



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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OPEN RECORDS AND MEETINGS OPINION
2026-O-08

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ISSUED TO: Grand Forks Police Department

CITIZEN'S REQUEST FOR OPINION

Korrie Wenzel, Publisher of the Grand Forks Herald, requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the Grand Forks Police Department improperly denied a request for records related to a criminal investigation in violation of N.D.C.C. § 44-04-18.

FACTS PRESENTED

On May 10, 2024, a reporter from the Grand Forks Herald requested from the Grand Forks Police Department (Department) a police report related to the arrest of a state legislator on suspicion of driving under the influence.¹ The Department provided “[a] copy of the initial open report with limited release information” but did not provide the full detailed police report.² The Department explained to the reporter, “[a]t this time limited information is available for release as this report is still open within the court system.”³

On May 20, 2024, the Managing Editor of the Grand Forks Herald requested the body camera footage from the same arrest.⁴ The Department denied the request on the ground that it constituted active criminal investigative information under N.D.C.C. § 44-04-18.7, which is exempted from the open records law.⁵ The Department classified the case active while it was pending in court “because the prosecution had not been secured yet.”⁶

¹ Letter from Lt. Andrew Stein #316, Grand Forks Police Dep’t, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (July 29, 2024); Grand Forks Police Dep’t JustFOIA Portal, #24103142 - JUSTFOIA Requests, Request #PD-2024-329, Sav Kelly (May 10, 2024).

² Letter from Lt. Andrew Stein #316, Grand Forks Police Dep’t, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (July 29, 2024).

³ Email from Penny Johnson, Grand Forks Police Dep’t, to Sav Kelly, Grand Forks Herald (May 13, 2024, 1:41 PM).

⁴ Letter from Lt. Andrew Stein #316, Grand Forks Police Dep’t, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (July 29, 2024); Grand Forks Police Dep’t JustFOIA Portal, #24103142 - JUSTFOIA Requests, Request #PD-2024-392, Hannah Shirley (May 20, 2024).

⁵ Letter from Lt. Andrew Stein #316, Grand Forks Police Dep’t, to Annique M. Lockard, Assistant Att’y Gen., Off. of Att’y Gen. (July 29, 2024).

⁶ *Id.*

On July 2, 2024, the court entered judgment and closed the case after the state legislator pleaded guilty to an amended charge, explicitly waiving her right to a trial and appeal.⁷ The Grand Forks Herald subsequently renewed its open records request to the Department, and the Department released the full police report and body camera footage.⁸

ISSUE

Whether the Department violated N.D.C.C. § 44-04-18 by initially denying records under N.D.C.C. § 44-04-18.7 on the basis that the records constituted active criminal investigative information.

ANALYSIS

Unless otherwise provided by law, all records of a public entity are open.⁹ Records containing “active criminal investigative information” are not subject to the open records law.¹⁰ The law defines active criminal investigative information as follows:

“Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Criminal investigative information must be considered “active” as long as it is related to an ongoing investigation that is continuing with a reasonable good-faith anticipation of securing an arrest or prosecution in the foreseeable future.¹¹

In a letter to the Department responding to the denial of the records request, Mr. Wenzel argued that the case was no longer “active” because the legislator had been arrested, and the prosecution element of the definition had been satisfied because the prosecution had already commenced and the case was in court.¹² However, that interpretation conflicts with prior opinions from this office and the North Dakota Supreme Court. A requester of a 2005 Attorney General opinion made the same argument, and the opinion analyzed the meaning of “prosecution” in the statute’s definition of “active.”¹³ The opinion noted that the definition of “prosecution” is “a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime.”¹⁴ The opinion further noted that when a

⁷ *Id.* (emphasis added).

⁸ *Id.*

⁹ N.D.C.C. § 44-04-18(1).

¹⁰ N.D.C.C. § 44-04-18.7(1).

¹¹ N.D.C.C. § 44-04-18.7(4).

¹² Letter from Korrie Wenzel, Publisher, Grand Forks Herald, to Chief Mark Nelson, Lt. Andrew Stein, Grand Forks Police Dep’t (May 22, 2024).

¹³ N.D.A.G. 2005-O-13.

¹⁴ *Id.* quoting *Black’s Law Dictionary* 1221 (6th ed. 1990).

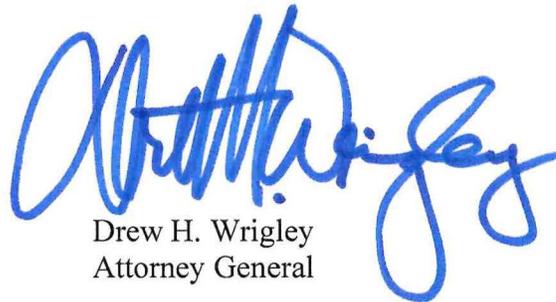
criminal defendant is “making his way through the judicial system, his prosecution has not been secured,” and the defendant’s “guilt or innocence has not been determined.”¹⁵ The opinion concluded that the criminal investigative information in that case remained active “because the prosecution is not complete.”¹⁶

The requester of the 2005 opinion also brought a civil action against the public entity involved in the opinion and raised the same argument.¹⁷ The North Dakota Supreme Court adopted the reasoning of the 2005 Attorney General opinion and held the investigation in that case was active “because the prosecution . . . was not complete at the time of [the open records] request.”¹⁸ In so holding, the North Dakota Supreme Court honored a balance of the important public right to know and the essential due process protections under our Constitution.

Here, the Grand Forks Herald requested the records while the prosecution was still pending. Because the prosecution was not complete at the time of the request, under applicable legal provisions and case law the records constituted active criminal investigative information. The Department therefore did not violate the open records law by denying the request at that time. Importantly, the request was promptly honored once the criminal matter was complete.

CONCLUSION

The Grand Forks Police Department did not violate N.D.C.C. § 44-04-18 by denying the requested records because the records constituted active criminal investigative information under N.D.C.C. § 44-04-18.7.



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cc: Korrie Wenzel

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *Riemers v. City of Grand Forks*, 2006 ND 224, 723 N.W.2d 518.

¹⁸ *Riemers v. City of Grand Forks*, 2006 ND 224, ¶ 18, 723 N.W.2d 518.