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OPEN RECORDS AND MEETINGS OPINION
2026-O-02

DATE ISSUED: January 21, 2026

ISSUED TO: Williston Basin School District No. 7

CITIZEN'S REQUEST FOR OPINION

Tom Simon requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether Williston Basin School District No. 7 failed to provide him with the legal authority for redactions on open records in violation of N.D.C.C. § 44-04-18.

FACTS PRESENTED

On May 31, 2023, Tom Simon entered the main office of Williston Basin School District No. 7 (District) and requested all records related to a teacher, the teacher's alleged inappropriate relationship with a student, and two paraprofessionals who were terminated by the District.¹ The District's Human Resources Director "informed Mr. Simon that she could not immediately 'on the spot' provide him with those records due to . . . confidentiality issues and the significant number of pending open records requests that had come in before his," though the District ultimately provided the requested records the next day on June 1, 2023.²

Mr. Simon picked up the records in person and discovered they contained redactions related to the alleged incident involving the teacher and the student.³ Mr. Simon then "immediately called" the District's superintendent and spoke with him about the redactions.⁴ During the phone call, the

¹ Letter from KrisAnn Norby-Jahner, Att'y at Law, Vogel Law Firm, to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Nov. 14, 2023).

² *Id.* In his request for an opinion, Mr. Simon alleged that the Human Resources Director estimated it would take two weeks or more to fulfill his request and that this estimate of time violated the law. But the open records law's mandate that requests be fulfilled within a reasonable time is only concerned with the actual amount of time a public entity takes to respond to a request, not the public entity's initial estimate of time. *See* N.D.C.C. § 44-04-18(8). A public entity's initial estimate of the time it will take to fulfill an open records request is therefore irrelevant to the question of whether it responded within a reasonable time. Here, the request was fulfilled the very next day, which is a reasonable amount of time. The initial estimate of two weeks was immaterial and not a violation of the open records law.

³ *Id.*

⁴ Email from Tom Simon, Williston Trending Topics News, Coyote Radio, 98.5 FM, to Off. of Att'y Gen. (June 6, 2023, 1:09 PM).

superintendent “was very clear with Mr. Simon that he could not release any records or information protected under FERPA⁵ and the pending Title IX⁶ investigation. Any information that could reveal the identity of the student and/or compromise or release information from an ongoing Title IX investigation had to be redacted.”⁷

On June 5, 2023, the superintendent wrote Mr. Simon and reiterated that the redacted records were protected under FERPA and Title IX.⁸ The superintendent “also provided Mr. Simon with guidance from the U.S. Department of Education, Office for Civil Rights . . . providing a thorough explanation of the confidentiality of Title IX records that implicate FERPA.”⁹

ISSUE

Whether the District substantially complied with N.D.C.C. § 44-04-18 when it provided partially redacted records in response to an open records request, verbally informed the requester of the legal authority for the redactions, and later provided written references to the legal authority for the redactions.

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.”¹⁰ A denial of access to requested records “must describe the legal authority for the denial . . . and must be in writing if requested.”¹¹ This office must base its open records opinions on the facts provided by the public entity involved in the matter.¹²

⁵ The Family Educational Rights and Privacy Act.

⁶ 20 U.S.C. §§ 1681-1689, and the regulations promulgated thereunder.

⁷ Letter from KrisAnn Norby-Jahner, Att’y at Law, Vogel Law Firm, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Nov. 14, 2023). In his request for an opinion, Mr. Simon alleged that the superintendent told him that “he was not obligated to tell [Mr. Simon] about the redactions or the exemption which allowed the redactions.” The District, however, says that the superintendent told Mr. Simon that the records were protected under FERPA and Title IX. This office must base its opinion on the facts provided by the District. *See* N.D.C.C. § 44-04-21.1(1).

⁸ Letter from KrisAnn Norby-Jahner, Att’y at Law, Vogel Law Firm, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Nov. 14, 2023); Email from Richard Faidley to Tom Simon (June 5, 2023).

⁹ Letter from KrisAnn Norby-Jahner, Att’y at Law, Vogel Law Firm, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Nov. 14, 2023).

¹⁰ N.D.C.C. § 44-04-18(1).

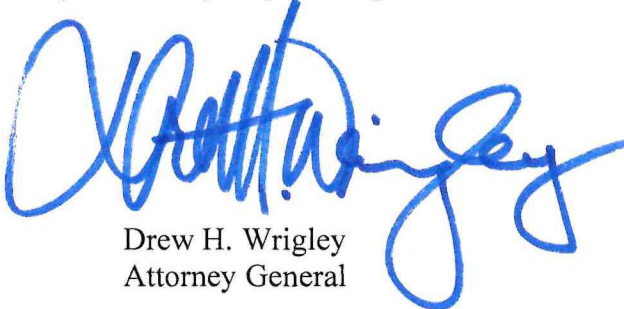
¹¹ N.D.C.C. § 44-04-18(7).

¹² N.D.C.C. § 44-04-21.1(1).

According to the District, during a phone call soon after Mr. Simon received the records, the superintendent told Mr. Simon the legal authority for the redactions. The superintendent “was very clear with Mr. Simon that he could not release any records or information protected under FERPA and the pending Title IX investigation. Any information that could reveal the identity of the student and/or compromise or release information from an ongoing Title IX investigation had to be redacted.”¹³ There is no evidence that Mr. Simon made a request for the District to put the legal authority to redact the records in writing, nevertheless the superintendent provided the authority in writing along with a resource from the U.S. Department of Education that provided “a thorough explanation of the confidentiality of Title IX records that implicate FERPA.”¹⁴ While it would have been better practice for the District to provide the legal authority for the redactions at the time the records were picked up, there is no temporal requirement in statute for when the legal authority for redactions must be provided in such instances.¹⁵ The District complied with the statute when the superintendent provided the legal authority on the phone immediately after Mr. Simon received the records. It is therefore my opinion that the District substantially complied with N.D.C.C. § 44-04-18(7) by verbally telling Mr. Simon the legal authority for the redactions. Because Mr. Simon never made a request for the District to put the legal authority in writing, the District had no obligation under N.D.C.C. § 44-04-18(7) to do so. Nevertheless, the District chose to provide written notice of the relevant legal authority, thereby exceeding their notification requirements.

CONCLUSION

The District substantially complied with N.D.C.C. § 44-04-18 by providing the requester with the legal authority for the redactions verbally on the day he picked up the records.



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cc: Tom Simon

¹³ Letter from KrisAnn Norby-Jahner, Att’y at Law, Vogel Law Firm, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (Nov. 14, 2023).

¹⁴ *Id.*

¹⁵ *See* N.D.C.C. § 44-04-18(7).