

**OPEN RECORDS AND MEETINGS OPINION
2010-O-04**

DATE ISSUED: April 20, 2010

ISSUED TO: North Dakota State University Research and Technology Park

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion from C. T. Marhula asking whether the North Dakota State University Research and Technology Park (Research Park) violated N.D.C.C. § 44-04-18 by failing to provide a copy of a record within a reasonable time.

FACTS PRESENTED

On Wednesday, January 13, 2010, C. T. Marhula e-mailed the Research Park and requested a copy of a record that lists the seven tenants of the Research Park and how many jobs each tenant created.¹ The next day, Thursday, a Research Park employee told Mr. Marhula that the Research Park's executive director, Tony Grindberg, was out of the office until the following Monday and would respond to him at that time. Mr. Marhula responded the same day and demanded that the records be provided no later than 10:00 a.m., Friday, January 15, 2010. Mr. Grindberg contacted Mr. Marhula Thursday evening to explain that he would respond to the open record request when he returned to the office on Monday.² On Monday, January 18, 2010, Mr. Marhula received the record.

The Research Park is located in Fargo and has an executive director and three staff, one of whom does not work on Fridays. At the time of the request, one staff member was conducting a day and a half client visit and the remaining staff had several off-site meetings to finalize the plans for "Innovation Week" scheduled for the following week.³

¹ Mr. Marhula understood that a record including the information he requested was created by the Research Park for a "Centers of Excellence" study by the N.D. Department of Commerce.

² E-mail from Tony Grindberg, NDSU Research and Technology Park Executive Director, to C. T. Marhula (Jan. 14, 2010, 6:34 p.m.).

³ E-mail from Tony Grindberg, NDSU Research and Technology Park Executive Director, to Mary Kae Kelsch, Assistant Attorney General (Jan. 18, 2010, 9:45 a.m.).

ISSUE

Whether the NDSU Research Park responded to a request for records within a reasonable time.

ANALYSIS

The Research Park is a nonprofit corporation created pursuant to the authority set forth in N.D.C.C. § 15-10-17(8) and does not dispute that it had an obligation under the open records law to provide the requested records.⁴

The open records law is violated when a public entity does not provide access to or copies of records within a reasonable time.⁵ “By prohibiting an unreasonable delay in providing access or copies, the Legislature has indicated by implication that access to or copies of open public records need not always be provided immediately.”⁶ “Whether a response has been provided within a reasonable time will depend on the facts of a given situation.”⁷

In 2006, a requester was told three times that records could not be provided to him because the director was out of the office.⁸ This office explained that providing access to records generally does not require the approval, supervision, or action by a head of an agency.⁹ However, the opinion did not preclude a director from having a role in providing records to a requester.

Unfortunately, this request came at a time when the staff of the Research Park was occupied with responsibilities that demanded immediate attention. The staff was attending off-site, pre-scheduled meetings that could not be postponed. According to the director, his involvement was an effort to facilitate the request, not further delay it. He contacted the requester Thursday evening by e-mail to tell him when the record would be provided.

Generally, a delay in providing one record is not anticipated. However, this office has explained in numerous opinions that a number of circumstances, including balancing

⁴ See N.D.A.G. 2006-O-01.

⁵ N.D.A.G. 2006-O-15. See also N.D.C.C. § 44-04-18(8).

⁶ N.D.A.G. 98-O-04.

⁷ N.D.A.G. 2006-O-15; N.D.A.G. 2005-O-05; N.D.A.G. 2003-O-09.

⁸ See N.D.A.G. 2006-O-15.

⁹ N.D.A.G. 2006-O-15.

other responsibilities of the public entity that demand immediate attention, could reasonably delay providing records in response to an open records request.¹⁰ Thus, past opinions have considered the public entity's workload, other responsibilities, available staff, and contact maintained with the requester as to the estimated response time to determine whether a delay was reasonable.¹¹

CONCLUSION

Although the Research Park did not receive a voluminous request, it came at an inopportune time that did not allow it to provide the record immediately. Based on the foregoing, it is my opinion that in this situation the delay in providing the record was not unreasonable.

Wayne Stenehjem
Attorney General

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¹⁰ See N.D.A.G. 98-O-04.

¹¹ N.D.A.G. 2004-O-05; N.D.A.G. 2003-O-21; N.D.A.G. 2002-O-06; N.D.A.G. 98-O-04.