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OPEN RECORDS AND MEETINGS OPINION
2026-O-01

DATE ISSUED: January 14, 2026

ISSUED TO: Williston Basin School District #7

CITIZEN'S REQUEST FOR OPINION

Nicole Johnson requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Williston Basin School District #7 violated N.D.C.C. § 44-04-18 by failing to provide records.

FACTS PRESENTED

In May 2023, Nicole Johnson asked that Superintendent Dr. Richard Faidley of the Williston Basin School District #7 (District) provide her with the bid documents for the Innovation Academy renovation project completed in or around 2018.¹ Because the project was completed by the former Williston Public School District #1 prior to its reorganization into District #7 in 2020, some of the bid records from that period were no longer available in the District's current files due to prior administrative actions.²

In light of these circumstances, District staff corresponded extensively with Ms. Johnson, providing her with board minutes, lease and construction agreements, and other relevant documents.³ On several occasions, the staff sought clarification to ensure her request was fully understood.⁴ On May 30, 2023, Dr. Faidley informed Ms. Johnson that the District "ha[s] provided you with everything that I could find in the District's records."⁵ Beyond searching the District records, Dr. Faidley attempted to locate additional bid records by contacting all contractors who

¹ Email from Nicole Johnson to Dr. Richard Faidley, Superintendent, Williston Basin Sch. Dist. #7 (May 11, 2023, 7:34 PM). In the same email, Ms. Johnson also requested document related to other new projects. However, in her request for an opinion, she limited her issue to "the Articles for bids for the Innovation Academy." Email from Nicole Johnson to Off. of Att'y Gen. (June 12, 2023, 10:13 AM). Therefore, this opinion is limited to the request for bid records for the Innovation Academy project.

² Letter from KrisAnn Norby-Jahner, Att'y, Vogel Law Firm, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Nov. 14, 2023).

³ *Id.*

⁴ *Id.*

⁵ Email from Dr. Richard Faidley, Superintendent, Williston Basic Sch. Dist. #7, to Nicole Johnson (May 30, 2023, 6:19 PM).

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had submitted bids for the 2018 project.⁶ However, according to the District's response to this office, those efforts were not successful.⁷

Although Ms. Johnson continued to demand further information, the District had already provided all responsive records in its possession and made unrequired but laudable efforts to locate any additional records.⁸

ISSUE

Whether the District's response to a request for records complied with N.D.C.C. § 44-04-18 when some of the requested records are no longer available.

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.”⁹ Under the open records law, a public entity is obligated only to provide records in its possession and is not required to create or compile records that do not exist.¹⁰ Thus, “the public entity generally has no obligation to obtain records it does not have.”¹¹

The District, through Dr. Faidley, provided Ms. Johnson with all available records in its possession related to the Innovation Academy project.¹² In addition, Dr. Faidley exceeded the legal requirements by contacting all contractors who submitted bids for the 2018 project in a commendable effort to locate any additional records. Accordingly, it is my opinion that the District complied with the open records laws when it provided all responsive records in its possession.

⁶ *Id.*

⁷ Letter from KrisAnn Norby-Jahner, Att'y, Vogel Law Firm, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Nov. 14, 2023).

⁸ *Id.*

⁹ N.D.C.C. § 44-04-18(1).

¹⁰ N.D.C.C. § 44-04-17.1(16) (definition of “record” includes “recorded information of any kind . . . which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business.”); N.D.C.C. § 44-04-18(4) (“[N]othing in this section requires a public entity to create or compile a record that does not exist.”); *see also* N.D.A.G. 2024-O-08; N.D.A.G. 2024-O-07; N.D.A.G. 2019-O-13, *citing* N.D.C.C. § 44-04-17.1(16); N.D.A.G. 2014-O-22; N.D.A.G. 2010-O-02; N.D.A.G. 2004-O-05.

¹¹ N.D.A.G. 2024-O-07 (quoting N.D.A.G. 2019-O-13).

¹² This office must base its opinion on the facts provided by the public entity. *See* N.D.C.C. § 44-04-21.1(1).

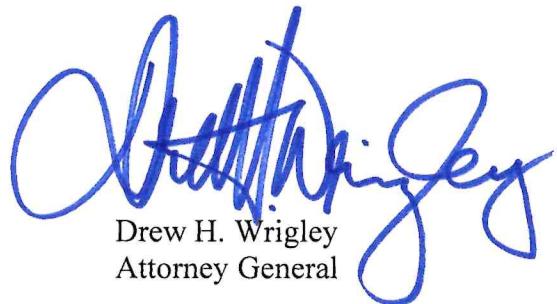
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CONCLUSION

The District's response complied with N.D.C.C. § 44-04-18 because it provided all responsive records in its possession.



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cc: Nicole Johnson