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ATTORNEY GENERAL

OPEN RECORDS AND MEETINGS OPINION
2025-O-25

DATE ISSUED: December 23, 2025

ISSUED TO: McHenry County State's Attorney

CITIZEN'S REQUEST FOR OPINION

Dale Yost requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the McHenry County State's Attorney violated N.D.C.C. § 44-04-18 by denying a request for records pertaining to a criminal matter for which Mr. Yost was convicted and by failing to issue a denial for the records for almost nine months.

FACTS PRESENTED

On July 27, 2022, Dale Yost requested of the McHenry County State's Attorney Joshua Frey (Attorney Frey), various transcripts from interviews pertaining to the investigations into Mr. Yost's criminal proceedings, videos and photos of items confiscated as part of the investigations, and "[a]ll medical reports and/or records of the examination of sexual abuse" of five minor children.¹ On September 22, 2022, Mr. Yost wrote to this office that he had not received any documentation from Attorney Frey.² After having spoken with Attorney Frey via telephone, this office responded to Mr. Yost on October 28, 2022, indicating that it was this office's understanding that Attorney Frey would be providing a response to Mr. Yost's request.³ On November 18, 2022, Mr. Yost again notified this office that he had not yet received communication or the requested records from Attorney Frey.⁴ Follow-up letters dated December 14, 2022, and January 30, 2023, from Mr. Yost to this office indicated that he was still awaiting a response from Attorney Frey.⁵

¹ Letter from Dale G. Yost, Inmate # 39654, to Joshua E. Frey, State's Att'y, McHenry Cnty. State's Att'y's Off. (Jul. 27, 2022).

² Letter from Dale G. Yost, Inmate # 39654, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Sept. 22, 2022).

³ Letter from Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen., to Dale G. Yost, Inmate # 39654 (Oct. 28, 2022).

⁴ Letter from Dale G. Yost, Inmate # 39654, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Nov. 18, 2022).

⁵ Letter from Dale G. Yost, Inmate # 39654, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Dec. 14, 2022); Letter from Dale G. Yost, Inmate # 39654, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Jan. 30, 2023).

On February 14, 2023, this office contacted Attorney Frey to ask that he provide a summary and interpretation of Mr. Yost's requests for records to the McHenry County State's Attorney's office.⁶ On April 10, 2023, Attorney Frey responded to Mr. Yost's requests providing some of the requested records but denying others.⁷ Except for the records attached for Mr. Yost's review, the response indicated that "all documents in the State's possession have been previously provided to you through your attorneys in the related criminal case matters," and "all records in these [sic] office's possession related to your requests are active criminal investigation information and are confidential pursuant to N.D.C.C. § 44-04-18.7."⁸ Attorney Frey cited N.D.C.C. § 44-04-18.7 (regarding active criminal investigations), §§ 27-20.2-23 and 50-25.1-11 (relating to child protection matters and reports of child abuse or neglect), and § 12.1-35-03 (as containing confidential identifying information regarding child witnesses and victims of crimes) as the legal basis for denying the remainder of the requested records.⁹

ISSUES

1. Whether the McHenry County State's Attorney violated N.D.C.C. § 44-04-18 by denying a request for records and relying on N.D.C.C. § 44-04-18.7, which protects criminal investigative information, and the open records exemptions in N.D.C.C. §§ 27-20.2-23, 50-25.1-11, and 12.1-35-03 for the denial.
2. Whether the McHenry County State's Attorney's response to Mr. Yost's requests was timely.

ANALYSIS

Issue One

All records of a public entity are public records except as otherwise specifically provided by law.¹⁰ A denial of a records request "must describe the legal authority for the denial."¹¹ Mr. Yost requested the following records from Attorney Frey: transcripts of several interviews with minor children; video footage of a police search pertaining to the abuse of minor children and photographs of items confiscated during that search; and medical reports and/or records of the examinations relating to the sexual abuse of minor children.¹²

⁶ Letter from Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen., to Mr. Joshua Frey, McHenry Cnty. State's Att'y (Feb. 14, 2023).

⁷ Letter from Joshua E. Frey, McHenry Cnty. State's Att'y, State's Att'y's Off., to Dale Yost, Inmate # 39654 (Apr. 10, 2023).

⁸ Letter from Joshua E. Frey, McHenry Cnty. State's Att'y, State's Att'y's Off., to Dale Yost, Inmate # 39654 (Apr. 10, 2023).

⁹ *Id.*

¹⁰ N.D.C.C. § 44-04-18(1).

¹¹ N.D.C.C. § 44-04-18(7).

¹² Letter from Dale G. Yost, Inmate # 39654, to Joshua E. Frey, State's Att'y, States Att'y's Off. (July 27, 2022).

