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OFFICE OF ATTORNEY GENERAL

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OPEN RECORDS AND MEETINGS OPINION
2026-O-12

DATE ISSUED: June 26, 2026

ISSUED TO: Department of Veterans' Affairs

CITIZEN'S REQUEST FOR OPINION

Kelly Volk requested an opinion from this office under N.D.C.C. § 44-04-21.1 asking whether the North Dakota Department of Veterans' Affairs (Veterans' Affairs) failed to provide requested reports from a database or failed to timely respond to the request for reports, and thereby violated N.D.C.C. § 44-04-18.

FACTS PRESENTED

Ms. Volk¹ made a request to Veterans' Affairs on May 3, 2023, seeking specific reports for years 2021, 2022, and 2023 from a relational database case management system known as VetraSpec.² She sought reports on the number of new claims submissions by the Veterans' Affairs, the number of claim submissions by county, and the number of appeals.³ Ms. Volk also sought the total awarded dollars for all claims by year, and the total number of the claimants' chosen powers of attorney.⁴ It was her understanding that all the data was exportable from the database into other programs, such as Microsoft Excel, in order to create other reports.⁵ The request for records was sent to Veterans' Affairs Commissioner Lonnie Wangen, who was out of the office until May 15, 2023.⁶ In his absence, other Veterans' Affairs staff received the request and worked to determine what records would be responsive.⁷

¹ Kelly Volk's email address is "Robert Benson" - when referencing her email correspondence with the N.D. Dep't of Veteran's Affs. "Robert Benson" means Ms. Volk.

² Email from Robert Benson to Lonnie Wangen, Comm'r, N.D. Dep't of Veterans' Affs. (May 3, 2023, 12:05 PM) ("I am requesting the following *reports* from the raw data uploaded into your relational database case management system known as VetraSpec . . .") (emphasis added).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Email from Bryan Watters, N.D. Dep't of Veterans' Affs., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Sept. 25, 2023, 3:16 PM).

⁷ *Id.*

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On May 9, 2023, Ms. Volk followed up with Veterans' Affairs because she had not received a response.⁸ Within two hours of that follow-up email, Commissioner Wangen replied to the email, acknowledged the request, and indicated Veterans' Affairs was in the process of "gathering the documents."⁹

Veterans' Affairs provided information in response to the request on May 19, 2023.¹⁰ For each of the requested years, Veterans' Affairs provided the number of new claim submissions, as well as the total awarded dollars for all claims per the database.¹¹ It also provided the number of appeals by Veterans' Affairs.¹² Veterans' Affairs indicated that the report for the number of new claim submissions by county, and the report for the number of appeals by each county did not exist.¹³ Veterans' Affairs has informed this office that, not only do the reports not exist, but that state-level users do not have access to create the queries necessary to generate the requested reports that were unavailable.¹⁴

On May 23, 2023, Ms. Volk indicated that she was unsatisfied with the response to the request, as she claimed she had requested the raw data, not the reports that Veterans' Affairs provided her.¹⁵ She further speculated that the nonexistent reports could easily be created and should be turned over.¹⁶ She did not ask Veterans' Affairs to send her the raw data from the database.¹⁷ Veterans' Affairs responded and indicated that it complied with Ms. Volk's request and that no "other data exists."¹⁸

That same day, Ms. Volk asked this office for an opinion.¹⁹ She is seeking an opinion about whether the delay between her request and Veterans' Affairs' response was reasonable, and whether the reply from Veterans' Affairs was responsive to her request.

⁸ Email from Robert Benson to Lonnie Wangen, Comm'r, N.D. Dep't of Veterans' Affs. (May 9, 2023, 10:09 AM CDT). (In the second email sent by Ms. Volk, she also carbon copied four of the 15 members of the Admin. Comm. on Veterans Affs. (AVOVA)).

⁹ Email from Lonnie Wangen, Comm'r, N.D. Dep't of Veterans' Affs., to Robert Benson (May 9, 2023, 11:55 AM).

¹⁰ Email from Lonnie Wangen, Comm'r, N.D. Dept't of Veterans' Affs., to Robert Benson (May 19, 2023, 2:07 PM).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Email from Bryan Watters, N.D. Dep't of Veterans' Affs., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Sept. 26, 2023, 10:22 AM).

