

**OPEN RECORDS AND MEETINGS OPINION  
2008-O-18**

DATE ISSUED: July 15, 2008

ISSUED TO: Mountrail County

**CITIZEN'S REQUEST FOR OPINION**

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from First American CoreLogic asking whether Mountrail County violated N.D.C.C. § 44-04-18 when it required First American CoreLogic to pay an advance fee of \$900 for an electronic copy of the County's tax assessment roll.

**FACTS PRESENTED**

Mountrail County (County) has established a system to store certain County records electronically including its real estate tax billing, integrated financial services, payroll, treasurer's financial reports, recorder's land tract index, and other records. The County hired Computer Professionals Unlimited, Inc. (CPU), to design, develop, install, and maintain the County's electronic records system because it does not have any in-house information technology staff.<sup>1</sup>

On October 19, 2007, First American CoreLogic (CoreLogic) submitted a request to the Mountrail County auditor asking for an electronic copy of the County's most recent tax roll. Specifically, CoreLogic asked for a "duplicate tax/assessment roll" that includes: "real property and tax information for each parcel [of land] located within the county [including] parcel number, owner name, site address and/or mailing address, tax amount and/or value of property and improvements (building) on the property, and legal description of the property."<sup>2</sup> The county auditor advised CoreLogic that the County would provide the requested records and further stated:

---

<sup>1</sup> Agreement to Provide Professional Services between Mountrail County and Computer Professionals Unlimited, Inc. (Contract) (Dec. 19, 2006).

<sup>2</sup> Letter from Brad Bohrer, Senior Counsel, CoreLogic, to Ms. Karen Eliason, Mountrail County Auditor (Oct. 19, 2007). Subsequently, CoreLogic learned that Ms. Joan Hollekim had succeeded Ms. Eliason as County Auditor and has addressed subsequent correspondence to Ms. Hollekim.

## OPEN RECORDS AND MEETINGS OPINION 2008-O-18

July 15, 2008

Page 2

The Mountrail County Commissioners set a fee yesterday for obtaining Mountrail County's records in electronic format. The cost will be 4 cents per parcel plus whatever our software company charges to format the records. Mountrail County has 14,097 parcels (\$563.88). I cannot give you an exact cost the software provider will be charging, but they indicated around \$350.00. The total cost would be around \$900.00. The fee will need to be paid upfront. . . .<sup>3</sup>

CoreLogic questions the legality of the per parcel surcharge of four cents per parcel of property in Mountrail County, but does not question the County's authority to charge a fee based on the actual cost of making an electronic copy of the records requested.<sup>4</sup>

### ISSUE

Whether the County's cost estimate provided to CoreLogic for a copy of electronic records was based on charges allowed by N.D.C.C. § 44-04-18.

### ANALYSIS

"Except as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection."<sup>5</sup> A "[r]ecord" means recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity."<sup>6</sup> This definition includes electronic records stored in computers.<sup>7</sup> Information in a database of a public entity is subject to the open records law and required to be accessible.<sup>8</sup>

Access to electronically stored records is free if the records are recoverable without the use of a computer backup file.<sup>9</sup> But if a request is made for a copy of an electronically stored record, in addition to the other charges authorized under N.D.C.C. § 44-04-18, "the public entity may charge a reasonable fee for providing the copies, including costs

---

<sup>3</sup> E-mail from Joan Hollekim, County Auditor, to Brad Bohrer, CoreLogic (Nov. 8, 2007) (emphasis added).

<sup>4</sup> Letter from Brad Bohrer, CoreLogic, to Wayne Stenehjem, Attorney General (Nov. 20, 2007).

<sup>5</sup> N.D.C.C. § 44-04-18(1).

<sup>6</sup> N.D.C.C. § 44-04-17.1(15).

<sup>7</sup> N.D.A.G. 2007-O-01; N.D.A.G. Letter to Tracy (Sept. 10, 1992).

<sup>8</sup> N.D.A.G. 2007-O-01.

<sup>9</sup> N.D.C.C. § 44-04-18(3).

## OPEN RECORDS AND MEETINGS OPINION 2008-O-18

July 15, 2008

Page 3

attributable to the use of information technology resources."<sup>10</sup> A reasonable fee means the actual cost of making the copy, including labor, materials, and equipment.<sup>11</sup> An entity may require payment before making a copy of the record.<sup>12</sup> A copy of an electronically stored record must be provided at the requester's option in any available medium, including an electronic format.<sup>13</sup> Finally, except as reasonably necessary to reveal the manner of organization of data contained in an electronically stored record, a public entity is not required to provide an electronically stored record in a different structure, format, or organization.<sup>14</sup>

Here the County is seeking to impose two distinct fees: \$350 for the actual cost to make an electronic copy of the records, and an additional four cents per parcel charge for the cost of maintaining electronic records. I will review each charge separately.

