

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

Susan Franciere,)	
)	
Plaintiff and Appellant,)	
)	Supreme Court No. 20190122
v.)	
)	Civil No. 30-2017-CV-00914
City of Mandan,)	
)	
City and Appellee.)	
)	

ON APPEAL FROM JUDGMENT OF
MORTON COUNTY DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT
JUDGMENT DATED 02/12/2019
THE HONORABLE JAMES S. HILL

BRIEF OF PLAINTIFF AND APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	Pages 3-5
STATEMENT OF ISSUES	¶¶1-20
STATEMENT OF CASE	¶¶21-26
STATEMENT OF FACTS	¶¶27-48
LAW AND ARGUMENT	¶¶49-101
CONCLUSION	¶102

TABLE OF AUTHORITIES

Cases	Paragraph
<u>Ashley Educ. Ass'n</u> , 556 N.W.2d at 668	¶90
<u>Gosbee v. Bendish</u> , 512 N.W.2d 450 (N.D. 1994)	¶¶25, 47, 50-52, 54-55
<u>Hughes v. State Farm Mut. Auto. Ins. Co.</u> , 236 N.W.2d 870 (N.D.1975)	¶72
<u>Kelsh v. Jaeger</u> , 2002 ND 53, 641 N.W.2d 100	¶61
<u>Pollock v. McKenzie County Public School Dist. #1</u> , 221 N.W.2d 521 (N.D.1974)	¶72
<u>Saefke v. Stenehjem</u> , 2003 ND 202, 673 N.W.2d 41	¶¶62, 95
<u>Sposato v. Sposato</u> , 1997 ND 207, 570 N.W.2d 212	¶90
<u>State v. Jelliff</u> , 251 N.W.2d 1 (N.D.1977)	¶72
<u>State v. Kostelecky</u> , 2018 ND 12, 906 N.W.2d 77	¶69
<u>State v. Strom</u> , 2019 ND 9, 921 N.W.2d 660	¶69
<u>Werlinger v. Champion Healthcare Corp.</u> , 1999 ND 173, 598 N.W.2d 820	¶62

Statutes	Paragraph
N.D.C.C. § 1-02-07	¶63
N.D.C.C. § 12.1-11-06	¶¶13, 15, 22, 34, 42, 47, 49, 73, 93
N.D.C.C. § 44-04-17.1(5)	¶¶74-75
N.D.C.C. § 44-04-17.1(16)	¶1

N.D.C.C. § 44-04-18	¶¶22, 33, 42, 47, 49, 55, 60, 73, 75-76, 80, 82-85, 87, 89, 91, 93-94, 96-97, 99-102
N.D.C.C. § 44-04-18(1)	¶¶2, 21, 33-34, 49, 57, 67, 82, 89
N.D.C.C. § 44-04-18(2)	¶¶4, 17-18, 21, 30-31, 33-34, 49, 67, 73
N.D.C.C. § 44-04-18(7)	¶¶9, 21-22, 31-34, 36, 42, 49, 64, 66, 68
N.D.C.C. § 44-04-18(8)	¶¶10, 21, 33-34, 49, 66-68
N.D.C.C. § 44-04-18.7	¶49, 79, 82
N.D.C.C. § 44-04-18.7(1)	¶76
N.D.C.C. § 44-04-18.7(3)	¶77
N.D.C.C. § 44-04-18.7(4)	¶78
N.D.C.C. § 44-04-21.1	¶¶6, 33, 60, 65, 88, 94, 96-97, 100-102
N.D.C.C. § 44-04-21.1(1)	¶¶96
N.D.C.C. § 44-04-21.2	¶¶7-11, 52-54, 60, 65, 73, 83-84, 89, 93-94, 100-102
N.D.C.C. § 44-04-21.2(1)	¶¶9, 16, 18-19, 21-22, 34, 42, 47-49, 54, 60, 65-66, 73, 80, 82, 84, 86, 92, 94, 101
N.D.C.C. § 44-04-21.3	¶¶12, 14, 22, 34, 42, 47, 49, 73, 93
N.D.C.C. § 54-12-01(19)	¶¶96, 101-102

Constitutional Provisions

Paragraph

N.D. Const., Art. I, § 25	¶¶30-31, 81, 102
N.D. Const., Art. I, § 25(1)	¶¶36, 73, 75
N.D. Const., Art. I, § 25(1)(a)	¶¶70, 100

N.D. Const., Art. I, § 25(1)(g)	¶¶39, 41
N.D. Const., Art. I, § 25(1)(h)	¶41
N.D. Const., Art. I, § 25(1)(i)	¶39, 41
N.D. Const., Art. I, § 25(1)(l)	2-7, 11-13, 17-18, 21-22, 25, 30-34, 42, 47, 49, 58, 60, 73, 75, 79-80, 82-83, 85, 87-89, 91, 93-94, 96-102
N.D. Const., Art. I, § 25(1)(n)	¶¶14-16, 19, 22, 34, 41-42, 47-49, 60, 65- 66, 71, 73, 80, 82, 84, 86, 92, 94, 100-102
N.D. Const., Art. I, § 25(1)(o)	¶38
N.D. Const., Art. I, § 25(3)	¶¶59, 96
N.D. Const., Art. I, § 25(4)	¶¶22, 27, 42, 49, 73, 75, 79-80, 82, 85-89, 91-94, 96-100
N.D. Const., Art. XI, § 6	¶¶33, 49, 56, 67, 82, 89

Attorney General Opinions

Paragraph

Letter Opinion 2016-L-04	¶¶63-64, 98-99
Opinion 2014-O-21	¶67
Opinion 2014-O-25	¶67
Opinion 2017-O-10	¶68
Opinion 2019-O-07	¶68

Other Authority

Paragraph

S.B. 2228 (1997)	¶¶51-53
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STATEMENT OF ISSUES

[¶1.] Whether statutory law in North Dakota Century Code (hereafter “N.D.C.C.”) § 44-04-17.1(16) defines a “Record” as including a police report.

[¶2.] Whether statutory law stated in N.D.C.C. § 44-04-18(1), on public records subject to release, includes all records subject to release to the “victim” under the constitutional mandate in North Dakota Constitution (hereafter “N.D. Const.”), Article (hereafter “Art.”) I, Section (hereafter “Sec.”) 25(1)(l).

[¶3.] Whether the constitutional mandate in ND Const., Art. XI, Sec. 6, on public records, includes all records subject to release to the “victim” under the constitutional mandate in N.D. Const., Art. I, § 25(1)(l).

[¶4.] Whether statutory law stated in N.D.C.C. § 44-04-18(2), regarding copies, includes records subject to release to the “victim” under the constitutional mandate in N.D. Const., Art. I, § 25(1)(l).

[¶5.] Whether the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), on rights of a “victim” to records, overrides statutory law in N.D.C.C. § 44-04-18.7 exempting records from disclosure the records.

[¶6.] Whether statutory law in N.D.C.C. § 44-04-21.1, on requesting an Open Records and Meetings Opinion (hereafter “Opinion”) includes those records subject to release to the “victim” under a constitutional mandate in N.D. Const., Art. I, § 25(1)(l), that are not released to the person listed as a “victim” in those records.

[¶7.] Whether statutory law in N.D.C.C. § 44-04-21.2, on the use of a civil action, includes violations for withholding records subject to release to the “victim” under the constitutional mandate in N.D. Const., Art. I, § 25(1)(l).

[¶8.] Whether statutory law in N.D.C.C. § 44-04-21.2, on the use of a civil action, becomes moot if the public entity only corrects part or all violations of open records law after a civil action is brought under N.D.C.C. § 44-04-21.2.

[¶9.] Whether statutory law in N.D.C.C. § 44-04-21.2, on the use of a civil action, becomes moot when a violation of statutory law in N.D.C.C. § 44-04-18(7) fails to be corrected during the course of that civil action that would allow for the remedies stated in statutory law in N.D.C.C. § 44-04-21.2(1).

