

**OPEN RECORDS AND MEETINGS OPINION
2012-O-07**

DATE ISSUED: August 2, 2012

ISSUED TO: Dresden Township

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. § 44-04-21.1 from Tom Valentine asking whether Dresden Township unreasonably delayed access to records he requested.

FACTS PRESENTED

On February 1, 2012, Tom Valentine sent a letter to Mark Schneider, the Chairman of the Dresden Township Supervisors, asking to view and copy township records. In his letter Valentine asked to see the following:

- | | | |
|----|---------------------------------|--------------|
| 1. | Minutes of meetings | 2005 to 2011 |
| 2. | Receipts and for what | 2005 to 2011 |
| 3. | Expenditures (to include bills) | 2005 to 2011 |

After receiving no response, Valentine sent the same letter on February 17, 2012, by certified mail to Chairman Schneider. Chairman Schneider signed for the certified letter on February 27, 2012, and immediately contacted Township Clerk Barb Schiestel.¹ The clerk, who had many of the records in her possession, was leaving the state the next day and was not due to return until March 15. Chairman Schneider, who also had some of the records in his possession, was going to be gone from March 15 until March 27.

Chairman Schneider subsequently sent Mr. Valentine a letter dated March 1, 2012, informing him that the records he requested would be available for review on April 2,

¹ There was a ten day delay between the time the certified letter was sent to Chairman Schneider and the day he signed for the letter. Chairman Schneider states he repeatedly signed the receipt left in his mailbox by the rural mail carrier thinking that the letter would then be delivered to him. When the letter was not delivered, Chairman Schneider stopped the rural mail carrier on his route who told him he had to go into town to pick up the certified letter.

2012, from 10:00 a.m. until 11:00 a.m. at the Cavalier County Courthouse. The letter invited Mr. Valentine to discuss his request further at the annual meeting scheduled for March 20, 2012. Mr. Valentine received the letter from Chairman Schneider on March 6, 2012. Rather than contact Chairman Schneider about an alternative date, six days later Mr. Valentine asked this office whether Dresden Township's response violated the open records law. Mr. Valentine attended the Dresden Township annual meeting but did not complain about the proposed date to view the records.

On March 30, 2012, the clerk, Chairman Schneider, and his wife, met to assemble the seven years of records Mr. Valentine requested. Mr. Valentine reviewed the records on April 2, 2012; 36 days after Chairman Schneider received the certified letter.²

ISSUE

Whether Dresden Township's one month delay in providing access to public records was reasonable.

ANALYSIS

A township is a political subdivision and is therefore a "public entity" subject to the open records and meetings law.³ "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."⁴ When a public entity receives a request for records, it must, within a reasonable time period, either provide the records or explain why the records are not being provided.⁵ A delay may be appropriate for a number of reasons, including excising closed or confidential information, the number of records requested, or balancing other responsibilities of the public entity that demand immediate attention.⁶

According to the Township, it was unable to immediately provide Mr. Valentine with the records he requested because of vacations that were taken first by the township clerk from February 28, 2012, to March 15, 2012 and then by the chairman from March 15, 2012, until March 27, 2012. The township's response was complicated by the fact that all the records were not kept with one person. Based upon many past experiences with

² Mr. Valentine asked for copies of certain township records during his review. The township overcharged him for the copies. However, this office was contacted immediately by the township and it then reimbursed the overcharged amount to Mr. Valentine.

³ N.D.C.C. § 44-04-17.1(11), (13)(b).

⁴ N.D.C.C. § 44-04-18.

⁵ N.D.C.C. § 44-04-18(7); 2004-O-05.

⁶ N.D.A.G. 2004-O-05; N.D.A.G. 2002-O-06.

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Mr. Valentine, Chairman Schneider and the clerk believed Mr. Valentine would not agree to review the records in stages.

When determining the reasonableness of a response, this office considers the circumstances of the particular request.⁷ In past opinions, this office has concluded that the fact that a public entity has limited or part-time employees may legitimately delay a response to a request for records.⁸ Dresden Township, like most townships, does not have any employees or an office. It is located in a sparsely populated, rural area and township records are kept in the homes of the clerk and chairman. Thus, when a clerk, chairman, or supervisor is on vacation, there are no remaining individuals to handle records requests. In the case of a township, the absence of the person who has the records and the lack of a central office are legitimate factors to consider when considering the reasonableness of a delay.

In a 2008 opinion to Round Prairie Township, there was a delay of more than a month in providing Township minutes.⁹ In that opinion, the Township clerk was a farmer and did not have time to stop harvest, go into town, and make copies.¹⁰ I explained that the part of the delay attributable to the harvest was reasonable.¹¹ In the case of Round Prairie Township, the violation occurred when, after harvest, no action was taken to fulfill the request for records.¹² Round Prairie Township completely disregarded its obligation under the open records law to provide access to public records.¹³

In this instance, nothing indicates that the delay was due to a disregard for the open records law. Upon receiving the request, the township took immediate action to coordinate a response by sending a letter sent to Mr. Valentine with a proposed date for review. Then, upon returning from their respective vacations, the Dresden Township clerk and Chairman Schneider promptly met and provided the records to Mr. Valentine within three days of their return. While arguably it may have been preferable for the chairman and the clerk individually to provide Mr. Valentine with the requested information in their respective possessions, given the facts in this specific instance, I cannot conclude it was unreasonable for the officials to decide to respond to the request with one response rather than separately.

⁷ N.D.A.G. 2004-O-05.

⁸ See, N.D.A.G. 98-O-03 (a delay of eleven days was not unreasonable when the public entity was staffed with part-time employees); N.D.A.G. 2004-O-05 (a fourteen day delay was reasonable based upon a number of factors including the part-time status of the staff working for the public entity).

⁹ N.D.A.G. 2008-O-12.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

Under most circumstances, a delay of a month in providing copies of requested records would be unreasonable.¹⁴ In this situation, however, there were circumstances unique to a rural township that lead me to conclude the delay was reasonable.

CONCLUSION

The Dresden Township provided the requested records within a reasonable time.

Wayne Stenehjem
Attorney General

mkk/vkk

¹⁴ N.D.A.G. 2004-O-05. See e.g. N.D.A.G. 2003-O-19 (4 months); N.D.A.G. 2003-O-17 (89 days); N.D.A.G. 2003-O-09 (1.5 months); N.D.A.G. 2002-O-06 (1.5 months); N.D.A.G. 2002-O-03 (2 months); and N.D.A.G. 98-O-20 (1.5 months).