



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
ATTORNEY GENERAL

NATALEE J. HART
ASSISTANT ATTORNEY GENERAL

March 30, 2015

William H. Foster III
Better Airports, LLC
4504 North Versailles Avenue
Dallas, TX 75205

RE: *File No. 15-R-107; Wahoo Airport Authority; William H. Foster III,
Petitioner*

Dear Mr. Foster:

We are writing in response to your e-mail¹ sent to the Attorney General on March 13, 2015, in which you requested our assistance in obtaining certain public records belonging to the City of Wahoo Airport Authority (the "Airport Authority"). We also received follow-up e-mails from you on March 17 and 18, 2015 making further allegations regarding this request. As is our normal practice with such requests, we contacted the party against whom the complaint was made. In this case, we spoke to the custodian of these records, Wahoo City Administrator/Clerk/Treasurer Melissa Harrell, on March 16, March 17, and again on March 18, 2015. We consider your e-mails to be a petition for access to records under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014). Our findings are set forth below.

RELEVANT FACTS

Our understanding of the facts in this matter is based on your e-mails, our phone conversation with Ms. Harrell on March 16, and our subsequent follow-up via e-mail and phone with Ms. Harrell on March 17 and March 18. On February 27, 2015 you e-mailed Ms. Harrell a public records request for all insurance policies covering the Wahoo Municipal Airport from January 1, 2011 to the present. Ms. Harrell responded to you on March 5, 2015 that she had received your request, was reviewing it and the Nebraska

¹ On March 13, 2015, you sent four e-mails to the AGO – Department of Justice e-mail address. The first was received at 3:16 a.m., the second at 3:30 a.m. containing corrections, the third at 3:49 a.m. containing further corrections, and the fourth received at 9:55 a.m. designated as "Clean Corrected Copy as to Item #8." All four e-mails concern the same records request to the City of Wahoo Airport Authority and we will treat the fourth e-mail, sent at 9:55 a.m. as the official petition in this matter.

Public Records Statutes, and would have an estimate for you on March 9, 2015 as to the cost for fulfilling your records request. You followed up with Ms. Harrell on March 10, when you had not received the estimate from her on March 9. Ms. Harrell next e-mailed you on March 12, 2015 that she had not forgotten your request and should have the information to you by the end of that day. You filed your petition on March 13, 2015.

We contacted Ms. Harrell on March 16, 2015 via phone with respect to your petition. Ms. Harrell informed us that she had sent you documents via e-mail and priority mail on March 13, 2015 in response to your February 27 records request. You subsequently filed addenda to your complaint on March 17 and 18, 2015 alleging that you did not receive all documents requested. We queried Ms. Harrell as to your allegations that not all documents requested had been provided. We understand Ms. Harrell then sent you further documents on March 17 and 18. Ms. Harrell has assured us that she has now provided you with all documents responsive to your request of February 27 which are maintained by her as custodian of the Airport Authority records.

Ms. Harrell indicates to us that this latest public records request is one of over one hundred that you have made with the Airport Authority in the recent past. Ms. Harrell's job responsibilities include not only custodian of the records for the Airport Authority, but also, as referenced above, City Clerk, City Administrator, and City Treasurer for the City of Wahoo. She has expressed to us that she has fulfilled this public records request, and every other, in good faith and with no intent to withhold any documents from you at any time. In this instance, her interpretation of your records request was more narrow than you had intended; you may want to consider that future requests be more specific if you are looking for certain documents. Instead of simply requesting all "insurance policies," you may consider requesting "Airport Liability, Director's and Officer's Coverage, and Property insurance policies" covering the airport for a requested time frame. This will ensure that your request is understood as you intend.

DISCUSSION

Generally speaking, the Nebraska Public Records Statutes 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. A public body is not required, however, to create documents that do not otherwise exist, or to answer questions made to the public body under the guise of a public records request.

When we receive petitions under Neb. Rev. Stat. § 84-712.03, our focus is to ensure that citizens have not been improperly denied public records. Since the Airport Authority has now provided the records which are responsive to your public records

William H. Foster III
March 30, 2015
Page 3

request, we see no basis for further action by this office and we are closing this file. However, we will remind Ms. Harrell, by sending her a copy of this letter that, in the future, a timely response must follow any request for public records, i.e., not more than four business days after actual receipt of the request, which *fully* comports with the requirements set out in Neb. Rev. Stat. § 84-712(4) at the time of the initial response. We also addressed the requirements of this statute with Ms. Harrell in our phone conversation of March 16.

We would also note that Ms. Harrell has been accommodating in explaining the records she has and answering questions posed by you. She is not required to do so. The Nebraska Public Records Statutes provide for access to and copies of public records; they do not require public officials to answer questions, clarify the contents of records, or to create records which do not otherwise exist. We believe Ms. Harrell has fully complied with the requirement to provide records and consider this matter closed.

Sincerely,

DOUG PETERSON
Attorney General

A handwritten signature in black ink, appearing to read "Natalee J. Hart". The signature is fluid and cursive, written over the printed name and title.

Natalee J. Hart
Assistant Attorney General

cc: Melissa Harrell

02-482-29