[¶10.] Whether statutory law in N.D.C.C. § 44-04-21.2, on the use of a civil action, becomes moot when a violation of statutory law in N.D.C.C. § 44-04-18(8) exists during a civil action and cannot be corrected because of the type of violation under open records law that violation represents.

[¶11.] Whether statutory law in N.D.C.C. § 44-04-21.2, on the use of a civil action, includes when a public entity violates rights of a “victim” to records subject to release to a “victim” under the constitutional mandate in N.D. Const., Art. I, § 25(1)(l).

[¶12.] Whether statutory law in N.D.C.C. § 44-04-21.3, regarding violations of open records law representing a criminal act, includes the refusal by a public entity to release records subject to release to a “victim” under the constitutional mandate in N.D. Const., Art. I, § 25(1)(l).

[¶13.] Whether statutory law in N.D.C.C. § 12.1-11-06, regarding a criminal act when a public servant refuses to perform a duty mandated by law, includes the refusal to release records subject to release to a “victim” under the constitutional mandate in N.D. Const., Art. I, § 25(1)(l).

[¶14.] Whether the constitutional mandate in N.D. Const., Art. I, § 25(1)(n), on

“full and timely restitution” to a victim to make a “victim” whole, includes when the “victim” becomes a “victim” when a public entity commits an act defined as criminal under statutory law N.D.C.C. § 44-04-21.3.

[¶15.] Whether the constitutional mandate in N.D. Const., Art. I, § 25(1)(n), on “full and timely restitution” to a victim to make a “victim” whole, includes when the “victim” becomes a “victim” when a public entity commits an act defined as criminal under statutory law N.D.C.C. § 12.1-11-06.

[¶16.] Whether the constitutional mandate in N.D. Const., Art. I, § 25(1)(n), on “full and timely restitution” to a victim to make a “victim” whole, includes the costs, disbursements and damages listed in statutory law N.D.C.C. § 44-04-21.2(1).

[¶17.] Whether the District Court erred by refusing to address whether the police report Franciere requested from the City of Mandan (hereafter “City”) under statutory law in N.D.C.C. § 44-04-18(2) and the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), was a public record required to be released to Susan Franciere (hereafter “Franciere”) upon request before dismissing as moot Franciere’s civil action against the City.

[¶18.] Whether the District Court violated Franciere’s rights under statutory law in N.D.C.C. § 44-04-21.2(1) by refusing to address if Franciere was entitled to be awarded costs, disbursements and damages by declaring Franciere’s civil action moot when the City only corrected the violation of statutory law in N.D.C.C. § 44-04-18(2) and the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), after Franciere filed a civil action against the City under N.D.C.C. § 44-04-21.2(1) on October 23, 2017.

[¶19.] Whether the District Court violated Franciere’s constitution rights when

the District Court dismissed with prejudice Franciere’s civil action against the City, stopping Franciere from receiving “full and timely restitution” under the constitutional mandate in N.D. Const., Art. I, § 25(1)(n), by failing to order the City to pay Franciere costs, disbursements and damages under statutory law in N.D.C.C. § 44-04-21.2(1).

[¶20.] Whether the District Court erred by presuming no controversies still existed for Franciere’s civil action against the City when declaring Franciere’s civil action against the City moot.

STATEMENT OF CASE

[¶21.] Under statutory law N.D.C.C. § 44-04-21.2(1), Franciere initiated a civil action against the City on October 23, 2017. Franciere filed a Complaint at the Morton County Courthouse on October 23, 2017. [Doc. No. 1; App. 2] Franciere requested costs, disbursement and damages under N.D.C.C. § 44-04-21.2(1) after the City violated statutory law in N.D.C.C. § 44-04-18(1), (2), (7) and (8) in addition to the City violating the constitutional mandates in N.D. Const., Art. I, § 25(1)(l), and ND Const., Art. XI, Sec. 6.

[¶22.] On November 14, 2018, Franciere filed a Motion for Summary Judgment. [Doc. No. 16; App. 7] It was not disputed that Franciere sent a letter dated August 18, 2017, requesting a copy of the police report and written notification citing the legal authority used if the police report would not be released. [Doc. No. 6; App. 5] It was not disputed the City released a redacted copy of the police report to Franciere on October 30, 2017. It was not disputed the City Prosecutor, Daniel Nagle (hereafter “Mr. Nagle”), sent a letter to Franciere by U.S. mail dated January 12, 2018, stating a copy the police report was released on that date. [Doc. No. 73; App. 13] It was not

disputed the City released an unredacted copy of the police report to Franciere on January 12, 2018. It was not disputed the City failed to provide Franciere with written notification required under N.D.C.C. § 44-04-18(7) citing the legal authority used by the City to withhold the police report from Franciere. The District Court had authority under N.D.C.C. § 44-04-21.2(1) to order “effective relief” to Franciere in the form of costs, disbursements and damages to provide the “full and timely restitution” that the constitutional mandate in N.D. Const., Art. I, § 25(1)(n) requires because of the City violating N.D.C.C. § 44-04-18 while violating N.D. Const., Art. I, § 25(1)(l) resulting Franciere being a “victim” under N.D. Const., Art. I, § 25(4) because the City commit acts defined as criminal under N.D.C.C. § 44-04-21.3 and N.D.C.C. § 12.1-11-06.

[¶23.] On November 15, 2018, the City filed an Answer with responses that were Not consistent with known facts and records. [Doc. No. 20]

[¶24.] On December 6, 2018, the City filed a Motion for Summary Judgment. [Doc. No. 24]

[¶25.] On January 11, 2019, the District Court issued the Order on Motions for Summary Judgment dismissing Franciere's civil action with prejudice when stating Franciere’s civil action was moot based on Gosbee v. Bendish, 512 N.W.2d 450 (N.D. 1994). [Doc. No. 37; App. No. 9] The District Court erred by stating an incorrect date that Franciere initiated a civil action against the City. [Doc. No. 37, ¶3; App. No. 9, ¶3] The District Court stated a copy of the police report was released to Franciere as if no controversies still existed. [Doc. No. 37, ¶10; App. No. 9, ¶10] The District Court acknowledged not addressing whether the police report was a public record that could be considered exempt but avoided acknowledging if the police report could not

be withheld from Franciere because of Franciere's rights based on the constitutional mandate in N.D. Const., Art. I, § 25(1)(l). [Doc. No. 37, ¶11; App. No. 9, ¶11]

[¶26.] On February 12, 2019, a Judgment by the District Court was issued that dismissed Franciere's civil action with prejudice. [Doc. No. 81; App. No. 16]

STATEMENT OF FACTS

[¶27.] On August 14, 2017, Franciere became a "victim" as defined N.D. Const., Art. I, § 25(4), when Franciere and Franciere's dog were both the victims of the unprovoked attack by a large dog lacking tags, resulting Franciere receiving a Marsy's Card from Officer Bryce Klein (hereafter "Officer Klein") with the Mandan Police Department (hereafter "MPD"). [Doc. No. 2; App. No. 3] Franciere went to the Emergency Room at Sanford Hospital on August 14, 2017, for treatment of a dog bite and received a medical record for that treatment. [Doc. No. 3; App. No. 4] Officer Klein informed Franciere on August 14, 2017, that Officer Klein would contact Franciere on August 15, 2017, to advise Franciere as to the rabies vaccination status of the dog at large that bit Franciere on August 14, 2017, but Officer Klein never contacted Franciere on August 15, 2017, or any day thereafter.

[¶28.] On August 14, 2017, while receiving medical care from Mark Detwiller, MD (hereafter "Dr. Detwiller") at the Sanford Hospital Emergency Room in Bismarck, Dr. Detwiller informed Franciere that Franciere needed to know whether or not the dog had a current rabies vaccination or showed signs of rabies within three days of the dog bite or Franciere should consider starting treatment for rabies.

