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July 27, 2011

Mr. Heyward Smith
Executive Director
Plains States Legal Foundation
17330 West Center Road, Suite 110-162
Omaha, NE 68130

Re: *File No. 11-R-125; Omaha Fire Dept.; Smith.*

Dear Mr. Smith:

This letter is in response to your correspondence dated July 5, 2011, which we received on July 12, 2011. In your correspondence, you asked us to determine if a \$36,000 charge for copies of public records proposed by the Omaha Fire Department and the City of Omaha was excessive under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2010). We considered your correspondence to be a petition under § 84-712.03. Our response to your petition is set out below.

FACTS

Our understanding of the facts in this case is based upon your letter and the materials you provided to us. We have also discussed this matter with staff at the Omaha City Attorney's office.

On June 9, 2011, you sent a "Request for Open Records" to the Omaha Fire Department (the "Department") in which you asked for copies of records in five specified areas. Your fourth request was for "[a] copy of all written (email or otherwise) communications pertaining to any pending employee union contract."

Omaha Assistant City Attorney Bernard J. in den Bosch responded to your records request in a letter dated June 17, 2011. In his letter, Mr. in den Bosch indicated that, due to the breadth of your fourth request, records involving over 600 Department employees would have to be reviewed. To review email records for those individuals,

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Mr. in den Bosch indicated that three different computer searches would have to be conducted. He represented further that those searches would involve over 900 hours of Department labor at a total cost of \$36,000. You question whether those charges are excessive under the Public Records Statutes.

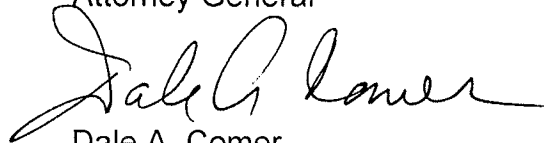
ANALYSIS

The Nebraska Public Records Statutes 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 therefrom, and to obtain copies of records in certain circumstances. However, under § 84-712 (3)(b), "the custodian of a public record may charge a fee for providing copies of such public record[s] . . . which fee shall not exceed the actual cost of making the copies available." As a result, the Department may charge you a fee for providing copies of the public records which you requested, but that fee may not be more than the Department's actual costs in providing those copies. In that regard, we have indicated in the past that an agency's actual cost of providing copies includes the time of persons involved in finding certain records, making copies and returning those records to their files.

In this instance, we understand that the fee of over \$36,000 quoted to you by the Department for copies of computer records represents the cost estimate that was presented to the Department by DOT.Comm, the computer agency for the City. It also represents the costs of the time necessary for Department personnel to review the computer data to find responsive records, given the fact that DOT.Comm's search capabilities apparently still require a personal review of the computerized data to determine its relevancy. Therefore, our preliminary conclusion regarding the charges questioned by your Public Records petition indicates that those charges are not excessive. However, we have requested additional information from the Department regarding the charges at issue, and we expect to receive that information by August 12, 2011. We will make a final determination regarding your petition and the charges at issue subsequent to that date.

Sincerely,

JON BRUNING
Attorney General



Dale A. Comer
Assistant Attorney General
Chief, Legal Services Bureau