

**OPEN RECORDS AND MEETINGS OPINION
2009-O-02**

DATE ISSUED: February 20, 2009

ISSUED TO: City of Mandan

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from C. T. Marhula asking whether the city of Mandan (City) violated N.D.C.C. § 44-04-18 by asking Mr. Marhula for his full name and the name of his company before providing the records requested.

FACTS PRESENTED

On December 22, 2008, Mr. Marhula sent the City an e-mail explaining that he is a professional researcher and that a client would like the following information:

Total membership fees your organization paid to:
Your local Chamber of Commerce?
The GNDA?
The US Chamber of commerce?

Total additional expenses such as travel, social events, [and] any other expense associated with:
Your local Chamber of Commerce?
The GNDA?
The US Chamber of commerce?

Mr. Marhula concluded the e-mail by listing his name, address, and phone number. He also invited the City to contact him if there were any questions. The City responded the next day with the following reply: "Please provide your full name and company you work for."

ISSUE

Whether the City violated the open records law by asking the requester for his name and the name of the company for which he works.

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.”¹ The right to access public records belongs to all persons equally; therefore, the identity or residency of the requester and the purpose of the request are generally irrelevant.² A request for a public record “need not be made in person or in writing.”³

The City’s justification for seeking the requester’s full name and company name was to verify that a real person made the request and it was not an e-mail that was sent to thousands of e-mail addresses. The City further explained that it did not provide any further response because the requester did not respond.

The City’s response to the requester is not supported by the law; it is unnecessary for a person to disclose his or her name or employer in order to see or obtain copies of public records. In a past opinion, I found a violation of the open records law when a state agency required requesters to complete a form listing the name of the requester’s employer in order to receive requested records.⁴ “Requiring such information may be a deterrent to someone who requests access to public records.”⁵ Generally, records must be provided regardless of the identity of the requester, although there may be legitimate reasons for a public entity to ask for information, such as an address, to have a record mailed or to clarify a complicated request. Moreover, in this instance, it was unnecessary for the City to request additional information about Mr. Marhula’s identity; he provided a North Dakota street address, ZIP code, and phone number. Therefore, it is my opinion the City violated the open records law by requiring the requester to provide his full name and the name of his employer.⁶

¹ N.D.C.C. § 44-04-18(1). See also N.D. Const. art. XI, § 6. Mr. Marhula requested “information” about the City’s participation in Chamber of Commerce activities rather than records containing this information. Because the City treated the request for information as a request for records, this opinion will do the same.

² N.D.A.G. 2006-O-15; N.D.A.G. 2005-O-12; N.D.A.G. 98-F-13.

³ N.D.C.C. § 44-04-18(2); N.D.A.G. 2007-O-03; N.D.A.G. 2006-O-15; N.D.A.G. 2005-O-09; N.D.A.G. 2001-O-12.

⁴ N.D.A.G. 2007-O-03.

⁵ N.D.A.G. 2006-O-15.

⁶ The City’s concern that it was one of many cities that received the same open records request is without merit. The burden on the City of Mandan is the same whether it is the only public entity from which records are requested, or the requester has made the same request to many entities. See N.D.A.G. 2008-O-19; N.D.A.G. 2008-O-18; and N.D.A.G. 2008-O-17 (First American CoreLogic requested a copy of tax records from several North Dakota counties).

CONCLUSION

The City violated the open records law when it asked the requester to provide his name and the name of his employer before it provided the requested records.

STEPS NEEDED TO REMEDY VIOLATION

The City has now provided Mr. Marhula all of the information he requested. Therefore, no further remedy is required in this regard. This is the fourth opinion issued to the City in the last two years for violations of the open records and meetings law. Complete information regarding the requirements of the open records and meetings law is available on our office web site (www.ag.nd.gov), and I suggest you consider providing training on these requirements for those individuals whose duty it is to comply.

Wayne Stenehjem
Attorney General

mas/pg