[¶29.] On August 15, 2017, Franciere waited for contact from Officer Klein but neither Officer Klein nor anyone with the City contacted Franciere on August 15,

2017, or initiated contact with Franciere on the rabies status of a dog that bit Francier prior to Franciere initiating the civil action against the City on October 23, 2017.

[¶30.] On August 16, 2017, Franciere walked to the MPD to request a copy of the police report under N.D.C.C. § 44-04-18(2), while Franciere asserted rights under N.D. Const., Art. I, § 25, to a copy of the police report under the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), when Franciere attempted to ascertain the rabies vaccination status of the dog that bit Franciere on August 14, 2017, and whether the dog showed signs of rabies but Franciere was refused all information that included the refusal to release a copy of the police report.

[¶31.] On August 18, 2017, Franciere used United States (hereafter “U.S.”) mail to send a letter to Chief of Police Jason Ziegler (hereafter “Chief Ziegler”) at the MPD to request a copy of the police report and to request that Franciere receive written notification stating why if the MPD refused to release a copy of the police report to Franciere. [Doc. No. 6; App. No. 5] Franciere discussed the Marsy’s Card given to Franciere that included information on Franciere’s rights to records. [Doc. No. 2; App. No. 3] Under N.D.C.C. § 44-04-18(2), Franciere was entitled to a copy of the police report based on N.D. Const., Art. I, § 25, and the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), when Franciere attempted to learn what the rabies vaccination status was of the dog that bit Franciere on August 14, 2017, and whether the dog showed any signs of rabies. The City was required under statutory law in N.D.C.C. § 44-04-18(7) to provide written notification to Franciere stating the legal authority used if the MPD would not release a copy of the police report to Franciere.

[¶32.] On August 22, 2017, Franciere received a phone call from a Lieutenant

Patrick Haug (hereafter “Lt. Haug”) at the MPD stating the MPD refused to release a copy of the police report on the grounds the police report was for an active case but nothing was released to Franciere in writing required under N.D.C.C. § 44-04-18(7) stating the legal authority used by the MPD to withhold the police report from Franciere despite the constitutional mandate in constitutional mandate in N.D. Const., Art. I, § 25(1)(l), granting Franciere the right as a “victim” to records and reports.

[¶33.] On September 5, 2017, Franciere used U.S. mail to send a letter to the north Dakota Office of Attorney General (hereafter “OAG”) to submit a request under N.D.C.C. § 44-04-21.1 to have an Opinion issued because the City violated N.D.C.C. § 44-04-18 by violating N.D.C.C. § 44-04-18(1), (2), (7) and (8) in addition to violating N.D. Const., Art. XI, § 6 after the City withheld the police report from Franciere. [Doc. No. 8; App. No. 6] Franciere, as the “victim” should have also had the right to the police report under a constitutional mandate in N.D. Const., Art. I, § 25(1)(l). Franciere failed to receive any response from the OAG until a letter was received by U.S. mail from Liz Brocker (hereafter “Brocker”) dated October 31, 2017, misrepresenting and misstating facts by falsely stating a copy of the police report was released to Franciere by the City shortly after Franciere’s Opinion request dated September 5, 2017, while Brocker did not address Franciere’s Opinion request.

[¶34.] On October 23, 2017, Franciere filed a civil action Complaint against the City under N.D.C.C. § 44-04-21.2(1). [Doc. No. 1; App. No. 2] Franciere requested costs, disbursement and damages under N.D.C.C. § 44-04-21.2(1), as the City violated statutory law in N.D.C.C. § 44-04-18(1), (2), (7) and (8) in addition to violating the constitutional mandates in N.D. Const., Art. I, § 25(1)(l), and ND Const., Art. XI, Sec.

6. Franciere was entitled under the constitutional mandate in N.D. Const., Art. I, § 25(1)(n) to “full and timely restitution” because Franciere was the “victim” of acts by the City defined as unlawful in N.D.C.C. § 44-04-21.3 and N.D.C.C. § 12.1-11-06.

[¶35.] On October 27, 2017, Franciere received a phone call from Lieutenant Lori Flaten (hereafter “Lt. Flaten”) at the MPD stating the MPD would release a copy of the police report but Lt. Flaten did not state that any information would be redacted from the police report when Lt. Flaten asked if the police report would be picked up or if it was preferred to have the copy of the police report sent to Franciere by U.S. mail. Franciere requested the use of U.S. mail to send a copy of the police report.

[¶36.] On November 1, 2017, Franciere received by U.S. mail from the MPD a redacted copy of the police report. The written notification required under N.D.C.C. § 44-04-18(7) was not provided to Franciere and no legal authority was cited that was used to redact the information from the police report and the redaction included basic information on both the only witness listed of four the witnesses and on the suspect, Charles William Ochlech (hereafter “Mr. Ochlech”), hindering Franciere’s rights granted in the constitutional mandates in N.D. Const., Art. I, § 25(1).

[¶37.] On January 13, 2018, Franciere received a letter from Mr. Nagle by U.S. mail dated January 12, 2018. [Doc. No. 73; App. No. 13] An unredacted copy of the police report with a printed date of October 5, 2017, was also received from Mr. Nagle on January 13, 2018. Mr. Nagle notified Franciere of the intent to prosecute Mr. Ochlech but Mr. Nagle did not provide Franciere of any advance notification for the date on the hearing that would be held on February 7, 2018, to prosecute Mr. Ochlech.

[¶38.] On and before January 17, 2018, the City, through the actions of Mr. Nagle

and the MPD, violated Franciere's rights as a "victim" by violating the constitutional mandate in N.D. Const., Art. I, § 25(1)(o), by not prosecuting Mr. Ochlech for more than five month and for nearly three months after Franciere initiated the civil action against the City on October 23, 2017, when the Complaint was only filed under Case No. MA-2018-CR-00064 on January 17, 2018, after the unprovoked attack by Mr. Ochlech's dog occurred on August 14, 2017, that did not receive any media coverage when Mr. Nagle filed a Complaint in less than two weeks against Antoinette Fleck (hereafter "Ms. Fleck") under Case No. MA-2018-CR-00498 on August 1, 2018, after an unprovoked dog attack on July 22, 2018, received media coverage. The unredacted police report released by Mr. Nagle on January 12, 2018, confirmed that no additional information related to the class B misdemeanor criminal offense was entered into the police report by Officer Klein after August 15, 2017. This confirmed that there was nothing to justify why Mr. Nagle belatedly filed the Complaint against Mr. Ochlech until January 17, 2018, so that any delay in prosecuting Mr. Ochlech was deliberate because of the original intent by the City to not prosecute Mr. Ochlech.

[¶39.] On February 7, 2018, a hearing was held in Mandan Municipal Court that Mr. Ochlech failed to appear for because Mr. Ochlech was in federal custody to serve the remainder of his federal sentence in a federal prison but the City, through the actions of Mr. Nagle, violated Franciere's rights as a "victim" by failing to provide Franciere with advanced notification statutorily mandated under N.D.C.C. § 12.1-34-02(5) and despite the constitutional mandates in N.D. Const., Art. I, § 25(1)(g) and (i).

