

**OPEN RECORDS AND MEETINGS OPINION
2011-O-07**

DATE ISSUED: May 26, 2011

ISSUED TO: City of Dickinson's Human Relations Commission

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Mr. William (Jack) Jackson asking whether the City of Dickinson's Human Relations Commission (HRC) violated the open records and meetings laws by failing to provide open records within a reasonable time and by failing to provide notice of a regularly scheduled meeting to the newspaper.

FACTS PRESENTED

The HRC is an advisory board that was created by ordinance of the Dickinson Municipal Code to promote the acceptance and respect for diversity through educational programs and activities and to discourage all forms of discrimination.¹ The HRC currently has six members appointed by the president of the Board of City Commissioners and subject to confirmation by the Dickinson City Commission (Commission).²

The HRC held a regularly scheduled meeting on December 17, 2010.³ On December 20, 2010, Mr. Jackson made a verbal request to the Dickinson city administrator for the names and addresses of the HRC members and also inquired whether the newspaper had been informed of the HRC meeting held December 17, 2010. Mr. Jackson did not receive a response to his request so he left a voice mail message for the city administrator. The city administrator sent Mr. Jackson an e-mail on December 29, 2010, seeking clarification regarding the records Mr. Jackson requested. Mr. Jackson responded to the city administrator on January 1, 2011, asking

¹ Dickinson Mun. Code § 2.35.010.

² Dickinson Mun. Code § 2.35.020.

³ The HRC holds regular meetings every third Friday of the month at 12:00 p.m. Pursuant to N.D.C.C. § 44-04-20(3), a schedule of all regularly scheduled meetings is annually filed in January with the Dickinson City Administrator's office.

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if the newspaper was contacted regarding the HRC meeting held on December 17, 2010. Mr. Jackson also requested the minutes from the December 17 meeting and asked again for the names and mailing addresses of the HRC members. On January 4, 2011, the city administrator provided Mr. Jackson the names and telephone numbers of the HRC members and informed Mr. Jackson that the request for addresses was being referred to the chair of the HRC because the city administrator did not have addresses for the HRC members.

On January 8, 2011, Mr. Jackson again contacted the city administrator about the December 17 meeting minutes and was informed the minutes had not been completed. On January 11, 2011, draft minutes for the December 17 meeting were provided to Mr. Jackson.

Between January and March, Mr. Jackson repeatedly requested the mailing addresses of the HRC members from the city administrator. On March 15, 2011, the Dickinson city attorney e-mailed Mr. Jackson a business mailing address for the HRC members. The city attorney, however, denied the request for home mailing addresses citing N.D.C.C. § 44-04-18.1(2), because the home mailing addresses of the HRC members are exempt and do not need to be released by the public entity.

ISSUES

1. Whether the City of Dickinson violated N.D.C.C. § 44-04-18 by not responding to a request for records within a reasonable time.
2. Whether the City of Dickinson provided proper notice of the HRC's regularly scheduled meeting on December 17, 2010.

ANALYSIS

Issue one

All records of a public entity⁴ are open and accessible to the public unless otherwise specifically provided by law.⁵ A copy of a record must be provided upon request.⁶ A

⁴ Even though the HRC does not have final decision making authority, the Commission created it by ordinance and delegated authority to the HRC, making the HRC subject to the open meetings and notice requirements.⁴

⁵ N.D.C.C. § 44-04-18(1); N.D. Const. art. XI, § 6.

⁶ N.D.C.C. § 44-04-18(2).

request for a public record “need not be made in person or in writing.”⁷ A verbal request in person or by telephone has the same effect as a “formal” written request.⁸ When a public entity does not provide access to or copies of a record within a reasonable time, the open records law is violated.⁹ If a public entity denies a request for records, the denial must describe the legal authority for the denial and must be provided within a reasonable time.¹⁰ “Once a person makes a request for open records, it is the responsibility of the public entity to respond to the request within a reasonable time and the requester is not required to contact the entity again to find out when the records will be provided or made available.”¹¹ Although N.D.C.C. § 44-04-18 does not usually require an immediate response, the delay permitted generally will be measured in a few hours or a few days rather than several days or weeks.¹²

Names and Addresses of HRC Members

On January 4, 2011, fifteen days after his original request, Mr. Jackson received the names and telephone numbers of the HRC members. On March 15, 2011, Mr. Jackson finally received a business mailing address for the HRC members and a legal explanation for why he was not provided the home mailing addresses for the members.

