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March 28, 2017

Bruce Schuknecht
[REDACTED]

RE: *File No. 17-R-112; Nebraska Health and Human Services Office of Vital Records; Bruce Schuknecht, Petitioner*

Dear Mr. Schuknecht:

This letter is in response to your Public Records petition received by us on March 13, 2017, in which you requested our review of a request made by you to the Nebraska Department of Health and Human Services Office of Vital Records ("Vital Records") to view a copy of a death certificate. As is our normal practice with such complaints, we contacted the party against whom the complaint was made and advised them of the opportunity to provide us with a response. We received information from the legal counsel for Vital Records and spoke with Stanley Cooper, head of Vital Records. We have now considered your petition and the response of Vital Records under the Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2014, Cum. Supp. 2016), and our findings in this matter are set forth below.

RELEVANT FACTS

Our understanding of the facts in this case is based on your complaint and information received by us from Vital Records. On March 13, 2017, you made an in-person verbal request to view a copy of a death certificate maintained by Vital Records. You were advised by Vital Records that in order to view a death certificate, you must complete the appropriate form and pay a fee of \$16.00. You declined to fill out the form and asserted that the \$16.00 fee is excessive and that you would not pay more than ten cents for the record. Your petition followed your visit to Vital Records.

DISCUSSION

Generally speaking, 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. As an initial matter, the NPRS require all requests for public records to be in writing. Neb. Rev. Stat. § 84-712(4). A public body is under no obligation to provide records pursuant to a verbal request. You declined to make your request to Vital Records in writing. Consequently, you have not been improperly denied access to public records.

Birth and death records, are public records. See Neb. Rev. Stat. § 84-712.05(2); Op. Att’y Gen. No. 91004 (January 25, 1991), Op. Att’y Gen. No. 90039 (November 20, 1990). However, the Legislature has placed certain limitations on obtaining those records, in order to maintain the integrity of those records. Neb. Rev. Stat. § 84-712 of the NPRS provides that “except as otherwise expressly provided by statute,” members of the public are entitled to examine and copy all public records. The Legislature has “expressly provided” in Neb. Rev. Stat. § 71-612 (2014) that records maintained by Vital Records may be treated differently than other public records. The Department of Health and Human Services is required to provide a copy of a death record for viewing only after a properly completed application is submitted and a statutory fee of \$16 is paid. Neb. Rev. Stat. § 71-612(1). Only then may a member of the public obtain access to view a particular death record. That death record may not be removed from the office of Vital Records, but the applicant may view and make notes about the record. 174 NAC 3, § 3-003. In order to obtain a copy of a death record which may be removed from Vital Records, an applicant must request a certified copy of the record on an application provided by that office and pay the statutory fee. Neb. Rev. Stat. § 71-612(1). A certified copy may be obtained only upon a showing of a “proper purpose.” *Id.*; 174 NAC 3, § 3-003.05.

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. The Nebraska Public Records Statutes require all requests for public records to be in writing. Vital Records is not in violation of the NPRS as to your petition. If you wish to view the death certificate, you must complete the application at Vital Records and pay the \$16 fee. Requiring you to do so is also not in violation of the NPRS.

CONCLUSION

For the reasons explained above, we do not believe Vital Records has violated the NPRS with respect to your verbal request for a record, and that no further action by this office is warranted. Accordingly, we are closing this file. If you disagree with the analysis we have set out above, you may wish to consult your private attorney to discuss what additional remedies may be available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Natalee J. Hart
Assistant Attorney General

cc: Brad Gianakos

02-655-29