### The \$350 charge:

The County contracts with a private company, CPU, for information technology support. CPU must make the electronic copy of the records because the county auditor and her staff do not have the information technology training required to make an electronic copy of the County's tax roll records. Pursuant to N.D.C.C. § 44-04-18(2) and (3), the amount CPU charges the County for making an electronic copy may be passed on to the requester. Thus, the County is authorized by law to charge Corelogic a fee for making an electronic copy that is based on the actual cost the County pays CPU.

### The four cents per parcel charge:

The County argues that an additional fee of four cents per parcel is justified because it is the same charge the county recorder charges for copies of noncertified instrument pages and the County wants "[t]o stay uniform with the county Recorder's Office."<sup>15</sup> This

---

<sup>10</sup> Id.; see also N.D.A.G. 2007-O-01 (entity "may . . . charge a reasonable fee for making an electronic copy of the data").

<sup>11</sup> N.D.C.C. § 44-04-18(2); see also N.D.A.G. 2003-O-04 ("City may charge its actual costs, including labor, materials, and the equipment" for making a copy of electronic records.).

<sup>12</sup> Id.

<sup>13</sup> N.D.C.C. § 44-04-18(4). A computer file is not an available medium if no means exist to separate or prevent the disclosure of any closed or confidential information contained in that file. Id.

<sup>14</sup> Id.

<sup>15</sup> N.D.C.C. § 11-18-05(3) states that "[f]or making a noncertified copy of any recorded instrument or filed non-central indexing system instrument, a fee of not more than one dollar per instrument page." As a result, county recorders may charge a copy charge

## OPEN RECORDS AND MEETINGS OPINION 2008-O-18

July 15, 2008

Page 4

argument ignores the fact that the county recorder's charges are based on a specific statute that applies only to county recorders.<sup>16</sup> The tax and assessment roll that CoreLogic requested is not in the possession of the county recorder so N.D.C.C. § 11-18-05 does not apply. There is no similar statute that allows other departments within the County to charge a per parcel charge. The County is only authorized to charge the amounts allowed in N.D.C.C. § 44-04-18(2) and (3).

The County also argues that the four cent charge reimburses the County for "personnel cost ... [attributable to] continually updating these [electronic] records."<sup>17</sup> Generally, the wages and benefits attributable to the time public employees devote to maintaining and updating public records (as distinguished from time directly related to making a copy of a record) has never been an allowable cost in determining the charges for a copy of a public record.<sup>18</sup>

Although it may be true that the County has a significant monetary investment in its electronic records, the Legislature has not provided for a separate fee that may be assessed by counties in order to recoup the investment in electronic records. Thus, the County is not statutorily authorized to charge an extra four cents per parcel.

By calculating an additional per parcel fee, the County greatly miscalculated the estimated cost to provide CoreLogic with the records.<sup>19</sup> "While an entity may require payment before making copies, the estimate given to a requester must be based on legally chargeable fees."<sup>20</sup> The County did not have statutory authority for over half of the charges it estimated to Corelogic. Therefore, it is my opinion that the County violated N.D.C.C. § 44-04-18 when it included in its estimate charges for copies of electronic records that are not allowed under the law.

### CONCLUSION

Mountrail County may charge CoreLogic the actual cost of having CPU make an electronic copy, but the County does not have the statutory authority to charge a fixed

---

per instrument, regardless of whether the copy is electronic or a traditional paper copy. See N.D.A.G. 2008-L-01. This is in contrast to the general open records provision that only refers to "paper copies."

<sup>16</sup> Id.

<sup>17</sup> Response of Mountrail County (undated) to questions from Mary Kae Kelsch, Assistant Attorney General (Dec. 27, 2007).

<sup>18</sup> See, e.g., N.D.A.G. 2004-O-20; N.D.A.G. 2004-O-07.

<sup>19</sup> See N.D.A.G. 2005-O-05 (public entity greatly miscalculated the estimated cost to provide a requester with public records).

<sup>20</sup> Id.

fee for each parcel of land in the County's tax assessment roll. Thus, the County violated N.D.C.C. § 44-04-18 when it included in its estimate to CoreLogic charges for copies of electronic records that are not allowed under the law.

#### STEPS NEEDED TO REMEDY VIOLATIONS

Mountrail County, through its agent, Computer Professionals Unlimited, Inc., must provide a copy of the most recent tax assessment roll in an electronic form, including the file layout and data dictionary for the database. The electronic copy may be provided to CoreLogic directly from CPU, if possible. Mountrail County may charge CoreLogic the actual cost incurred in making the copy, but no more than \$350, and Mountrail County may not require CoreLogic to pay the fee in advance.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2.<sup>21</sup> It may also result in personal liability for the person or persons responsible for the noncompliance.<sup>22</sup>

Wayne Stenehjem  
Attorney General

Assisted by: Michael J. Mullen  
Assistant Attorney General

vkk

---

<sup>21</sup> N.D.C.C. § 44-04-21.1(2).

<sup>22</sup> Id.