



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-23

DATE ISSUED: December 5, 2025

ISSUED TO: Retirement and Investment Office

CITIZEN'S REQUEST FOR OPINION

Masaki Ova, a reporter for the Jamestown Sun, requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Retirement and Investment Office (RIO) violated N.D.C.C. § 44-04-18 by failing to provide a record.

FACTS PRESENTED

On November 18, 2024, Mr. Ova requested the video of the State Investment Board (SIB)'s February 23, 2024, meeting.¹ Sarah Mudder, RIO's Communications and Outreach Director, responded to Mr. Ova's request the same day.² Ms. Mudder stated "[t]he recording is no longer available" and provided a link to the February 23, 2024, meeting minutes.³ Mr. Ova responded asking why the recording was no longer available.⁴ Ms. Mudder promptly responded explaining RIO's record retention schedule only requires retention of SIB's meeting recordings for six months.⁵

According to RIO, "SIB meeting recordings are retained by RIO for a period of six month to allow the agency's administrative staff time to complete meeting minutes. Meetings are

¹ Email from Masaki Ova, Rep., Jamestown Sun, to Sarah Mudder, Commc'n & Outreach Dir., Ret. & Inv. Off. (Nov. 18, 2024, 1:26 PM); Email from Masaki Ova, Rep., Jamestown Sun, to Office of Att'y Gen. (Dec. 17, 2024, 12:49 PM).

² Email from Sarah Mudder, Commc'n & Outreach Dir., Ret. Inv. Off., to Masaki Ova, Rep., Jamestown Sun (Nov. 18, 2024, 1:34 PM).

³ *Id.*

⁴ Email from Masaki Ova, Rep., Jamestown Sun, to Sarah Mudder, Commc'n & Outreach Dir., Ret. Inv. Off. (Nov. 18, 2024, 1:40 PM).

⁵ Email from Sarah Mudder, Commc'n & Outreach Dir., Ret. Inv. Off., to Masaki Ova, Rep., Jamestown Sun (Nov. 18, 2024, 1:51 PM). Ms. Mudder provided a screenshot of the record retention schedule to Mr. Ova. The schedule she provided is for "audio recordings of the open portion of the meetings of the State Investment Board and its committees." N.D. Info. Tech., 220109 – State Inv. Bd. Recordings Open, Ret. & Inv. Office – Inv. (1900 – 002) <https://apps.nd.gov/itd/recmgmt/rm/recSer/confirmMaintain/3919?divId=98&divSelected=false>.

conducted using Microsoft Teams and the recordings are saved to the cloud. When a request is received, if the recording is available, a link to the recording is provided.”⁶

In correspondence with this office, RIO provided a copy of its disposal log, titled “Board and Committee Recordings Disposal,” for Fiscal Year 2025 (July 1, 2024 through June 30, 2025) which shows the requested record had been deleted on October 15, 2024.⁷

ISSUE

Whether RIO violated the open records law by failing to provide a record.

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.”⁸ Upon a request for a copy of specific public records, a public entity shall furnish the requester one copy of the public records requested.⁹ The public entity must either provide or deny the record in a reasonable time.¹⁰ A public entity does not have to “create or compile a record that does not exist” and only has to search the records in its possession.¹¹ Any attorney general opinion issued under N.D.C.C. § 44-04-21.1 shall be based on the facts given by the public entity.¹²

RIO’s record retention schedule allows for deletion of SIB meeting recordings after six months. Mr. Ova’s request was made almost nine months from the date of the meeting. RIO promptly explained to Mr. Ova that it no longer had the meeting recording he requested. RIO had no duty to create records it had properly disposed of in accordance with its record retention schedule. The requested record was deleted in accordance with RIO record keeping policy and was, therefore, not in the possession of RIO. It is my opinion RIO properly responded to this request for records.

⁶ Letter from Jodi Smith, Interim Exec. Dir., Ret. Inv. Off., to Annique M. Lockard, Assistant Att’y Gen., Office of Att’y Gen. (Feb. 12, 2025).

⁷ *Id.*

⁸ N.D.C.C. § 44-04-18(1). *See also* N.D.A.G. 2013-O-18; 2011-O-10.

⁹ N.D.C.C. § 44-04-18(2). *See also* N.D.A.G. 2023-O-09; 2023-O-08; 2013-O-18; 2007-O-06.

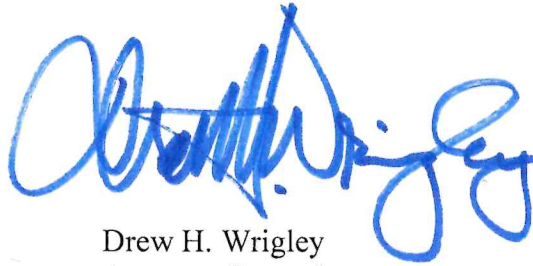
¹⁰ N.D.C.C. § 44-04-18. *See also* N.D.A.G. 2023-O-09; 2023-O-08.

¹¹ N.D.C.C. § 44-04-18(4). *See also* N.D.A.G. 2023-O-09; 2023-O-08; 2023-O-07.

¹² N.D.C.C. § 44-04-21.1(1). *See also* N.D.A.G. 2024-O-02; 2015-O-14; 2007-O-06.

CONCLUSION

RIO did not violate open records law when it was unable to provide a record that no longer exists.

A handwritten signature in blue ink, appearing to read "Drew H. Wrigley". The signature is stylized with large loops and a prominent "W".

Drew H. Wrigley
Attorney General

cc: Masaki Ova