

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

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July 31, 2018

Donald M. O'Neill



RE: *File No. 18-R-123; Walthill Public School; Donald M. O'Neill, Petitioner*

Dear Mr. O'Neill:

This letter is in response to your petition received by this office on July 16, 2018, in which you sought our assistance in obtaining certain public records from Walthill Public School ("WPS") relating to the costs of a new gym. On July 17, 2018, we contacted WPS superintendent Kirk Ahrends regarding your petition, and advised him of the opportunity to respond. We received Mr. Ahrends' response on July 20, 2018, which included documentation previously provided to you by WPS in response to your public records request. We have fully considered your petition and WPS' response in accordance with the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2016<sup>1</sup>) ("NPRS"). Our findings in this matter are set forth below.

**RELEVANT FACTS**

On June 18, 2018, you mailed a public records request to the Walthill Board of Education, which was received by WPS on June 25. Your request stated, in pertinent part, as follows:<sup>2</sup>

. . . I would like a copy of the following public records:

1. A copy of the Architect's bid on the plans and design of the new gym (including foyer/bathrooms/snack area/etc.) at the Walthill Public Schools and final cost of such plans, design and the name of the Architect/Firm;

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<sup>1</sup> See also 2018 Neb. Laws LB 193; 2018 Neb. Laws 859; and 2018 Neb. Laws LB 902.

<sup>2</sup> Quoted material has been reproduced as written.

2. A copy of all bids for the new gym at the Walthill Public Schools and which bid was chosen for every job required for this new addition (including foyer/snack area/bathrooms/etc.);
3. The date the work on the new gym (including foyer/snack area/bathrooms/etc.) at the Walthill Public Schools began and the date of completion;
4. The final cost of this addition at the Walthill Public Schools and specifically where each dollar came from to pay for this addition (i.e. loans, gifts, grants, etc.) including information on any outstanding debt concerning this gym;
5. Names of all individuals who signed off on building this gym and their understanding of the purpose and cost of this new gym/addition at Walthill Public Schools.

\* \* \*

According to the statue, you have seven days to respond to this request.

On June 26, June 29, July 1-3, July 6, and July 13, you exchanged emails with both former and current WPS superintendents<sup>3</sup> regarding your public records request. On June 26, July 2 and July 6, former WPS superintendent Edward Stansberry and Mr. Ahrends emailed several documents to you, including the architect and construction contracts, construction bid, payment documents and meeting minutes. In a July 6, 2018 email to Mr. Ahrends, you wrote:

There is just two things that I have asked for and still want. First, I would like to have the total cost of the new Gym at the Walthill, Ne. Public School, total cost of everything concerning this Gym Start, any money spent starting with the contract signing on 15 May 2015 until completion on 9 Aug 2017 and the figure \$5,506,589.00 does not include all of the costs. . . .

Second, Mr. Stansberry said that this Gym was built with Impact Aid Funds? If this is true wish to know the amount of each years Impact Aid Funds and how much each year was used to built this Gym?

On July 13, Mr. Ahrends emailed you three documents relating to impact aid, indicating that the documents should contain the information you were seeking.

You subsequently filed your petition with this office. You indicate that you received "some information," but could not get the total cost of the gym, or the amount of impact

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<sup>3</sup> It is our understanding that Mr. Ahrends took over as WPS superintendent on July 1, 2018.

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aid received each year by WPS, and the amount of aid used for the gym. Your petition concludes: "This is a petition to the Attorney General to review this matter and see why my request is being ignored and why it was not furnished to me in the seven days which the statute shows to be the case?"

## DISCUSSION

In Nebraska, the basic rule for open public records is found at Neb. Rev. Stat. § 84-712 (2014) of the NPRS. That statute provides, in pertinent part, that

[e]xcept as otherwise expressly provided by statute, all citizens of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

The purpose of § 84-712 is "to guarantee that public government records are public." Introducer's Statement of Purpose for LB 505, 72<sup>nd</sup> Nebraska Legislature (1961).

The NPRS generally 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 records, and to obtain copies of records in certain circumstances. Under those statutes, every record "of or belonging to" a public body is a public record which individuals may obtain a copy of unless the custodian of the record can point to a specific statute which allows the record to be kept confidential. However, we have consistently taken the position that the NPRS do not require public officials to answer questions or to create documents which do not otherwise exist. See Op. Att'y Gen. No. 87104 (October 27, 1987); Op. Att'y Gen. No. 94035 (May 13, 1994).

Mr. Ahrends has represented to the undersigned that Walthill Public School has provided you all of the documentation it has that could be considered responsive to your request. WPS officials have no further obligation, under a public records request made pursuant to § 84-712, to answer your questions regarding total costs for the gym or the amount of impact aid involved. Notwithstanding this limitation, our review of the emails provided to this office indicates that both superintendents made a good faith effort to respond to your various questions, in addition to providing you pertinent documentation. The assertion that your request has been "ignored" by school officials is simply not supported by the record.

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We will now address your allegation that WPS officials should have provided you the requested information within seven days after receiving your request. The statutory provision at issue, § 84-712(4), provides, in pertinent part:

Upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, **but not more than four business days after actual receipt of the request**, an estimate of the expected cost of the copies and either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

(Emphasis added.)

As you can see, § 84-712(4) contains no provision that requires the custodian of public records to produce records in seven days. The statute does require the custodian to *respond* to the requester no more than four business days after actual receipt of a written request. The custodian can respond in four different ways: (1) provide the requester with the records; (2) deny access to the records, and provide the basis for denying access; (3) indicate that it needs more time to produce the records; or (4) inform the requester that there are no records responsive to the request.

According to your July 2, 2018 email to Mr. Ahrends, you sent your public records request to WPS by registered mail. Someone from WPS signed for it on June 25. Four business days after actual receipt on June 25 is June 29. It appears that Mr. Stansberry emailed you on June 26, stating, in part: "Here is your requested information on our school gym project. . . ." While it is unclear from this email which documents were provided to you, we know that you received documentation because you sent a follow up email to Mr. Stansberry on June 29 with questions about the documents. This was Mr. Ahrends' understanding as well. In any event, it appears that WPS officials emailed you records responsive to your request on June 26, July 2, July 6, and July 13. Consequently, WPS officials did not violate § 84-712(4) with respect to the timeliness of its response.

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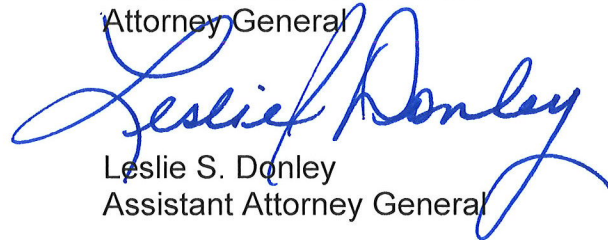
## CONCLUSION

We conclude that the Walthill Public School has provided you all of the documents it has in its possession which are responsive to your public records request. In addition, there is no requirement under the NPRS to answer questions or create documents that do not otherwise exist. The purpose of these statutes is to give you access to *public records*. There is no question that Walthill Public School provided you public records as requested and in a timely manner.

Since we have identified no violations of the NPRS with respect to this matter, no further action by this office is necessary and we are closing this file. If you disagree with our analysis, you may wish to discuss this matter with your private attorney to determine what, if any, additional remedies might be available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: Kirk Ahrends

49-2048-29