[¶40.] On June 30, 2018, Franciere received a letter from Mr. Nagle by U.S. mail dated June 29, 2018. [Doc. No. 75; App. No. 14] Mr. Nagle used false pretenses to

request that Franciere provide Mr. Nagle with “out-of-pocket” expenses but not “all losses” Franciere incurred because of the unprovoked dog attack on August 14, 2017, when Mr. Nagle stated Mr. Ochlech’s anticipated release date from federal prison on August 16, 2018. Mr. Nagle withheld from Franciere that Mr. Ochlech had written a letter to the Mandan Municipal Court filed on June 8, 2018, for Case No. MA-2018-CR-00064, as shown in the Case Summary. [Doc. No. 56; App. No. 11] Mr. Nagle also withheld from Franciere that Mr. Nagle was working on a Plea Agreement with Mr. Ochlech signed in July of 2018. [Doc. No. 76; App. No. 15]

[¶41.] On July 18, 2018, the City, through the actions of Mr. Nagle and the Mandan Municipal Court Judge, DeNae Kautzmann (hereafter “Judge Kautzmann), violated Franciere’s rights as a “victim” by failing to provide Franciere with required advanced notification that was both statutorily mandated under N.D.C.C. § 12.1-34-02(5) and constitutionally mandated under N.D. Const., Art. I, § 25(1)(g) and (i), regarding the Plea Agreement with Mr. Ochlech that Mr. Nagle and Judge Kautzmann signed on July 18, 2018. [Doc. No. 76; App. No. 15] The Plea Agreement wording was so poor that where restitution payments were to be paid by Mr. Ochlech, what was to occur if Mr. Ochlech failed to make restitution payments, if the restitution payments met the required “full and timely restitution” constitutionally mandated by N.D. Const., Art. I, § 25(1)(n), and who the “victim” was to receive restitution was not included in the Plea Agreement while Franciere was also denied the right to be heard despite what is constitutional mandated in N.D. Const., Art. I, § 25(1)(h).

[¶42.] On November 14, 2018, Franciere filed a Motion for Summary Judgment. [Doc. No. 16; App. No. 8] It was not disputed that Franciere sent a letter to Chief

Ziegler dated August 18, 2017, requesting a copy of the police report and written notification citing the legal authority used if the police report would not be release to Franciere. [Doc. No. 6; App. No. 5] It was not disputed that Franciere initiated a civil action against the City on October 23, 2017. [App. 1] It was not disputed that the City did not release a redacted copy of the police report to Franciere until October 30, 2017. It was not disputed that Mr. Nagle sent a letter by U.S. mail to Franciere dated January 12, 2018, stating a copy the police report was released to Franciere on that date. [Doc. No. 73; App. No. 13] It was not disputed that the City did not release an unredacted copy of the police report to Franciere until January 12, 2018. And, it was not disputed the City failed to provide Franciere with the written notification required under N.D.C.C. § 44-04-18(7) citing the legal authority used by the City to withhold a copy of the police report from Franciere. The District Court had the authority under N.D.C.C. § 44-04-21.2(1) to order “effective relief” to Franciere in the form of costs, disbursements and damages to provide Franciere with the “full and timely restitution” that the constitutional mandate in N.D. Const., Art. I, § 25(1)(n) requires after the City violated N.D.C.C. § 44-04-18 while violating N.D. Const., Art. I, § 25(1)(l) resulting Franciere becoming a “victim” again under on N.D. Const., Art. I, § 25(4) because the City committed acts defined as criminal under N.D.C.C. § 44-04-21.3 and N.D.C.C. § 12.1-11-06.

[¶43.] On November 15, 2018, the City filed an Answer with responses that were inconsistent with known facts and records. [Doc. No. 20]

[¶44.] On November 19, 2018, Franciere used U.S. mail to send a letter to the Mandan Municipal Court inquiring how long Case No. MA-2018-CR-00064 would

remain open. [Doc. No. 55; App. No. 10]

[¶45.] On November 28, 2018, Franciere received a handwritten response from the Mandan Municipal Court stating that Case No. MA-2018-CR-00064 was closed. [Doc. No. 55; App. No. 10] The Mandan Municipal Court provided a copy of the Case Summary for Case No. MA-2018-CR-00064. [Doc. No. 56; App. No. 11] One entry listed was the letter by Mr. Ochlech filed with the Mandan Municipal Court on June 8, 2018. Another entry listed was the Plea Agreement. [Doc. No. 76; App. No. 15]

[¶46.] On December 6, 2018, the City filed a Motion for Summary Judgment. [Doc. No. 24]

[¶47.] On January 11, 2019, the District Court issued the Order on Motions for Summary Judgment dismissing Franciere’s civil action with prejudice. [Doc. No. 37; App. No. 9] The District Court stated Franciere’s civil action was moot when citing Gosbee v. Bendish, 512 N.W.2d 450 (N.D. 1994), and the District Court incorrectly stated Franciere initiated the civil action on October 24, 2017, instead of the correct date of October 23, 2017. Though the District Court was correct that a redacted copy of the police report was released to Franciere on October 30, 2017, and an unredacted copy of the police report was then released to Franciere on January 12, 2018, but the District Court was incorrect that no controversies still existed. Though the District Court acknowledged not addressing if the police report was an exempt public record, the District Court avoided addressing if the constitutional mandate in N.D. Const., Art. I, § 25(1)(l) granting a “victim” a right to records and reports would have granted Franciere the right to a copy of the police report when Franciere made an oral request to the MPD on August 16, 2017, and a written request to Chief Ziegler on August 18,

2017. The District Court erred in stating that no “effective relief” existed when the District Court could have ordered “effective relief” by requiring the City to pay costs, disbursements and damages to Franciere under N.D.C.C. § 44-04-21.2(1) as “timely and full restitution” that is constitutionally mandate in N.D. Const., Art. I, § 25(1)(n) because the City’s actions should have been considered criminal under N.D.C.C. § 44-04-21.3 and N.D.C.C. § 12.1-11-06 for having violated N.D.C.C. § 44-04-18 in conjunction with violating the constitutional mandate in N.D. Const., Art. I, § 25(1)(l).

[¶48.] On February 12, 2019, the District Court issued a Judgment that dismissed Franciere’s civil action with prejudice. [Doc. No. 81; App. No. 16] This incorrectly denied “effective relief” to Franciere despite both statutory law in N.D.C.C. § 44-04-21.2(1) and the constitutional mandate in N.D. Const., Art. I, § 25(1)(n).

LAW AND ARGUMENT

I. Introduction.

[¶49.] The District Court erred with a dismissal with prejudice Franciere’s civil action against the City while incorrectly finding the civil action as moot, without any controversy, or without available “effective relief” without addressing whether the police report requested in writing by Franciere on August 18, 2017, was a public record under N.D. Const., Art. XI, § 6, and N.D.C.C. § 44-04-18(1) required to be released to Franciere under N.D.C.C. § 44-04-18 on August 18, 2017, in conjunction with the constitutional mandate N.D. Const., Art. I, § 25(1)(l), once Franciere was a “victim” under N.D. Const., Art. I, § 25(4) because of what occurred on August 14, 2017. The District Court erred by not addressing an unreasonable delay by the City in releasing a redacted copy of the police report to Franciere on October 30, 2017, and

by not addressing an unreasonable delay by the City when releasing an unredacted copy of the police report to Franciere on January 12, 2018. The District Court erred by not addressing a failure of the City to comply with a statutory mandate in N.D.C.C. § 44-04-18(7) that required the City to provide Franciere with written notification citing the legal authority the City used to withhold a copy of the police report from Franciere. The District Court erred by not addressing the available “effective relief” under statutory law in N.D.C.C. § 44-04-21.2(1) and the constitutional mandate in N.D. Const., Art. I, § 25(1)(n) when the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), grants a “victim” the right to records that should include records considered exempt under N.D.C.C. § 44-04-18.7 such that Franciere should be entitled to the “effective relief” for costs, disbursements and damages permitted under statutory law in N.D.C.C. § 44-04-21.2(1) because of the City in violating N.D.C.C. § 44-04-18(1), (2), (7) and (8) in conjunction with violating N.D. Const., Art. I, § 25(1)(l), that resulted in Franciere becoming a “victim” again because the City committed acts defined as criminal under N.D.C.C. § 44-04-21.3 and N.D.C.C. § 12.1-11-06.

