

**OPEN RECORDS AND MEETINGS OPINION  
2008-O-06**

DATE ISSUED: March 14, 2008

ISSUED TO: Cavalier Fire Department  
Cavalier Rural Fire Department

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Scott Heck asking whether the Cavalier Fire Department and the Cavalier Rural Fire Department violated N.D.C.C. § 44-04-18 by failing to provide Mr. Heck with the records requested within a reasonable time.

**FACTS PRESENTED**

On November 14, 2007, Mr. Heck sent an open records request to the Cavalier Fire Department and Cavalier Rural Fire Department requesting copies of fire protection contracts that the two departments may have undertaken with townships and cities<sup>1</sup> to render services outside the corporate limits of the city.<sup>2</sup> On December 6, 2007, David Duncan, the secretary/treasurer for both the Cavalier Rural Fire Department and Cavalier Fire Department, responded in writing to Mr. Heck advising him that neither fire department had the records he requested.

**ISSUE**

Whether the Cavalier Fire Department and Cavalier Rural Fire Department violated N.D.C.C. § 44-04-18 by not responding to Mr. Heck's request within a reasonable time.

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<sup>1</sup> Mr. Heck requested copies of contracts with the following cities and townships: Advance; Akra; Bathgate (city and township); Beaulieu; Carlisle (North and South); Cavalier (city and township); Hamilton (city and township); Lodema; Park; St. Joseph.

<sup>2</sup> Mr. Heck is of the opinion that the Cavalier Fire Department is required to enter into contracts with the governmental entities outside of the city limits to which it provides fire protection services based upon the Cavalier, N.D. Municipal Code ch. 32, § 32.04.

## ANALYSIS

It is a violation of N.D.C.C. § 44-04-18 when a copy of a record is not provided within a reasonable time.<sup>3</sup> Although N.D.C.C. § 44-04-18 does not usually require an immediate response, the delay permitted will usually be measured in a few hours or a few days rather than several days or weeks.<sup>4</sup> “Depending on the circumstances, a delay may be appropriate for a number of reasons, including excising closed or confidential information, consulting with an attorney when there is a reasonable doubt whether the records are open to the public, or balancing other responsibilities of the public entity that demand immediate attention.”<sup>5</sup> “Whether a response has been provided within a reasonable time will depend on the facts of a given situation.”<sup>6</sup>

When a public entity receives a request for records, it must either provide those records or explain why the records are not being provided within a reasonable time.<sup>7</sup> This includes determining whether a record exists, and informing the requester of the fact.<sup>8</sup>

Mr. Duncan responded to Mr. Heck’s request on behalf of both fire departments, approximately 23 days (16 working days) after the request was sent.<sup>9</sup> Mr. Duncan advised my staff that he manages the books of both departments but that he is a volunteer and he works full time at a different job. Mr. Duncan also advised that the delay in responding to Mr. Heck was not intentional and that it was partly due to personal circumstances beyond his control.

Prior opinions have explained that delayed responses are closely scrutinized. One opinion concluded that a delay of 11 days (seven working days) was not unreasonable under certain circumstances including the fact that the public entity was staffed with part-time employees.<sup>10</sup> In another opinion, this office explained that a delay of 14 days (10 working days) was reasonable based upon a large number of factors including

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<sup>3</sup> N.D.C.C. § 44-04-18(8).

<sup>4</sup> N.D.A.G. 2004-O-07; N.D.A.G. 2002-O-06.

<sup>5</sup> N.D.A.G. 2004-O-05; 2002-O-06; N.D.A.G. 98-O-20; N.D.A.G. 98-O-04.

<sup>6</sup> N.D.A.G. 2006-O-15; 2005-O-05; 2003-O-09.

<sup>7</sup> N.D.A.G. 2007-O-11 (a delay of multiple months in responding to a request for records that are not in the possession of the public entity is unreasonable); N.D.A.G. 98-O-20.

<sup>8</sup> N.D.A.G. 2007-O-11.

<sup>9</sup> The secretary/treasurer has advised this office that the Cavalier Rural Fire Department is a non-profit entity that is funded with public funds. The Cavalier Fire Department is a municipal fire department. Both are public entities under N.D.C.C. § 44-04-17.1(12).

<sup>10</sup> N.D.A.G. 98-O-03.

part-time staff working for the public entity.<sup>11</sup> But this office also has explained that a delay of 11 days (seven working days) is an unreasonable delay when the only action needed is to inform an individual that a requested record does not exist.<sup>12</sup>

Although I understand that it is difficult for small entities staffed with part-time employees to respond to requests for records in a timely fashion, and these circumstances are considered when reviewing an open records complaint, it is my opinion that the fire departments' delay of 16 working days to respond to Mr. Heck's request was unreasonable and violated N.D.C.C. § 44-04-18.

#### CONCLUSION

It is my opinion that the Cavalier Fire Department and the Cavalier Rural Fire Department violated N.D.C.C. § 44-04-18 by waiting 16 working days to advise Mr. Heck that the records he requested did not exist. The time taken to respond to the request was unreasonable.

#### STEPS NEEDED TO REMEDY VIOLATION

Although untimely, the fire departments have remedied their violations by advising Mr. Heck that the records he requested do not exist.

Wayne Stenehjem  
Attorney General

Assisted by: Matthew A. Sagsveen  
Assistant Attorney General

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<sup>11</sup> N.D.A.G. 2004-O-05.

<sup>12</sup> N.D.A.G. 2007-O-11; N.D.A.G. 2001-O-04.