



STATE OF NEBRASKA
Office of the Attorney General

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July 1, 2021

Travis Trotter
[REDACTED]

RE: *File No. 21-R-119; City of Broken Bow; Travis Trotter, Petitioner*

Dear Mr. Trotter:

This letter is in response to your petition filed against the City of Broken Bow ("City"), which we received on June 16, 2021. In your petition, you raise concerns regarding the City's compliance with the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2020). On June 22, 2021, we discussed this matter with the City Attorney, Jason White. We have fully considered your petition and materials in accordance with the provisions of the NPRS, and our response to your petition is set out below.

YOUR PETITION

This matter involves a series of public records requests you made to the City beginning in March 2020. The crux of your petition appears to be that City officials required you to provide a reason for requesting certain records in violation of Neb. Rev. Stat. § 84-712 (2014). You state that

. . . I felt that if I did not meet this requirement I would be denied the ability to make further records requests. I provided the city attorney with 50 pages of documentation and explanation as to what I was after. I am now concerned that this information could sabotage any investigation that fema [sic] may currently be conducting in the matter of possible noncompliance.

You indicate in your petition that you "only included the documents that specifically referenced their request as to why I wanted to review these records."

CITY'S RESPONSE

Mr. White informs us that City officials have never asked you to provide the *reason* why you wanted certain records. Rather, City officials have asked you to provide a *description* of what records you are seeking. Mr. White indicates that the City has tried to accommodate your various requests, and has provided you all records responsive to those requests. Lastly, Mr. White indicates that, in many instances, the City simply does not have the records you are seeking.

DISCUSSION

The Nebraska Public Records Statutes generally allow interested persons the right to examine public records in the possession of public agencies in Nebraska during normal business hours, to make memoranda and abstracts from those records, and to obtain copies of records in certain circumstances. The process begins by submitting a *written request* to the custodian of records. Neb. Rev. Stat. § 84-712(4) (2014). The NPRS do not require public officials to answer questions or to create records which do not otherwise exist. Op. Att'y Gen. No. 94092 (November 22, 1994); Op. Att'y Gen. No. 94035 (May 11, 1994); Op. Att'y Gen. No. 87104 (October 27, 1987).

Your petition correctly points out that “[s]ection 84-712 does not require any showing by a person requesting access to public records of the reason for his or her review of those records.”¹ “The public records statutes apply ‘equally to all persons without regard to the purpose for which the information is sought.’ As a general rule, citizens are not required to explain why they seek public information.” *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, 943 N.W.2d 231, 247 (2020); *State ex rel. Sileven v. Spire*, 243 Neb. 451, 457, 500 N.W.2d 179, 183 (1993).

With this legal principle in mind, we reviewed the approximately 115 pages of documentation you provided to this office. These documents generally pertain to an ongoing drainage issue on your property and a purported FEMA violation by the City. We identified no instance in which a City official required you to provide a reason prior to fulfilling your public records request. We did identify instances where City officials asked you to describe or define the records sought. For example, in an email to you dated December 17, 2020, Mr. White stated, in part, “I am asking you to tell me what it is you seek by way of a records request.” In a letter written in response to your March 10, 2020, records request, the City Clerk stated, in part: “As to your reference to ‘[the City’s] efforts to remedy violations in zone A12’ it is uncertain to which records you are referring. If you have specific records please define such records, and the City will determine if such records exist.” Conversely, your petition materials include instances where you attached information and documentation to a particular records request. For example, in an email

¹ Excerpt from the Attorney General’s “Outline on the Nebraska Public Records Statutes” accessible at <https://ago.nebraska.gov/public-records>.

Travis Trotter
July 1, 2021
Page 3

to the City Clerk sent February 8, 2021, you state that “[o]n 10/9/2020 2 Requests for records were submitted with 12 attachments for clarity.” (Emphasis added.)

We do not construe City officials’ requests for clarification as violating your right to access public records guaranteed under § 84-712. And while the full extent of your correspondence with City officials is unclear from your documentation, we find the February 16, 2021, letter from City Administrator Daniel Knoell instructive in resolving this matter. Mr. Knoell’s letter states, in pertinent part:

Over the past several months since I have taken over as City Administrator of Broken Bow, I have tried to assist you in all ways possible. You have submitted multiple Public Records Request[s] about the “Flooding or Drainage” issues on or around your property. I have informed you many times that your property as well as the drive/road that leads to your property is all “Private” property owned by [private parties], Not, The City of Broken Bow.

I am still willing to assist in this matter by giving you all records that pertain to your request(s). I must make it known that ALL this information is ALL we have records of, and most of this information has come from you. Also, with the records you request that you have requested withdrawn, most of that information is on our website

[P]lease accept this information for your public records request. If in the future you request information pertaining to this issue, I will refer you to the attached pdf which contains every document we have on this subject. We have spent quite a bit of taxpayer time and money, looking for information that does not exist

Based on the foregoing, we do not believe that the City’s handling of your public records requests was improper. The City provided you with the records in its possession which were responsive to your requests, which sometimes included records you had provided the City. In some instances, the City indicated that it had no responsive records. Absent any direct evidence to the contrary, we must presume that public officials act in good faith and that they are speaking truthfully if they indicate that they do not have records responsive to a particular records request.² Moreover, as indicated above, public bodies are not required to create records for you that otherwise do not exist.

² See *Wolf v. Grubbs*, 17 Neb. App. 292, 314, 759 N.W.2d 499, 520 (Neb. Ct. App. 2009) (The court held that “[i]n the absence of evidence to the contrary, it may be presumed that public officers faithfully performed their official duties and that absent evidence showing misconduct or disregard of law, the regularity of official acts is presumed.”).

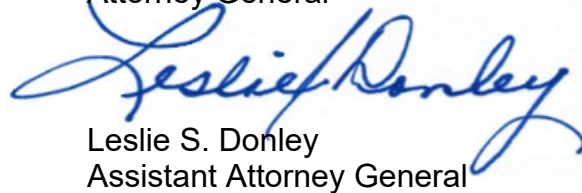
Travis Trotter
July 1, 2021
Page 4

CONCLUSION

For the reasons discussed above, we do not believe that the City of Broken Bow violated the provisions of the NPRS relating to your public records requests. As a result, 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 additional remedies, if any, are available to you under these statutes.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Jason White

49-2729-29