

STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
TIERONE FAX (402) 471-4725

JON BRUNING
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

December 3, 2010

Ivan Fintel, Chairman
Clay County Board of Supervisors
P.O. Box 67
Clay Center, NE 68933

RE: *File No. 10-R-142; Nebraska Environmental Trust; Clay County Board of Supervisors, Petitioner*

Dear Mr. Fintel:

This letter is in response to your correspondence dated November 16, 2010, and received by us on November 18, 2010, in which you have requested our assistance in obtaining certain public records belonging to the Nebraska Environmental Trust (the "Trust"). As is our normal practice with such requests, we contacted the party against whom the complaint was made. In this case we contacted Mark Brohman, executive director of the Trust, and requested a response. On November 29, 2010, we received Mr. Brohman's response. We have now considered your letter, which we have construed to be a petition for access to records under Neb. Rev. Stat. § 84-712.03 (the "Petition"), and the response from the Trust under the Nebraska Public Record Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2010) ("NPRS"). Our findings in this matter are set forth below.

FACTS

Our understanding of the facts in this case is based upon your Petition and the attached materials, and Mr. Brohman's written response. We have also discussed this matter briefly with Mr. Brohman by telephone on December 2, 2010.

It appears from the documentation provided to us that Deb Karnatz, Secretary for the Clay County Board of Supervisors (the "Board"), mailed a letter to the Trust dated September 24, 2010. In her letter, Ms. Karnatz requested "a copy of the 2011 Grant

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Requests and also the 2011 Grant Requests Modifications.” Mr. Brohman responded by writing the following notation on the request letter:

Deb, Here is a list of the 2011 Applications. ‘Modifications’ will not be available until after the grants are awarded in April 2011.
[signed] Mark Brohman

Mr. Brohman’s response is undated, and it is unclear when this information was conveyed to Ms. Karnatz.

In a letter dated October 21, 2010, Ms. Karnatz made another public records request to the Trust on behalf of the Board. Specifically, Ms. Karnatz requested “a copy modifications [sic] from the Kearney meeting in June.” Lori Moore, an administrative secretary for the Trust, responded to this request by e-mail on November 2, stating “[a]s per your request from October 21, 2010, there are no modifications from the Kearney meeting in July.”

It appears that the Board’s last written request for records was made by letter dated November 1, 2010. Here, Ms. Karnatz states:

I have been asked to request copies of the full grant requests for the following grants: 10-172-2, 11-191, 11-201, 10-106-2, 11-130, 11-194. It is my understanding that these are available in electronic format. If you would like to email them, my email address is clerk@clay.nacone.org. Otherwise, these may be sent to the board at: PO Box 67, Clay Center, NE 68933.

Ms. Moore responded on behalf of the Trust by e-mail on November 2. She indicated that the Trust’s server would prohibit sending files that large electronically, and that Ms. Karnatz’s system would be unable to receive files that large also. Ms. Moore further states:

I have attached our Policy on Public Records and the photo copy charges associated with making said copies. I suggest that you go to our website at www.environmentaltrust.org and go to the link 2011 Application Summary booklet; contained within the information is the application summary on the grants plus the carry over projects from previous years. The description for the two 2010 projects would be located under the grants tab under the 2010 grants.

In his response, Mr. Brohman represents that his handwritten response to Ms. Karnatz’s September 24, 2010, request for “2011 Grant Requests Modifications” was

his explanation as to process—i.e., individuals cannot request grant modifications until after they receive a grant, which in the present case would not occur until the April 2011 board meeting. Consequently, there were no 2011 grant modifications. With respect to Ms. Karnatz' October 21 request for modifications from the Kearney meeting in June, Mr. Brohman represents that Ms. Moore construed Ms. Karnatz' request to mean modifications relating to the *meeting minutes*, not copies of the actual modifications. As a result, Ms. Moore's response was simply there are no modifications.

Ultimately, Mr. Brohman states that he reviewed the Nebraska Public Records Statutes, and it appeared that there was "no exception for grant applications not to be considered 'public record.'" He indicated that "[t]he Nebraska Environmental Trust shall immediately vacate its policy of not releasing grant applications to the public, including the media." Mr. Brohman concludes his response by indicating that the Trust would e-mail the requested records to Ms. Karnatz.¹

DISCUSSION

The Nebraska Public Records Statutes generally allow interested persons the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from the records, and to obtain copies of records in certain circumstances. The NPRS specifically allows copies of public records to "be obtained in any form designated by the requester in which the public record is maintained or produced, including, but not limited to, printouts, electronic data, discs, tapes, and photocopies." See Neb. Rev. Stat. § 84-712 (3)(a). In addition, the provisions of § 84-712.05 do not create "exemptions" to the public records statutes. The eighteen categories of records set out in that section are still "public records." However, even though they are public records, they may be kept confidential at the discretion of their custodian agency. See Op. Att'y Gen. No. 94080 (October 14, 1994).

In the present case, it seems to us that the efforts of the Nebraska Environmental Trust fell well short in meeting the statutory requirements of the NPRS. However, since the Trust has provided the Board with the records at issue in this Petition, and has indicated to us that its policy has been amended to comport with state law, we see no basis for further action by this office and we are closing this file. However, please feel

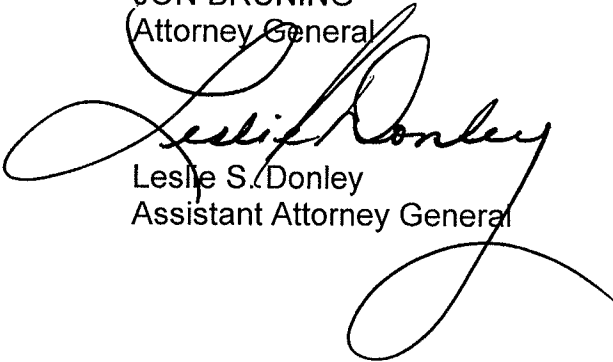
¹ Our office has confirmed that Ms. Karnatz has received the requested documents.

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free to contact the undersigned if any additional issues should arise with respect to your access to public records.

Sincerely,

JON BRUNING
Attorney General

A handwritten signature in black ink, appearing to read "Leslie S. Donley". The signature is fluid and cursive, with a large loop at the end. It is positioned over the typed name and title of the Assistant Attorney General.

Leslie S. Donley
Assistant Attorney General

cc: Mark Brohman

49-566-30