II. The District Court erred in relying on Gosbee v. Bendish, 512 N.W.2d 450 (N.D. 1994).

[¶50.] In issuing Gosbee v. Bendish, 512 N.W.2d 450 (N.D. 1994), this Court found that civil action moot based on finding that the requested record released after the civil action was brought was not a public record when this Court stated:

The lease Gosbee originally sought from Bendish and Trauger does not rise to the level of public importance necessary to merit our review....The insufficiency of public importance determination is bolstered even further by the existence of a statute that exempts certain economic development records from disclosure under our open records law. NDCC 44-04-

18.2(1).2 The legislature has decided that in certain situations the importance of economic development overrides the public's right of access to sensitive information relating to private businesses.

[¶51.] Gosbee v. Bendish, 512 N.W.2d 450 (N.D. 1994), was issued prior to the passage of Senate Bill (hereafter “S.B.”) 2228 by state legislature in 1997 providing a definition of a “Record” as meaning:

[R]ecorded 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 or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business.

[¶52.] Gosbee v. Bendish, 512 N.W.2d 450 (N.D. 1994), was issued prior to the passage of S.B. 2228 by state legislature in 1997 that provided civil remedies under N.D.C.C. § 44-04-21.2.

[¶53.] In support of S.B. 2228, Heidi Heitkamp (hereafter “Heitkamp”), as the State Attorney General, submitted a Written Statement dated February 5, 1997, to the Senate Judiciary Committee. In discussing both the purpose and civil remedies in the proposed N.D.C.C. § 44-04-21.2 contained in S.B. 2228, Heitkamp stated:

The alternate procedure available under this bill would be for any interested person to bring a civil action in district court. If the court finds that the open records or open meetings laws have been violated, the bill provides that the court may award injunctive relief, costs, and reasonable attorney’s fees against the public entity. If the court finds that the violation was intentional or knowing, the court may also award damages in the amount of \$1,000 or actual damages, whichever is greater.

[¶54.] Gosbee v. Bendish, 512 N.W.2d 450 (N.D. 1994), was issued without the existence of N.D.C.C. § 44-04-21.2 creating statutory law allowing a District Court to

address civil remedies provided under N.D.C.C. § 44-04-21.2(1).

III. The District Court erred by not addressing if the police report was a public record under N.D. Const., Art. XI, § 6 and N.D.C.C. § 44-04-18(1) that could be exempt under N.D.C.C. § 44-04-18.7 but could not be withheld from Franciere because of the constitutional mandate in N.D. Const., Art. I, § 25(1)(I).

[¶55.] In Gosbee v. Bendish, 512 N.W.2d 450 (N.D. 1994), this Court recognized that, in addressing whether the record at issue was a public record, the District Court also addressed whether the record at issue was a public record by stating:

The district court concluded that the document which plaintiff sought access to was not a public record, and therefore it was not subject to NDCC 44-04-18. Determining that this appeal is moot, we dismiss.

[¶56.] N.D. Const., Art. XI, § 6, defines a “public record” as:

Unless otherwise provided by law, all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.

[¶57.] N.D.C.C. § 44-04-18(1) defines a “public record” as:

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.

[¶58.] N.D. Const., Art. I, § 25(1)(I) grants a “victim” access to records by stating:

The right, upon request, to receive a copy of any report or record relevant to the exercise of a victim's right, except for those portions made confidential by law or unless a court determines disclosure would substantially interfere with the investigation of a case, and to receive a copy of any presentence report or plan of disposition when available to City or delinquent child.

[¶59.] N.D. Const., Art. I, § 25(3), preserves rights the “victim” is granted by any other constitutional and statutory mandates by stating:

The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims.

[¶60.] The police report requested by Franciere orally on August 16, 2017, and in writing on August 18, 2017, was a public record that was subject to the statutory mandates in N.D.C.C. § 44-04-18 that was neither dismissed nor made moot when Franciere asserted the right as a “victim” to the police report under the constitutional mandate in N.D. Const., Art. I, § 25(1)(l) so that when the City violated N.D.C.C. § 44-04-18, while violating the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), Franciere was entitled to “effective relief” under N.D.C.C. § 44-04-21.1 and N.D.C.C. § 44-04-21.2. N.D.C.C. § 44-04-21.2 was not made moot when the City belatedly released copies of the police report to Franciere on October 30, 2017, and January 12, 2018, only after Franciere initiated a civil action against the City on October 23, 2017, seeking civil remedies that included “effective relief” under N.D.C.C. § 44-04-21.2(1) that could be considered in conjunction with “full and timely restitution” in the constitutional mandate N.D. Const., Art. I, § 25(1)(n), after the City acted to hide from Franciere that the City failed to ensure the quarantine procedures were followed and properly complied with for a dog responsible for the unprovoked attack on August 14, 2017, that Franciere was a victim of while the City left Franciere in the position of not knowing either what the rabies vaccination status was or whether the dog showed any signs of rabies after biting Franciere on August 14, 2017.

IV. The District Court erred by stating the civil action by Franciere against the

City was moot when dismissing Franciere’s civil action with prejudice.

[¶61.] In Kelsh v. Jaeger, 2002 ND 53, 641 N.W.2d 100, 104, this Court stated:

When interpreting the state constitution, our overriding objective is to give effect to the intent and purpose of the people adopting the constitutional statement. The intent and purpose of a constitutional provision is to be determined, if possible, from the language itself. We give words in a constitutional provision their plain, ordinary, and commonly understood meaning. When interpreting constitutional provisions, we apply general principles of statutory construction. We must give effect and meaning to every provision and reconcile, if possible; Apparently inconsistent provisions. We presume the people do not intend absurd or ludicrous results in adopting constitutional provisions, and we therefore construe such provisions to avoid those results.

[¶62.] In Saefke v. Stenehjem, 2003 ND 202, 673 N.W.2d 41, this Court stated:

Although courts are not bound by attorney general's opinions, courts will give respectful attention to and follow those opinions if they are persuasive. Werlinger v. Champion Healthcare Corp., 1999 ND 173, ¶ 47, 598 N.W.2d 820. An attorney general's opinion guides officials until superseded by judicial opinion. *Id.* at ¶ 47.

[¶63.] In issuing Letter Opinion 2016-L-04, Attorney General Wayne Stenehjem (hereafter “Stenehjem”) stated:

The constitutional and statutory provisions of the open records law must be read in conjunction with the constitutional provision of Marsy’s Law, and statutory provisions on victim’s rights, to harmonize and give meaning to the related provisions.⁵...⁵ N.D.C.C. § 1-02-07.

[¶64.] In issuing Letter Opinion 2016-L-04, Stenehjem stated:

The open records law requires that a public entity describe the legal authority for a denial by pointing to a specific law that makes a record or information “exempt” or “confidential.”¹⁵...¹⁵ N.D.C.C. § 44-04-18(7).

[¶65.] Franciere complied with all statutory requirements in N.D.C.C. § 44-

04-18, N.D.C.C. § 44-04-21.1 and N.D.C.C. § 44-04-21.2 that entitled Franciere to have the District Court address whether Franciere was entitled to “effective relief” under N.D.C.C. § 44-04-21.2(1) in conjunction with N.D. Const., Art. I, § 25(1)(n) that included costs, disbursements and damages as “full and timely restitution” that Franciere was also entitled to receive as a “victim” because of the City’s actions.