In past opinions, a significant delay in responding to a request for records has been found reasonable in circumstances where the request was for a large number of records, where closed or confidential information had to be excised, or where other responsibilities of the public entity demanded immediate attention.¹³ Here, the City has not offered an explanation that would justify the lengthy delay in providing a response to Mr. Jackson’s repeated requests. Therefore, it is my opinion that the delay in responding to Mr. Jackson’s repeated requests for the names and addresses of the HRC members was unreasonable and violated N.D.C.C. § 44-04-18.

Meeting Minutes

On January 1, and again on January 8, 2011, Mr. Jackson asked the city administrator for a copy of the minutes from the December 17, 2010, HRC meeting. At the time of Mr. Jackson’s requests, the minutes had not been prepared. Draft minutes must usually

⁷ N.D.C.C. § 44-04-18(2); N.D.A.G. 2008-O-08; N.D.A.G. 2007-O-03; N.D.A.G. 2005-O-09; N.D.A.G. 2001-O-12.

⁸ N.D.A.G. 2008-O-08; N.D.A.G. 2007-O-03; N.D.A.G. 98-O-03.

⁹ N.D.C.C. § 44-04-18(8); N.D.A.G. 2009-O-07; N.D.A.G. 2006-O-15.

¹⁰ N.D.C.C. § 44-04-18(7); N.D.A.G. 2007-O-06.

¹¹ N.D.A.G. 2006-O-15; N.D.A.G. 2001-O-12; N.D.A.G. 98-O-04.

¹² 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.

¹³ N.D.A.G. 2007-O-06; N.D.A.G. 2004-O-05.

be prepared and available before the next regularly scheduled meeting of the public entity.¹⁴ Draft minutes of the December 17 meeting were completed on January 10, 2011, and were provided to Mr. Jackson on January 11, 2011. Because the draft minutes were provided to Mr. Jackson the day after they were available, it is my opinion that there was not an unreasonable delay in providing the minutes.

Issue two

Public notice must be given in advance of all meetings of a public entity. Mr. Jackson alleges that the December 17 meeting was not properly noticed because the City of Dickinson did not provide notice of the HRC meeting to The Dickinson Press. Unless otherwise provided by law, notices need not be published.¹⁵ Notice of a regular meeting must be posted at the principal office of the governing body, at the location of the meeting, filed with the city auditor, in the case of a city, or posted on the public entity's website.¹⁶ Notice must also be provided to anyone requesting such information.¹⁷ The notice requirements for regular meetings in N.D.C.C. § 44-04-20 do not require that a public entity provide additional notice to the newspaper unless it has requested notice.¹⁸

According to the City, The Dickinson Press had not requested to receive additional notice of the HRC meetings.¹⁹ Therefore, it is my opinion that the HRC was not legally required to provide additional notice to The Dickinson Press of the meeting held on December 17, 2010.

CONCLUSIONS

1. The City of Dickinson violated N.D.C.C. § 44-04-18 by failing to provide the names and addresses of the HRC members within a reasonable time, but did not violate N.D.C.C. § 44-04-18 because the meeting minutes were provided in a timely manner.
2. The City of Dickinson complied with the meeting notice requirement for regular meetings under N.D.C.C. § 44-04-20(5).

¹⁴ N.D.A.G. 2004-O-05; N.D.A.G. 98-O-04.

¹⁵ Id.

¹⁶ N.D.C.C. § 44-04-20(4). See S.B. 2232, 2011 N.D. Leg., effective April 11, 2011.

¹⁷ N.D.C.C. § 44-04-20(5).

¹⁸ See N.D.C.C. § 44-04-20(5). C.f. N.D.C.C. § 44-04-20(6) (a governing body shall also notify the public entity's official newspaper of special or emergency meetings).

¹⁹ See N.D.C.C. § 44-04-20(5) (anyone may request to receive notice of meetings).

STEPS NEEDED TO REMEDY VIOLATION

The unreasonable delay has been remedied to the greatest extent possible by providing the requested records to Mr. Jackson.

Wayne Stenehjem
Attorney General

lsm/vkk