¹⁵ Email from Robert Benson to Lonnie Wangen, Comm'r, N.D. Dep't of Veterans' Affs. (May 23, 2023, 5:07 PM).

¹⁶ *Id.*

¹⁷ *See* Email from Robert Benson to Lonnie Wangen, Comm'r, N.D. Dep't of Veterans' Affs. (May 23, 2023, 5:07 PM).

¹⁸ Email from Lonnie Wangen, Comm'r, N.D. Dep't of Veterans' Affs., to Robert Benson (May 24, 2023, 8:39 AM).

¹⁹ Email from Kelly Volk to Off. of Att'y Gen. (May 24, 2023, 4:06 PM).

ISSUES

1. Whether Veterans' Affairs violated N.D.C.C. § 44-04-18 by failing to provide requested reports created from its database.
2. Whether Veterans' Affairs violated N.D.C.C. § 44-04-18 by not responding to a request for reports from its database within a reasonable time.

ANALYSIS

Issue One

Veterans' Affairs is a public entity and is subject to the open record law.²⁰ "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."²¹ A record is "information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced" and must be in the "possession or custody of the public entity or its agent."²² This includes "records stored in computers."²³ Upon a request, the public entity shall furnish the requester one copy of the public records requested.²⁴ "Automation of public records must not erode the right of access to those records."²⁵ A public entity "must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise provided by law."²⁶ However, a public entity is not required to "create or compile a record that does not exist."²⁷

When issuing a public records opinion, the opinion shall be based on the facts given by the public entity.²⁸ Ms. Volk specifically requested "the following *reports* from the raw data uploaded" into the VetraSpec database.²⁹ When specifying the reports she was requesting, Ms. Volk further clarified she was looking for "[p]roductivity reports," and specific numbers regarding the claim submissions and awarded dollars.³⁰ Veterans' Affairs provided the reports that it possessed,³¹ and indicated that the other request reports did not exist.³² The requested

²⁰ N.D.C.C. § 44-04-17.1(13)(a). *See* N.D.C.C. ch. 37-18 (creating Veterans' Affairs).

²¹ N.D.C.C. § 44-04-18(1).

²² N.D.C.C. § 44-04-17.1(16).

²³ N.D.A.G. 2007-O-1, *citing* N.D.A.G. Letter to Tracy (Sept. 10, 1992).

²⁴ N.D.C.C. § 44-04-18(2).

²⁵ N.D.C.C. § 44-04-18(3).

²⁶ N.D.C.C. § 44-04-18(3).

²⁷ N.D.C.C. § 44-04-18(4).

²⁸ N.D.C.C. § 44-04-21.1(1).

²⁹ Email from Robert Benson to Lonnie Wangen, Comm'r, N.D. Dep't of Veterans' Affs. (May 3, 2023, 12:05 PM) (emphasis added).

³⁰ *Id.*

³¹ Email from Lonnie Wangen, Comm'r, N.D. Dep't of Veterans' Affs., to Robert Benson (May 19, 2023, 2:07 PM).

reports would need to be created in order to provide the information to Ms. Volk.³³ Veterans' Affairs provided the reports that did exist, and was not obligated to create records that did not exist. Therefore, it is my opinion that Veterans' Affairs complied with N.D.C.C. § 44-04-18.

Issue Two

The open records law is violated when there is an unreasonable delay in responding to the request.³⁴ Although an immediate response is not necessary, the response time should generally be "measured in a few hours or a few days rather than several days or weeks."³⁵ "Records are not required to be on hand," but some sort of response to the request should occur in that period.³⁶ The reasonableness of the delay is determined by the facts of the particular request.³⁷ Generally, employee absence is "not a sufficient reason to delay a request for records."³⁸ "[P]roviding access to records generally does not require the approval, supervision, or action by a head of a department."³⁹

Ms. Volk's initial request for records was submitted on May 3, 2023.⁴⁰ Even though Mr. Wangen was out of town that day, other staff were aware of the request as of May 3, 2023 and began working on a response.⁴¹ However, no acknowledgment of the request was provided to Ms. Volk until she followed up on her request on May 9, 2023 - six days after her initial request.⁴² Mr.