[¶66.] The failure of the City to comply with N.D.C.C. § 44-04-18(7) when the City failed to provide Franciere the required written notification citing the legal authority used by the City to withhold the police report from Franciere was not made moot after the City released a redacted copy of the police report on October 30, 2017, more than two months after Franciere’s written records request on August 18, 2017, and after the City released an unredacted copy of the police report on January 12, 2018, more than five months after Franciere’s written records request on August 18, 2017, because the City’s actions represented unreasonable delays violating N.D.C.C. § 44-04-18(7) and (8) that Franciere was entitled to “effective relief” for concerning costs, disbursements and damages based on statutory law in N.D.C.C. § 44-04-21.2(1) while in conjunction with the constitutional mandate in N.D. Const., Art. I, § 25(1)(n) regarding “full and timely restitution” a “victim” is entitled to receive.

[¶67.] In issuing Opinion 2014-O-21 and Opinion 2014-O-25, Stenehjem stated the City violated open records law when the City violated N.D.C.C. § 44-04-18(8) by causing unreasonable delays by taking two weeks to release the records in possession of the MPD that were subject to release under N.D. Const., Art. XI, § 6, and N.D.C.C. § 44-04-18(1), (2) and (8).

[¶68.] In issuing Opinion 2017-O-10 and Opinion 2019-O-07, Stenehjem stated

the City violated open records law when the City violated N.D.C.C. § 44-04-18(8) by causing unreasonable delays for failing to provide written notifications required under N.D.C.C. § 44-04-18(7) within a reasonable period of time.

[¶69.] In issuing State v. Strom, 2019 ND 9, 921 N.W.2d 660, this Court stated:

The addition of the modifier “full . . . restitution” underscores the point that the amount must make the victim whole by restoring the victim to his position prior to the offense. Kostelecky, 2018 ND 12, ¶ 13, 906 N.W.2d 77. To award less than the amount required to make the victim whole would not be “full” restitution. The further addition of “all losses” suggests a belt-and-suspenders approach in drafting this provision: no reasonable member of the public could overlook the double emphasis that restitution is not to be reduced.

[¶70.] N.D. Const., Art. I, § 25(1)(a), contains the constitutional mandate stating that a “victim” is entitled to:

The right to be treated with fairness and respect for the victim's dignity.

[¶71.] N.D. Const., Art. I, § 25(1)(n), contains the constitutional mandate stating that a “victim” is entitled to:

The right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal or delinquent conduct.

[¶72.] In issuing State v. Jelliff, 251 N.W.2d 1 (N.D.1977), this Court stated:

We have held repeatedly that statutes must be construed to avoid ludicrous and absurd results, Pollock v. McKenzie County Public School Dist. #1, 221 N.W.2d 521 (N.D.1974), and that courts endeavor to construe statutes so as to effectuate the legislative purposes which prompted their enactment. Hughes v. State Farm Mut. Auto. Ins. Co., 236 N.W.2d 870 (N.D.1975).

[¶73.] The District Court not only erred in dismissing with prejudice, and as moot,

the civil action Franciere brought against the City after the City violated statutory mandates in N.D.C.C. § 44-04-18 and constitutional mandates in N.D. Const., Art. I, § 25(1), but the District Court created “ludicrous and absurd results” by ignoring the “effective relief” Franciere was entitled under N.D.C.C. § 44-04-21.2(1) regarding costs, disbursements and damages when N.D.C.C. § 44-04-21.2(1) should be read in conjunction with N.D. Const., Art. I, § 25(1)(n), the same way that N.D.C.C. § 44-04-18 should be read in conjunction with N.D. Const., Art. I, § 25(1)(l), because the cost of preparing legal documents, making copies, the cost of postage and the filing cost Franciere incurred to initiate the civil action against the City under N.D.C.C. § 44-04-21.2 after the City acted in violation of N.D.C.C. § 44-04-18 in conjunction with violating N.D. Const., Art. I, § 25(1)(l), resulted in Franciere incurring a minimum in financial losses of \$105.00 before it took the City over five months to release on January 12, 2018, the unredacted copy of the police report, after first releasing a redacted copy on October 30, 2017, in response to Franciere written records request on August 18, 2017. As a result of what it cost Franciere to initiate the civil action against the City, Franciere was subjected to what would be the cost equivalent of \$17.50 per page for a copy of the unredacted six-page police report that Franciere belatedly received on January 13, 2018, when the cost per copy under N.D.C.C. § 44-04-18(2) is \$0.25 per copy. Such “ludicrous and absurd results” by the District Court, when it erred, denied Franciere “effective relief” when Franciere was denied “full and timely restitution” despite a constitutional mandate in N.D. Const., Art. I, § 25(1)(n), and despite the actions of the City in violating N.D.C.C. § 44-04-18, representing acts defined as criminal under N.D.C.C. § 44-04-21.3 and N.D.C.C. § 12.1-11-06, that

made Franciere a “victim” as defined under N.D. Const., Art. I, § 25(4).

[¶74.] N.D.C.C. § 44-04-17.1(5) states:

“Exempt meeting” or “exempt record” means all or part of a record or meeting that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity.

[¶75.] The District Court, having erred with the dismissal with prejudice the civil action Franciere initiated against the City on October 23, 2017, then created “ludicrous and absurd results” when the District Court further erred by stating that Franciere’s civil action against the City was moot. Franciere was placed in the position by the District Court of suffering the financial losses for bringing the civil action against the City after the City violated the statutory mandates in N.D.C.C. § 44-04-18 and after the City violated the constitutional mandates in N.D. Const., Art. I, § 25(1), with the District Court not allowing Franciere to receive “effective relief” in the form of costs, disbursements and damages from the City when Franciere was clearly a “victim” under N.D. Const., Art. I, § 25(4). This could lead to further “ludicrous and absurd results” where any “victim” under N.D. Const., Art. I, § 25(4) could also suffer financial losses for bringing a civil action against a public entity for violating N.D.C.C. § 44-04-18 in conjunction with violating the constitutional mandate in N.D. Const., Art. I, § 25(1)(l) if any District Court declares the civil action as moot and dismisses that civil action with prejudice without the public entity suffering any negative consequences for its actions while that public entity could use N.D.C.C. § 44-04-17.1(5) to release the same record to anyone else even if it is to a suspect listed in the police report that was withheld from the “victim” by that same public entity.

[¶76.] N.D.C.C. § 44-04-18.7(1) states:

Active criminal intelligence information and active criminal investigative information are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

[¶77.] N.D.C.C. § 44-04-18.7(3) states:

Criminal intelligence information must be considered “active” as long as it is related to intelligence gathering conducted with a reasonable good-faith belief it will lead to detection of ongoing or reasonably anticipated criminal activities.

[¶78.] N.D.C.C. § 44-04-18.7(4) states:

Criminal investigative information must be considered “active” as long as it is related to an ongoing investigation that is continuing with a reasonable good-faith anticipation of securing an arrest or prosecution in the foreseeable future.

[¶79.] The District Court, having erred with a dismissal with prejudice the civil action Franciere initiated against the City on October 23, 2017, then created “ludicrous and absurd results” when the District Court further erred by stating that Franciere’s civil action against the City was moot without considering whether the police report was a public record that could not be withheld from Franciere as a “victim” under N.D. Const., Art. I, § 25(4) even if the police report was exempt under N.D.C.C. § 44-04-18.7 because of the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), granting a “victim” a right to records and reports should have included the police report Franciere also requested in writing from the City on August 18, 2017, after first requesting a copy orally on August 16, 2017. Information in the unredacted police report belatedly received by Franciere on January 13, 2017, showed that, in addition to the listing in three different locations that Mr. Ochlech was only warned

and not cited, Officer Klein stated in the Police Report on August 15, 2017, that “This case will be active until the quarantine process is completed by Charles.” The Case Summary for Case No. MA-2018-CR-00064 does not list that a Summons/Citation was issued by the MPD and filed with the Mandan Municipal Court. [Doc. No. 56; App. No. 11] It does show a Complaint was filed on January 17, 2018, which was more than five months after Franciere became the “victim” of an unprovoked attack by Mr. Ochlech’s dog on August 14, 2017. Yet, the Register of Actions for Case No. MA-2018-CR-00498 shows that after an unprovoked dog attack on July 22, 2018, expediency was displayed. [Doc. No. 72; App. No. 12] A Summons/Citation was issued by Officer Brent Wilmeth with the MPD on July 22, 2018, and filed with the Mandan Municipal Court on July 27, 2018. Officer Klein did not issue a Summons/Citation to Mr. Ochlech because the original intent by the City was to avoid prosecuting Mr. Ochlech, and Officer Klein lied in the police report to hide that Mr. Ochlech’s dog bit Franciere during the unprovoked attack. The dog bite was documented in a Mandan Fire Department 911 record dated August 14, 2017, when a statement that Franciere was bitten by a dog was included as follows:

Mandan Fire Dept. responded to an individual that had been bitten by a dog and PD wanted us to take a look at the wound.

