. § 44-04-18(1).

<sup>30</sup> N.D.A.G. 2024-O-06, *citing* N.D.A.G. 2006-O-04.

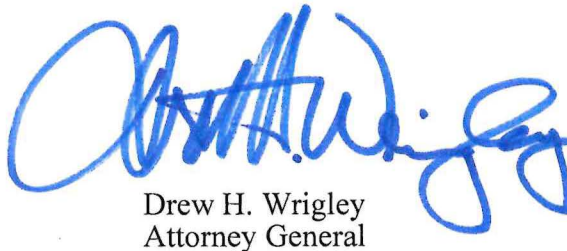
<sup>31</sup> Letter from Edward Ennis to Off. of Att’y Gen. (Nov. 28, 2022); Email from Edward Ennis to Alice Johnson, Paralegal, Off. of Att’y Gen. (Dec. 9, 2022, 10:19 AM).

several sets of meeting minutes to Mr. Ennis.<sup>32</sup> Mr. Ennis asserts the Council denied him access to additional records regarding board elections and term limits.<sup>33</sup>

Because the Council is a private nonprofit subject to the open records law only by virtue of receiving public funds, it is required to disclose only those records that relate to the receipt or expenditure of those funds.<sup>34</sup> Internal governance records, such as term limits or election procedures, do not pertain to the use of public funds and are not subject to disclosure. Accordingly, no violation of the open records law occurred under the facts as relayed to this office.

### CONCLUSION

1. The Council is a “public entity” subject to the open records and open meetings laws to the extent that it is supported by or expends public funds.
2. The Council did not hold any unscheduled or secret meetings, so it did not violate N.D.C.C. § 44-04-20 mandating notice.
3. The Council did not receive any requests for notice, so it did not violate N.D.C.C. § 44-04-20.
4. The Council did not violate N.D.C.C. § 44-04-18 by withholding records unrelated to the use of public funds.



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cc: Edward Ennis

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<sup>32</sup> Email from Ashlee Torgerson, Exec. Dir., Williston Council for the Aging Inc., to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Jan. 5, 2023, 4:34 PM). The Council acknowledges it needs to improve its records request process and plans to implement a tracking system with a sign-off sheet. While this office appreciates the Council’s attempt to improve its practices, North Dakota law does not require record requests to be made in writing or signed. A public entity may not condition access on signing a form or submitting a written request. *See* N.D.A.G. 2006-O-15; N.D.A.G. 2008-O-08, 2007-O-03, 2003-O-21.

<sup>33</sup> Email from Edward Ennis to Alice Johnson, Paralegal, Off. of Att’y Gen. (Dec. 9, 2022, 10:19 AM).

<sup>34</sup> N.D.A.G. 2024-O-06.