³² Email from Lonnie Wangen, Comm'r, N.D. Dep't of Veterans' Affs., to Robert Benson (May 24, 2023, 8:39 AM).

³³ Email from Bryan Watters, N.D. Dep't of Veterans' Affs., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Sept. 26, 2023, 10:22 AM). In this case, Ms. Volk only requested reports generated from the database - she did not request the data stored in the database itself which may be subject to disclosure. Email from Robert Benson to Lonnie Wangen, Comm'r, N.D. Dep't of Veterans' Affs. (May 23, 2023, at 5:07 PM); *see, e.g.*, N.D.A.G. 2008-O-17 (finding violation to provide requested records when database could have been exported into ASCII text files or PDF formats); N.D.A.G. 2007-O-01 (holding Department of Transportation was required to create software to allow meaningful access to data in database).

³⁴ N.D.C.C. § 44-04-18(8).

³⁵ *Kuntz v. State*, 2019 ND 46, ¶ 28, 923 N.W.2d 513 (quoting N.D.A.G. 2011-O-07). *See also*, N.D.A.G. 2009-O-07; N.D.A.G. 2008-O-08; N.D.A.G. 2004-O-07; N.D.A.G. 2002-O-06.

³⁶ N.D.A.G. 2023-O-04, *citing* N.D.A.G. 2004-O-07; N.D.A.G. 2002-O-06.

³⁷ *Kuntz v. State*, 2019 ND 46, ¶ 28, 923 N.W.2d 513, *citing* N.D.A.G. 2014-O-21 (11-day delay), N.D.A.G. 2017-O-06 (25-day delay), N.D.A.G. 2014-O-06 (2-month delay), N.D.A.G. 2015-O-17) (9-month delay).

³⁸ N.D.A.G. 2006-O-15.

³⁹ *Id.*

⁴⁰ Email from Robert Benson to Lonny Wangen, Comm'r, N.D. Dep't of Veterans' Affs., (May 3, 2023, 12:05 PM); Email from Bryan Watters, N.D. Dep't of Veterans' Affs., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Sept. 25, 2023, 3:16 PM).

⁴¹ Email from Bryan Watters, N.D. Dep't of Veterans' Affs., to Annique M. Lockard, Assistant Att'y Gen., Off. of Att'y Gen. (Sept. 25, 2023, 3:16 PM).

⁴² *Id.*

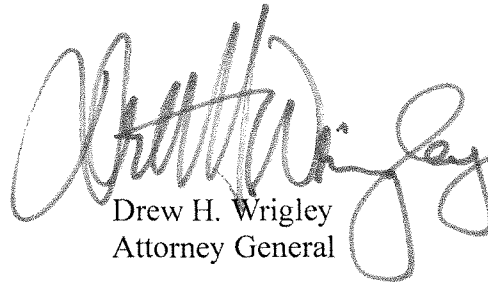
Wangen was unavailable to review a proposed response until May 19, 2023.⁴³ The records were not provided to Ms. Volk until sixteen days after her initial request.

Although Mr. Wangen was out of the office, under the facts of this particular case, the delay in acknowledging and later responding to Ms. Volk's request was unreasonable. Other employees were available to acknowledge the request, but they only did so after six days had passed.⁴⁴ Additionally, there was no reason Mr. Wangen needed to review or approve the response to Ms. Volk: providing records "is a ministerial act."⁴⁵

CONCLUSIONS

1. Veterans' Affairs complied with N.D.C.C. § 44-04-18 by providing the responsive reports that existed within its custody or possession, and it was not obligated to create reports that did not exist.
2. Veterans' Affairs failed to comply with N.D.C.C. § 44-04-18(8) by failing to provide an acknowledgment of a request and for failing to provide records within a reasonable time.

The existing records have been provided to Ms. Volk. Therefore, there are no further corrective measures to be taken by the Department of Veterans' Affairs.



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Attorney General

wdw

cc: Kelly Volk

⁴³ *Id.*

⁴⁴ This time period ran from a Wednesday to a Tuesday and included four weekdays and one weekend.

⁴⁵ N.D.A.G. 2006-O-15 (quoting N.D.A.G. 2001-O-02).