[¶80.] When the District Court erred by stating Franciere’s civil action against the City was moot while not addressing if the police report Franciere made a request for in writing on August 18, 2017, was subject to release to Franciere under N.D.C.C. § 44-04-18 in conjunction with the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), after Franciere was defined as a “victim” under N.D. Const., Art. I, § 25(4),

the District Court erred by ignoring “effective relief” such as costs, disbursements and damages Franciere should receive under N.D.C.C. § 44-04-21.2(1)(1) in conjunction with “full and timely restitution” in the constitutional mandate in N.D. Const., Art. I, § 25(1)(n), when the District Court erred by ignoring that the City incorrectly withheld a copy of the police report from Franciere and when the District Court erred by not addressing the City’s original intent of not prosecuting Mr. Ochlech at the time Franciere made the written request for a copy of the police report on August 18, 2017.

[¶81.] The District Court error of law on mootness is completely mistaken against the plain reading of this state’s statutory laws in N.D.C.C. Chapter 44-04 and when reviewed in conjunction with the constitutional mandates in N.D. Const., Art. I, § 25.

V. The District Court erred in taking the position that no controversies existed when dismissing with prejudice Franciere’s civil action against the City.

[¶82.] A controversy exists on whether the District Court could ignore whether a police report was a public record under N.D. Const., Art. XI, § 6 and N.D.C.C. § 44-04-18(1) and subject to release under N.D.C.C. § 44-04-18 in conjunction with N.D. Const., Art. I, § 25(1)(l), when requested by Franciere defined as a “victim” under N.D. Const., Art. I, § 25(4), even if the police report was exempt under N.D.C.C. § 44-04-18.7, because actions by the District Court denied Franciere “effective relief” that was available under N.D.C.C. § 44-04-21.2(1) and the constitutionally mandated “full and timely restitution” required under N.D. Const., Art. I, § 25(1)(n).

[¶83.] A controversy exists on whether the District Court could ignore violations by the City when the City violated N.D.C.C. § 44-04-18 in conjunction with violating the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), when the City belatedly

released a redacted copy of the police report to Franciere on October 30, 2017, and when the City belatedly released the unredacted copy of the police report to Franciere on January 12, 2018, only after Franciere initiated the civil action under N.D.C.C. § 44-04-21.2 on October 23, 2017, at a continued financial loss to Franciere.

[¶84.] A controversy exists on whether a District Court could ignore the rights of a Plaintiff to the “effective relief” regarding costs, disbursements and damages under N.D.C.C. § 44-04-21.2(1) in conjunction with a constitutional mandate in N.D. Const., Art. I, § 25(1)(n), on “full and timely restitution” by a District Court declaring a civil action brought against a public entity under N.D.C.C. § 44-04-21.2, as moot when the public entity cured some, but not all, violations of N.D.C.C. § 44-04-18, after a civil action was initiated against a public entity just as the District Court erred in dismissing Franciere’s civil action against the City as moot after Franciere suffered financial losses related to initiating the civil action against the City on October 23, 2017.

[¶85.] A controversy exists on whether a District Court should review N.D.C.C. § 44-04-18 in conjunction with N.D. Const., Art. I, § 25(1)(l), since Franciere is a “victim” as defined in N.D. Const., Art. I, § 25(4).

[¶86.] A controversy exists on whether a District Court should consider N.D.C.C. § 44-04-21.2(1) in conjunction with N.D. Const., Art. I, § 25(1)(n), since Franciere is a “victim” as defined in N.D. Const., Art. I, § 25(4).

[¶87.] A controversy exists on whether a “victim” under N.D. Const., Art. I, § 25(4) loses all rights contained in N.D.C.C. § 44-04-18 by when asserting rights as a “victim” to records under the constitutional mandate in N.D. Const., Art. I, § 25(1)(l).

[¶88.] A controversy exists on whether a “victim” under N.D. Const., Art. I, §

25(4), loses all rights contained in N.D.C.C. § 44-04-21.1 when asserting rights as a “victim” to records under the constitutional mandate in N.D. Const., Art. I, § 25(1)(l).

[¶89.] A controversy exists on whether the District Court could dismiss the civil action with prejudice by stating Franciere’s civil action against the City is moot when Franciere met all requirements in N.D.C.C. § 44-04-21.2 and when only some of the violations of N.D.C.C. § 44-04-18 were abated by the City only after the civil action was brought against the City under N.D.C.C. § 44-04-21.2 for violations of N.D. Const., Art. XI, § 6 and N.D.C.C. § 44-04-18(1) in conjunction with violations of the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), because records requested by Franciere were requested as a “victim” as defined in N.D. Const., Art. I, § 25(4).

VI. Even if Franciere’s civil action against the City is considered moot, this Court still has the authority to address and consider Franciere’s appeal.

[¶90.] In issuing Fercho v. Remmick, 2003 ND 85, 662 N.W.2d 259, this Court stated:

Nevertheless, this Court will determine an issue that is moot, rather than dismiss the appeal, “if the controversy is one of great public interest and involves the authority and power of public officials or if the matter is capable of repetition, yet evading review.” Sposato v. Sposato, 1997 ND 207, ¶ 9, 570 N.W.2d 212 (quoting Ashley Educ. Ass'n, 556 N.W.2d at 668).

[¶91.] Of “great public interest” and a “capable of repetition, yet evading review” are the rights of person defined as a “victim” in N.D. Const., Art. I, § 25(4), when requesting records under N.D.C.C. § 44-04-18 because a records request by a “victim” made under N.D.C.C. § 44-04-18 should also be considered as made in conjunction with the constitutional mandate in N.D. Const., Art. I, § 25(1)(l).

[¶92.] Of “great public interest” and a “capable of repetition, yet evading review” are the rights of a “victim” defined in N.D. Const., Art. I, § 25(4), when requesting “effective relief” regarding the costs, disbursements and damages under N.D.C.C. § 44-04-21.2(1) because N.D.C.C. § 44-04-21.2(1) should be considered in conjunction with the constitutional mandate in N.D. Const., Art. I, § 25(1)(n) on the “full and timely restitution” that victims are entitled to receive.

[¶93.] Of “great public interest” and a “capable of repetition, yet evading review” concerns whether the civil remedies available under N.D.C.C. § 44-04-21.2 can be ignored by a District Court regarding a Plaintiff defined as a “victim” in N.D. Const., Art. I, § 25(4), that results in “ludicrous and absurd results” by subjecting the “victim” to financial losses for bringing the civil action against a public entity under N.D.C.C. § 44-04-21.2 because of any act by the public entity violating N.D.C.C. § 44-04-18 in conjunction with violating the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), regarding the right of a “victim” to records when a District Court dismisses the civil action with prejudice by declaring the civil action as moot because the public entity only released the public record after the civil action was brought when such a dismissal by a District Court leaves the “victim” with the financial losses associated with bringing a civil action against a public entity under N.D.C.C. § 44-04-21.2 as if to victimize a “victim” for the third time after the “victim” was first a “victim” under N.D. Const., Art. I, § 25(4), resulting in a police report, and then a “victim” the second time under N.D. Const., Art. I, § 25(4), due to conduct by that public entity defined as criminal under N.D.C.C. § 44-04-21.3 and N.D.C.C. § 12.1-11-06 when the public entity withheld the police report in violation of N.D.C.C. § 44-04-18 in conjunction

with violating the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), by a public entity withholding a copy of that police report resulting psychological harm and the financial losses caused by initiating a civil action in an attempt to obtain a copy of the police report the “victim” should have been entitled to receive upon request.

