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Office of the Attorney General

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October 11, 2016

VIA EMAIL at mww250@cox.net
Mike Weaver



RE: *File No. 16-R-135; Game and Parks Commission; Mike Weaver, Petitioner*

Dear Mr. Weaver:

We are writing in response to your petition received by this office on September 26, 2016 in which you requested our review of the response of the Nebraska Game and Parks Commission ("Commission") to your public records request. When we receive petitions of this nature, our normal practice is to contact the entity involved and advise it of the opportunity to provide a response to this office. In the present case, we contacted Jim Douglas, Director the Commission, and requested a response to your petition, which we received October 4, 2016.

As a procedural note, both your request to the Commission and your petition to this office referenced the Federal Freedom of Information Act ("FOIA"). FOIA is a federal law, codified at 5 USC § 552, which generally provides that any person has the right to request access to *federal* agency records and information. You are seeking information from the Nebraska Game and Parks Commission, an agency of the State of Nebraska, whose headquarters are located in Lincoln, Nebraska. In this particular context, FOIA does not apply and the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 ("NPRS"), govern access to records of and belonging to the Commission. Consequently, our analysis will be related only to the NPRS and not to FOIA. Our findings in this matter are set forth below.

RELEVANT FACTS

Our understanding of the facts in this matter is based solely on your correspondence and the information we received from the Commission.

On September 19, 2016, you submitted an electronic request via the Nebraska Game and Parks Commission website seeking “the salary and benefits packages for Jim Douglas and Tim McCoy.” You requested “complete” records to include “all monies, benefits, and perks provided by the State of Nebraska to” Director Douglas and Deputy Director McCoy. On September 21, 2016, the Commission emailed you the requested salary information and a link to the State Personnel webpage. The email did not include any benefits information specific to the Director or Deputy Director but did specify that state employees “are not eligible for ‘perks’.”

That same day, you replied requesting “a spread sheet that outlines their Entire contract pay out, including all benefits.” Via email on September 22, 2016, you requested the Commission forward to you that spreadsheet by Friday, September 23, 2016 at 12:25 p.m. On September 23, 2016, the Commission sent you an email containing two attached documents, a letter from Director Douglas and a spreadsheet.

Director Douglas informed you that the Commission was providing to you a redacted version of a spreadsheet which contained information you had requested. The Commission redacted information “consisting of employee ID numbers, accounting information, and benefits information.” Director Douglas explained, “[w]e consider this information to be personal information relating to agency personnel, and which does not constitute routine directory information. Consequently, we will redact this information under the exception in Neb. Rev. Stat. § 84-712.05(7) (2014).” Director Douglas noted that the Commission was, “producing this record in accordance with Neb. Rev. Stat. § 84-712.06 (2014), which states: ‘Any reasonably segregable public portion of a record shall be provided to the public as a public record upon request after deletion of the portions which may be withheld.’”

The other document consisted of the spreadsheet referenced in the letter. All employee information was redacted except for the entries for Director Douglas and Deputy Director McCoy, which included their job title, FTE, Hourly Rate, July 1 rate, and Annual Salary. Column titles for “EmpID”, “Sec. Bs. Unit”, “Cost Center-Name”, “Cost Center-ID”, “Job Code”, “Ann Retire.075”, “OASDI”, “Annual Health”, “Annual EAP”, “Annual Life”, and “Fiscal Year Total” were left visible, but column data was redacted. You responded on September 23, 2016 indicating you did not accept the redacted spreadsheet and intended to bring the petition which is the subject of this letter.

DISCUSSION

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

Except 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.

Neb. Rev. Stat. § 84-712(1) (2014). Under the NPRS, every record “of or belonging to” a public body is a public record, which individuals may access or obtain a copy. Neb. Rev. Stat. § 84-712.01(1). However, the NPRS are not absolute and provide for exceptions to disclosure by express special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983).

Neb. Rev. Stat. § 84-712.05 contains eighteen categories of documents which may be kept confidential from the public. These exceptions to disclosure are discretionary. A public body is not required to invoke an exception to disclosure, but has the right to do so. The public body has the burden to show that a public record falls within an exemption to the general disclosure requirement. *State ex. rel. Nebraska Health Care Association v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998). Here, the Commission expressly claims the exception in Neb. Rev. Stat. § 84-712.05(7) as its basis to withhold the requested records. Subsection (7) provides, in pertinent part:

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information.

In Nebraska, in the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.

Swift and Company v. Nebraska Department of Revenue, 278 Neb. 763, 767, 773 N.W.2d 381, 385 (2009). The plain and ordinary reading of § 84-712.05(7) indicates a public body may lawfully withhold personal information regarding its personnel, except for salary and routine directory information. In the letter dated September 23, 2016, Director Douglas noted that the Commission considered “this information to be personal information relating to agency personnel, and which does not constitute routine directory information.”

In Op. Att’y Gen. No. 90015 (February 27, 1990), we were asked to determine if a state agency must disclose whether a particular employee received a bonus and the amount, which information was contained in the employee’s personnel file. In responding to this inquiry, the Attorney General stated:

We believe that subsection (7) would clearly allow a public agency to keep employee evaluations and bonus information in an employee’s personnel file confidential. In addition, we believe that other materials or records reflecting such personal information may also generally be kept confidential. For example, a list prepared by the agency of those employees who received bonuses and the amount of each bonus could be kept confidential under subsection (7).

We believe the same analysis applies here. The Commission located a spreadsheet such as you requested. The Commission provided the salary information, FTE, hourly rate, July 1 rate, and annual salary information found within the spreadsheet. The spreadsheet contained only two types of routine directory information, as that term is commonly understood (i.e., name, job title, date of hire and separation, etc.). The Commission supplied the routine directory information, specifically the name and job title, relating to the information you requested. The remainder of the information contained in this spreadsheet falls squarely within the category of personal information as contemplated by § 84-712.05(7).

The Commission did not withhold the entire spreadsheet. Rather, in compliance with § 84-712.06, the Commission identified segregable portions of the public record in question and provided it to you after deletions of the portions which the public body, at its discretion under § 84-712.05(7), could lawfully withhold from disclosure. See Neb. Rev. Stat. § 84-712.06. As a result, we believe that the Nebraska Game and Parks Commission lawfully withheld the personal information found in the spreadsheet, under the exception provided in § 84-712.05(7).

CONCLUSION

Therefore, for the reasons explained above, we conclude that the Commission has met its burden with respect to the application of this exception to disclosure of the public records you seek, and that the requested personal information found in the records of the Commission may be lawfully withheld under Neb. Rev. Stat. § 84-712.05(7). As you have

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not been improperly denied access to public records, we see no basis for further action by this office and are closing this file.

If you disagree with the analysis and the conclusion we have set out above, you may wish consider what additional remedies may be available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Marna Munn
Assistant Attorney General

cc: Jim Douglas

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