

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

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September 14, 2017

[REDACTED]  
Ken Anderson  
North Platte, NE

RE: *File No. 17-R-138; N-CORPE; Ken Anderson, Petitioner*

Dear Mr. Anderson:

This letter is in response to your email correspondence received by this office on August 29, 2017, in which you sought our assistance in obtaining certain records from the Nebraska Cooperative Republican Platte Enhancement Project (“N-CORPE”). When we receive correspondence 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 the general manager of N-CORPE, Kyle Shepherd, and advised him accordingly. On September 8, 2017, we received correspondence from attorney Donald G. Blankenau, who responded on behalf of the entity. We considered your correspondence to be a petition for review under Neb. Rev. Stat. § 84-712.03 of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2016) (“NPRS”). Our findings in this matter are set forth below.

### FACTS

According to your petition, on August 11, 2017, you emailed Mr. Shepherd the following request:

Myself and some other individuals<sup>1</sup> would be appreciative if you would provide us with the N-Corpe actual expenses and revenue (by category) for

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<sup>1</sup> Your petition also includes the contact information for “Lynn Frederick” of North Platte. The remedies set out in Neb. Rev. Stat. § 84-712.03 of the NPRS are available to “[a]ny person denied any rights granted by sections 84-712 to 84-712.03 . . . .” Since there is no clear indication that Ms. Frederick was involved in the public records request submitted to Mr. Shepherd, which forms the basis for the petition, she has not been denied access to public records. Consequently, we have not made her a party to this disposition.

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each of the previous years of N-Corpe activity, including the year just ended. Please email these to my email ahead of the scheduled board meeting.

We would also like provided at the board meeting the number of feet, yards, or rods of fencing completed, number of feet, yards, or rods in construction if any, the price per foot, yards, rod or however the charges we're [sic] calculated paid to date and what the plans are for additional fencing.

Mr. Shepherd responded to your request on August 14, stating as follows:

Attached are the year-end financials. When we had a contractor on site we were paying \$.90 per foot labor to install new fence. Cost of materials varied based on type of fence and materials used. We will need additional fencing in the future.

As noted in his response, Mr. Shepherd attached to his email the financial statements for the periods ending June 30, 2013 through June 30, 2016.

You followed up with Mr. Shepherd later that day, questioning the lack of information relating to the fence, specifically, "the number of feet installed and the total price per foot you have paid with material . . . ." In his response on August 15, Mr. Shepherd indicated that he would have to compile that information or pay someone else to do so.

You subsequently filed your petition with our office. You state that you emailed your request to the N-CORPE office on August 11, but still "have not had [your] questions answered fully!" You indicate that while you received the "accountants compilation" for the four years, you received nothing for the year ended June 30, 2017. You assert that during the fiscal year, "the board of directors and public are provided with the financial numbers and believe these should have been in our request we didn't require them to be compilations from the accountant." You also challenge the amount of information provided on the fencing project, noting that "to date [you] have only received an amount of \$.90 per foot . . . ." Finally, you question N-CORPE's openness and transparency.

According to Mr. Blankenau, Mr. Shepherd has, to the best of his knowledge, provided you all available records responsive to your public records request. He states that Mr. Shepherd was unable to provide certain fencing information because it "has not been compiled and placed in a documented form," which would ultimately require Mr. Shepherd to develop new information. However, Mr. Blankenau states that if and when such information becomes available, N-CORPE would be happy to provide it to you. Mr. Blankenau further represents to this office that "N-CORPE is committed to strict compliance with the Nebraska Public Records Statutes and all other applicable laws." He indicates that to the extent there has been any misunderstanding with respect to your request, the staff is ready and willing to correct it.

## DISCUSSION

We will begin by discussing the basic principles of the Nebraska Public Records Statutes. Under those provisions, citizens and other interested persons have 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 § 84-712(4), interested persons seeking access to or copies of a particular public record initiate that process by providing a written request to the custodian of that record for such access or copies. In connection with our enforcement authority under the NPRS, we have consistently taken the position for a number of years that those statutes do not require public agencies to review documents and create abstracts or other lists, answer questions or to create records which do not otherwise exist.<sup>2</sup> Instead, those statutes focus on access to and copies of *specific records*.

With these provisions in mind, we have considered the allegations raised in your petition. You first allege that you submitted your public records request to the N-CORPE office on August 11, but still “have not had my questions answered fully!” As indicated above, the provisions of the NPRS do not require a public body to answer questions posed to it under the guise of a request for records submitted under § 84-712. Those statutes give you the ability to access and receive copies of public records of or belonging to public bodies, not to receive responses to questions that may (or may not) implicate a public record.

You next allege that there are certain “financial numbers,” made available to the members of the N-CORPE board and to the public during the course of the fiscal year, which should have been provided to you instead of “compilations from the accountant.” We note again that your public records request to Mr. Shepherd sought the “actual expenses and revenue (by category) for each of the previous years of N-Corpe activity, including the year just ended.” In response to your request, Mr. Shepherd timely emailed you the financial statements for the four previous years. The fact that these are not the particular records you seek does not mean that Mr. Shepherd failed to comply with the NPRS. Consequently, if there are specific records that you wish to receive, we would suggest that you submit a modified request to Mr. Shepherd for these particular records.<sup>3</sup>

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<sup>2</sup> 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).

<sup>3</sup> We note that under Neb. Rev. Stat. § 84-1413(4) (Cum. Supp. 2016), any “documentation received or disclosed in open session [of a public meeting] shall be public records and open to public inspection during normal business hours.”

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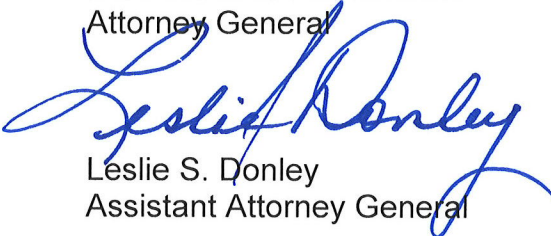
Finally, your third allegation relates to the dearth of information you received relating to the fencing project. According to Mr. Blankenau, this particular information has not been compiled and placed in a documented form. And as noted above, there is no requirement under § 84-712 for a public body to create records that do not already exist. However, Mr. Blankenau represents to this office that if and when information pertaining to the fencing project becomes available, N-CORPE will provide those records to you. We would also note that you have not alleged that certain records regarding the project exist, only that it is an extensive project which has been ongoing for about two years. We have to presume, then, that in the absence of any evidence from you to the contrary, it may be presumed that Mr. Shepherd has faithfully performed his official duties, and has provided you all responsive records. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (Neb. Ct. App. 2009).

Our review of petitions submitted to our office under § 84-712.03(1)(b) is limited to determining (1) whether a record may be withheld from public inspection or (2) whether the public body that is custodian of such record has otherwise failed to comply with the NPRS. In the present case, N-CORPE has withheld no records from public inspection, and has represented to this office that it has provided you all of the records in its possession responsive to your request. Based on the foregoing, we are unable to conclude that you have been denied access to public records or that N-CORPE has violated the Nebraska Public Records Statutes in some fashion. Consequently, since no further action by this office is warranted, we are closing this file.

If you disagree with the analysis we have set out above, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: Donald G. Blankenau

49-1858-29