[¶94.] Of “great public interest” and a “capable of repetition, yet evading review” are refusals by Stenehjem to issue Opinions requested under N.D.C.C. § 44-04-21.1 by those defined as victims under N.D. Const., Art. I, § 25(4), regarding violations of N.D.C.C. § 44-04-18 in conjunction with violations of constitutional mandates in N.D. Const., Art. I, § 25(1)(l), since Stenehjem refused to issue the Opinion requested by Franciere on September 5, 2017, after the City continued to violate more than one subsection of N.D.C.C. § 44-04-18 in conjunction with violating the constitutional mandate in N.D. Const., Art. I, § 25(1)(l). The only recourse left to Franciere after Stenehjem refused to issue an Opinion under N.D.C.C. § 44-04-21.1 was to seek civil remedies under N.D.C.C. § 44-04-21.2 resulting in Franciere suffering financial losses because the District Court failed to provide the “effective relief” permitted under N.D.C.C. § 44-04-21.2(1) in the form of costs, disbursements and damages that would represent the “full and timely restitution” constitutionally mandated in N.D. Const., Art. I, § 25(1)(n) that the District Court denied Franciere when dismissing Franciere’s civil action with prejudice because the District Court erred by incorrectly declaring Franciere’s civil action againstg the City as moot.

[¶95.] In Saefke v. Stenehjem, 2003 ND 202, 673 N.W.2d 41, this Court stated:

The attorney general has the statutory duty to issue opinions to state officers and public entities and to consult with and advise the several state's attorneys in matters relating to the duties of their office. N.D.C.C. § 54-12-01(4), (6) and (19).

[¶96.] Refusal by Stenehjem to issue Opinions victims requested under N.D.C.C. § 44-04-21.1 for violations of N.D.C.C. § 44-04-18 in conjunction with violations of the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), makes moot N.D.C.C. § 44-04-21.1(1) and N.D.C.C. § 54-12-01(19) to those defined as a “victim” under N.D. Const., Art. I, § 25(4), despite that N.D. Const., Art. I, § 25(3), states:

The granting of these rights to victims shall not be construed to deny or disparage other rights possessed by victims.

[¶97.] On December 19, 2017, the Petitioner submitted an Opinion request to the OAG by U.S. mail complying with N.D.C.C. § 44-04-21.1 for violations of N.D.C.C. § 44-04-18 committed by the Central Dakota Communications Center (hereafter “CDCC”) for overcharges in conjunction with violating the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), for releasing redacted 911 records when Franciere was entitled to unredacted records under the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), because Franciere was the “victim” based on N.D. Const., Art. I, § 25(4).

[¶98.] On December 26, 2017, Franciere received a letter from Brocker by U.S. mail dated December 22, 2017, refusing to accept the Opinion request by Franciere on the grounds that the OAG would not consider whether violations of N.D.C.C. § 44-04-18 occurred if the violations also involved violating the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), on the victim’s rights to records. Since the letter was not by Stenehjem but by Brocker, while ignoring Opinion 2016-L-04, this was inconsistent with Letter Opinion 2016-L-04 by not considering Letter Opinion 2016-L-04 related to Opinion requests submitted by a “victim” when using N.D.C.C. § 44-04-21.1.

[¶99.] On January 4, 2018, Franciere received a letter by U.S. mail from Chief

Deputy Attorney General Troy Siebel (hereafter “Siebel”) dated January 2, 2018, to reaffirm the OAG’s position that the OAG would not accept any Opinion request to consider whether violations of N.D.C.C. § 44-04-18 occurred if the violations also involved violating the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), on the victim’s rights to records. Since the letter was not by Stenehjem but by Siebel, while ignoring Opinion 2016-L-04, this was inconsistent with Letter Opinion 2016-L-04 by not considering Letter Opinion 2016-L-04 related to Opinion requests submitted by a “victim” when using N.D.C.C. § 44-04-21.1

[¶100.] Of “great public interest” and a “capable of repetition, yet evading review” is how a “victim” under N.D. Const., Art. I, § 25(4), is not treated with “fairness and respect” despite the constitutional mandate in N.D. Const., Art. I, § 25(1)(a), while a “victim” is subjected to “intimidation, harassment, and abuse” despite a constitutional mandate in N.D. Const., Art. I, § 25(1)(b), due to requesting records under N.D.C.C. § 44-04-18 in conjunction with the right to records based on the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), when requesting an Opinion under statutory law in N.D.C.C. § 44-04-21.1, and when seeking civil remedies under N.D.C.C. § 44-04-21.2 that should entitle a “victim” to costs, disbursement and damages as “full and timely restitution” based on the constitutional mandate in N.D. Const., Art. I, § 25(1)(n).

[¶101.] Of “great public interest” and a “capable of repetition, yet evading review” is nullification of statutory laws N.D.C.C. § 44-04-21.1(1) and N.D.C.C. § 54-12-01(19) by the OAG for violations of both N.D.C.C. § 44-04-18 and the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), while the District Court nullified the right of a “victim” to “effective relief” in N.D.C.C. § 44-04-21.2(1) for costs, disbursements

and damages under N.D.C.C. § 44-04-21.2 that should include “full and timely restitution” based on the constitutional mandate in N.D. Const., Art. I, § 25(1)(n).

CONCLUSION

[¶102.] Franciere complied with all the requirements in N.D.C.C. § 44-04-21.2 in initiating a civil action against the City after Stenehjem refused to issue an Opinion under N.D.C.C. § 54-12-01(19) after Franciere complied with all the requirements in N.D.C.C. § 44-04-21.1 after the City violated N.D.C.C. § 44-04-18 in conjunction with violating the constitutional mandate in N.D. Const., Art. I, § 25(1)(l), such that Franciere should be entitled to “effective relief” that includes costs, disbursements and damages under N.D.C.C. § 44-04-21.2 in conjunction with the “full and timely restitution” required based on the constitutional mandate in N.D. Const., Art. I, § 25(1)(n). Franciere requests that this Court reverse the District Court decision; remand with instructions that “effective relief” includes “full and timely restitution” to Franciere that should include costs, disbursements and damages under N.D.C.C. § 44-04-21.2(1) as “full and timely restitution” under the constitutional mandate in N.D. Const., Art. I, § 25(1)(n); and affirm, while clarifying, the rights of a “victim” under the constitutional mandates in N.D. Const., Art. I, § 25, regarding existing statutory laws.

Respectfully submitted May 20th, 2019.

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IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

Susan Franciere,)	
)	
Plaintiff and Appellant,)	
)	Supreme Court No. 20190122
v.)	
)	Civil No. 30-2017-CV-00914
City of Mandan,)	
)	
Defendant and Appellee.)	
)	

CERTIFICATE OF COMPLIANCE

The undersigned Plaintiff and Appellant, Susan Franciere, in this matter hereby certifies the Brief of the Plaintiff and Appellant is in compliance with Rule 32(a)(8)(A) of the North Dakota Rules of Appellant Procedure as the Brief of the Plaintiff and Appellant contains 38 total pages.

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City of Mandan,)	
)	
Defendant and Appellee.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that on May 20th, 2019, the following documents

- 1) Appellant Brief
- 2) Appellant Appendix
- 3) Certificate of Service

were served and filed by electronic delivery to:

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