

STATE OF NEBRASKA  
**Office of the Attorney General**

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March 31, 2011

Hailey Konnath  
Daily Nebraskan  
1400 R Street  
Lincoln, NE 68588

RE: *File No. 11-R-110; University of Nebraska Medical Center; Petitioner Hailey Konnath, Daily Nebraskan*

Dear Ms. Konnath:

This letter is in response to your petition received by us on March 7, 2011, in which you requested our assistance in obtaining certain public records belonging to the University of Nebraska Medical Center ("UNMC"). As is our normal practice with such requests, we contacted the party against whom the complaint was made. In this case we contacted William F. Lynch III, Director, University Records Management, and requested a response to your petition. On March 21, 2011, we received a response from Alison Dempsey, Associate General Counsel, who responded on behalf of UNMC. On March 22, 2011, we wrote to you advising that our response would be delayed due to our ongoing investigation. We have now concluded our investigation and have fully considered your petition for access to records under Neb. Rev. Stat. § 84-712.03, as well as UNMC's response, under the Nebraska Public Record Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2010). Our findings in this matter are set forth below.

**FACTS**

Our understanding of the facts in this matter is based on your petition and UNMC's response. On January 28, 2011, you submitted a public records request to Mr. Lynch. Specifically, you requested

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a copy of disclosure forms filed by University of Nebraska Medical Center professors, volunteers or physicians in regards to receiving payment from pharmaceutical companies. Provided below are the names, companies, and dates of the requested disclosure forms.

Your request listed 22 individuals. Each name referenced one or more pharmaceutical companies and one or more years, broken down by quarter.

Mr. Lynch responded to your request on February 3, 2011. He indicated that there were documents responsive to your request. However, Mr. Lynch stated that those documents were being withheld. In this regard, Mr. Lynch stated:

UNMC is not able to provide the requested information to you for the following reasons. With respect to all of the information requested, both the law of the State of Nebraska [Neb. Rev. Stat. § 84-712.05 (7)] and the Board of Regents Bylaw 1.4.4 protect from public disclosure "personal information" relating to employees without their consent, except for salary and information defined as routine directory information. Since you provided no consent to release this personal information from any of the persons you identified, your request is appropriately denied.

In her response, Ms. Dempsey reiterates that "[w]ith respect to all of the information requested, both § 84-712.05(7) and Board of Regents Bylaw 1.4.4<sup>1</sup> protect from public disclosure 'personal information' relating to employees without their consent, except for salary and information defined as routine directory information . . . ." Additionally, Ms. Dempsey provided definitions for "compensation" [salary] and "routine directory information" as those terms are defined in Board of Regents Bylaws 3.3.1 and 1.4.4, respectively. Ms. Dempsey further informs us that the Nebraska Political Accountability and Disclosure Act [Neb. Rev. Stat. §§ 49-1401 through 49-14,141 (2010)] does not require any of the individuals listed in your request to file a statement of financial interests with the Nebraska Accountability and Disclosure Commission. See § 49-1493.

Ms. Dempsey also represents that, with respect to the Milwaukee Journal Sentinel articles referenced in your initial request, "[a] review of the Wisconsin records law reveals no corollary provision to Board of Regents Bylaw 1.4.4 and the reach of the law extends past where the Board of Regents has authorized for routine directory information." Finally, Ms. Dempsey concludes that your request was "appropriately denied."

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<sup>1</sup> While Board of Regents Bylaw 1.4.4 may provide administrative, internal guidance for the proper dissemination of public records, for the purposes of our review under the NPRS, the bylaws carry little weight as to whether the records have been properly withheld.

Subsequently, you contacted our office seeking review of the propriety of this denial.

### ANALYSIS

The Nebraska Public Records Statutes ("NPRS") allow interested persons in Nebraska the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those public records, and to obtain copies of public records in certain circumstances. The NPRS are not absolute, and do allow public bodies to withhold public records through express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983). In particular, Section 84-712.05 is comprised of eighteen categories of documents which may be kept confidential from the public at the discretion of the agency involved. However, the burden of showing that an exception applies to particular records rests upon the custodian of the records. *State ex rel. Nebraska Health Care Association v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998).

Here, UNMC has claimed the exception set out in subsection (7), which provides:

Personal information in records regarding personnel of public bodies other than salaries and routine directory information . . . .

In Nebraska, in the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. *Swift and Company v. Nebraska Department of Revenue*, 278 Neb. 763, 773 N.W.2d 381 (2009). In that regard, "personal" is defined as "1. Of or affecting a person . . . ." BLACK'S LAW DICTIONARY 932 (abridged 7<sup>th</sup> ed. 2000). WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 1338 (2<sup>nd</sup> ed. 1983) defines "personal" as "2. Private; individual; affecting individuals; peculiar or proper to a certain person or to private actions or character; . . ." "Information" may be defined as "knowledge acquired in any manner; facts; data; learning; lore. . . ." WEBSTER'S at 940. It appears to us then that the personal information exception, taken in its plain and ordinary meaning, would encompass a broad variety of records pertaining to a public employee, except of course, his or her salary and directory information.

In the present case, UNMC has asserted that the disclosure forms at issue are personal information which do not constitute salary and routine directory information. We agree. According to the information we received, the disclosure documents purportedly contain the amounts of compensation received by some of the listed individuals from various pharmaceutical companies. We are satisfied that these

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amounts do not reflect actual "salaries" paid to these individuals by UNMC. Further, this office has historically regarded "routine directory information" as consisting of those items set out in Title 273, *Nebraska Administrative Code*, Chapter 12, § 001.01, i.e.— "[i]nformation concerning an employee's or former employee's name, position . . . date of hire, date of separation and agency where employed . . . ." We note that the definition of "routine directory information" set out in Board of Regents Bylaw 1.4.4 is less restrictive than the one set out in § 001.01, and includes such items as "postsecondary education degrees earned" and "awards or honors." In any event, the disclosure documents at issue would fall under neither definition. Consequently, we believe that the requested documents constitute "personal information" in records belonging to UNMC regarding its personnel, and UNMC's reliance on Neb. Rev. Stat. § 84-712.05(7) to withhold the requested documents was appropriate under these circumstances.

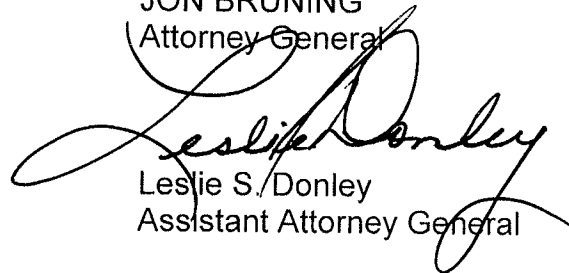
### CONCLUSION

For the reasons explained above, we believe that the requested documents belonging to the University of Nebraska Medical Center may be kept confidential under § 84-712.05 (7). We further believe that the University of Nebraska Medical Center did not unlawfully deny your records requests, and that no further action by this office is warranted. Accordingly, we are closing this records file.

If you disagree with our legal analysis set out herein, you may wish to consult with your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

JON BRUNING  
Attorney General



Leslie S. Donley  
Assistant Attorney General

cc: Alison Dempsey  
Associate General Counsel