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Office of the Attorney General

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November 1, 2018

Lyle M. Eisenhauer



RE: *File No. 18-MR-131; Tecumseh Airport Authority Board; Lyle M. Eisenhauer, Petitioner*

Dear Mr. Eisenhauer:

This letter is in response to the two complaints you submitted to this office on October 17, 2018, in which you sought our assistance in obtaining certain public records from the Tecumseh Airport Authority Board ("Board"). In accordance with our normal practice, we contacted the Board chair, Phillip D. Juilfs, and requested a response to your complaints, which we received on October 29, 2018. We have construed your complaint regarding the Board's failure to respond to your request for public records as a petition under § 84-712.03(1)(b) of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2016¹) ("NPRS"). Your complaint alleging the unavailability of Board meeting minutes has been considered under the Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2016, Supp. 2017) ("OMA"), as well as the NPRS. Our findings in both matters are set out below.

YOUR ALLEGATIONS

Public Records. In a certified letter dated September 26, 2018, addressed to Mr. Juilfs, you requested a copy of a letter received by the Board from the Federal Aviation Administration [FAA]. You indicated in your request that the letter was referenced in the Board's August 6, 2018 meeting minutes. According to the certified mail return receipt, the Board received your request on October 1. As of the date of your complaint [October 17], you had received no communication from the Board regarding your request.

Open Meetings. You allege you have not been able to see Board minutes for at least 21 days after a meeting. You indicate that the minutes are not available until the

¹ See also 2018 Neb. Laws LB 193; 2018 Neb. Laws 859; and 2018 Neb. Laws LB 902.

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Board secretary delivers the minutes and the notice for the next Board meeting to the city clerk. You indicate that this usually occurs on the last Wednesday of the month. The Board meets the first Monday of each month.

THE BOARD'S RESPONSE

According to Mr. Juilfs, your request letter was received by the Board secretary on October 1, the date of the Board's last regular meeting. During the meeting, Mr. Juilfs informed the Board about your letter, "but no action was taken on such request due to it not being received until that day." Mr. Juilfs indicates that upon his subsequent review of your request, he provided you a written response, with a copy of the FAA letter attached. Mr. Juilfs sent his letter by certified mail on October 25, 2018.

With respect to your allegations regarding access to the Board's meeting minutes, Mr. Juilfs indicates that Nancy Thies, Board secretary, maintains all records for the Board/Airport Authority. Ms. Thies advises that she has never received a request from you regarding the meeting minutes. Mr. Juilfs suggests that you might be under the impression that you must go to the city clerk for the minutes, and would like for you to contact Ms. Thies in the future for access to the meeting minutes. Finally, Mr. Juilfs represents that the Board's meeting "minutes will be prepared and made available in accordance with the [OMA] which is within 10 working days of any meeting or prior to the next convened meeting whichever occurs earlier."

DISCUSSION

Generally speaking, the NPRS 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 from those public records, and to obtain copies of public records in certain circumstances. Procedural provisions relating to requesting and responding to requests for public records are set out in Neb. Rev. Stat. § 84-712(4) of the NPRS. Subsection (4) requires, in pertinent part, that

[u]pon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, **but not more than four business days after actual receipt of the request**, an estimate of the expected cost of the copies and either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest

practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

(Emphasis added.)

With respect to meeting minutes, Neb. Rev. Stat. § 84-1413(4) of the OMA expressly provides that “[t]he minutes of all meetings . . . shall be public records and open to public inspection during normal business hours.” In addition, minutes must be “available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier” Neb. Rev. Stat. § 84-1413(5).

The Board received your public records letter on October 1. Under § 84-712(4), the Board was required to respond to your request no later than four business days after actual receipt. Consequently, a response was due to you no later than October 5. However, according to the certified mail return receipt, it appears that you received the requested FAA letter on or about October 29.

When we receive petitions under Neb. Rev. Stat. § 84-712.03, we must determine whether the petitioner has been denied access to public records or whether the public body involved is otherwise not in compliance with the NPRS. Obviously, since you have now received the letter at issue, you have not been denied access to public records. However, the Board failed to produce the record, or provide any response to you, in compliance with the statutory requirements set out above. Therefore, we will advise Mr. Juilfs, by sending him a copy of this letter, that, in the future, a *timely response* must follow any request for public records. And, in the event the Board denies access to particular records, the Board must provide the requester a written response which includes all of the components set out in Neb. Rev. Stat. § 84-712.04.²

With respect to the meeting minutes, we find your allegations somewhat problematic. You indicate that you have not been able to see the minutes for “at least 21 days after said meetings,” but have provided us no information as to when you were denied access to the minutes and the party who denied you access. This matter is further

² Those components include the following:

- (a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial;
- (b) The name of the public official or employee responsible for the decision to deny the request; and
- (c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

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complicated when you consider that the Board secretary represents that you never contacted her regarding the minutes. As set out in § 84-712 above, written requests for public records must be made to the “custodian of such record.” As you indicate in your complaint, while the city clerk may have received the minutes with the notice of the next Board meeting at the end of each month, the clerk is not the custodian of the Board’s records. In any event, all future requests for meeting minutes should be directed to Ms. Thies, whom we understand is fully aware of her responsibilities pertaining to minutes set out in Neb. Rev. Stat. § 84-1413.

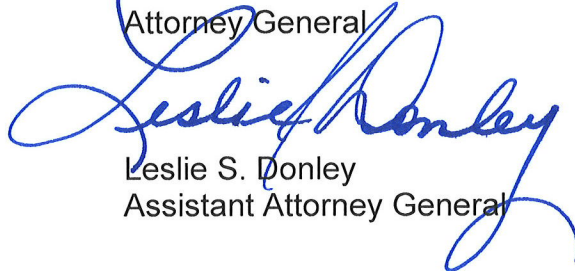
CONCLUSION

Based on the foregoing, we conclude that the Tecumseh Airport Authority Board violated § 84-712(4) of the NPRS when it failed to respond to your public records request no later than four business days after actual receipt of your request. However, since you have now received the public record you requested, we decline to take any further action with respect to this matter. In addition, we find no clear violation of the Open Meetings Act relating to the meeting minutes in view of the fact that no request was directed to the Board secretary, who serves as the custodian of the Board’s records.

If you disagree with the conclusions reached in this disposition letter, you may wish to discuss these matters with your private attorney to determine what, if any, additional remedies might be available to you under the Nebraska Public Records Statutes and the Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Phillip D. Juilfs

49-2100-29