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Attorney Frey's denial of Mr. Yost's request relied upon N.D.C.C. § 44-04-18.7, and more specifically on N.D.C.C. §§ 27-20.2-23, 50-25.1-11, and 12.1-35-03.¹³ N.D.C.C. § 44-04-18.7 states that "[a]ctive criminal intelligence information and active criminal investigative information are not subject to" North Dakota's open records requirements.¹⁴ In citing to N.D.C.C. § 44-04-18.7, Attorney Frey indicated that the McHenry County matter involving Mr. Yost was "intertwined" with an ongoing federal criminal investigation, and therefore the denied records of the McHenry County matter constituted active criminal intelligence or investigative information.¹⁵ Furthermore, under N.D.C.C. § 27-20.2-23, "the law enforcement and correctional facility records and files of a child . . . are not open to public inspection."¹⁶ Reports of child abuse or neglect as defined under N.D.C.C. ch. 50-25.1 are confidential and, under N.D.C.C. § 12.1-35-03, may not be made available to anyone except as provided in N.D.C.C. § 50-25.1-11.¹⁷ Nor may information about child victims appear in a public record, and such information must remain sealed to protect the child.¹⁸

Attorney Frey's written response to Mr. Yost identified each requested record and indicated specifically whether the denial to produce each record related to one of the cited exemptions, or whether his office simply was not in possession of the requested document. Based on this, it is my opinion that the McHenry County State's Attorney's Office's denial of records did not violate N.D.C.C. § 44-04-18.

Issue Two

"Upon a request for a copy of specific public records, an entity must, within a reasonable time, furnish the requester one copy of the records requested or explain why the records are not being provided."¹⁹ Delays in response can be considered reasonable under certain circumstances, but "the delay permitted in ordinary situations will usually be measured in a few hours or a few days rather than several days or weeks."²⁰ "Whether records have been provided within a reasonable time will depend on the facts of a given situation."²¹

Mr. Yost's first request to the McHenry County State's Attorney for records was received on July 27, 2022.²² This office attempted to facilitate a resolution from September 22, 2022, to January

¹³ Letter from Joshua E. Frey, McHenry Cnty. State's Att'y, State's Att'y's Off., to Dale Yost, Inmate # 39654 (Apr. 10, 2023).

¹⁴ N.D.C.C. § 44-04-18.7(1).

¹⁵ Letter from Joshua E. Frey, McHenry Cnty. State's Att'y, State's Att'y's Off., to Dale G. Yost, Inmate # 39654, n.1 (Apr. 10, 2023).

¹⁶ N.D.C.C. § 27-20.2-23(1).

¹⁷ N.D.C.C. § 50-25.1-11.

¹⁸ N.D.C.C. § 12.1-35-03.

¹⁹ N.D.A.G. 2006-O-08, *citing* N.D.C.C. § 44-04-18(2).

²⁰ *Id.*, *citing* N.D.A.G. 2004-O-07; N.D.A.G. 2002-O-06.

²¹ *Id.*, *citing* N.D.A.G. 98-O-03.

²² Letter from Dale G. Yost, Inmate # 39654, to Joshua E. Frey, State's Atty, McHenry Cnty. State's Att'y's Off. (Jul. 27, 2022).

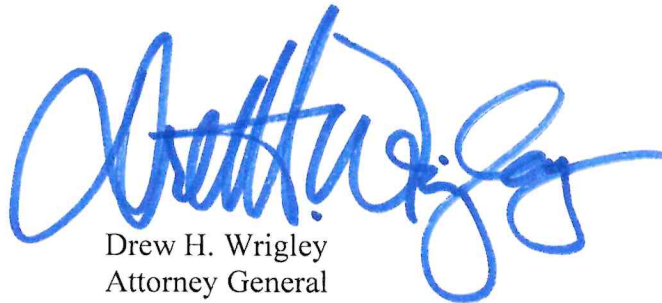
30, 2023.²³ Attorney Frey responded on April 10, 2023,²⁴ almost nine months after Mr. Yost made his initial request. It is my opinion that, under the circumstances present in this instance, the delay in providing a response was unreasonable.

CONCLUSIONS

1. The McHenry County State's Attorney did not violate N.D.C.C. § 44-04-18 by refusing to release records that related to criminal investigative information under N.D.C.C. § 44-04-18.7 or were protected from disclosure pursuant to the open records exemptions in N.D.C.C. §§ 27-20.2-23, 50-25.1-11, and 12.1-35-03.
2. The McHenry County State's Attorney did not provide the requested records within a reasonable time.

STEPS NEEDED TO REMEDY VIOLATION

Mr. Yost has now received the records required to be released. Therefore, there are no further corrective measures to be taken by the McHenry County State's Attorney's Office.



Drew H. Wrigley
Attorney General

cc: Dale G. Yost, Inmate # 39654

²³ Letter from Dale Yost, Inmate # 39564, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Sept. 22, 2022); Letter from Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen., to Dale G. Yost, Inmate # 39654, cc: Joshua Frey, McHenry Cnty. State's Atty (Oct. 28, 2022); Letter from Dale G. Yost, Inmate # 39654, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Nov. 18, 2022); Letter from Dale G. Yost, Inmate # 39654, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Dec. 14, 2022); Letter from Dale G. Yost, Inmate # 39654, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Jan. 30, 2023).

²⁴ Letter from Joshua E. Frey, McHenry Cnty. State's Att'y, State's Att'y's Off., to Dale Yost, Inmate # 39654 (Apr. 10, 2023).