

STATE OF NEBRASKA
Office of the Attorney General

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

DOUGLAS J. PETERSON
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

April 13, 2018

Steven M. Jacob
P.O. Box 2500-41659
Lincoln, NE 68542-2500

RE: *File No. 18-R-109; Nebraska Secretary of State; Steven M. Jacob, Petitioner*

Dear Mr. Jacob:

This letter is in response to your correspondence dated March 27, 2018 and received by this office on March 30, 2018, in which you sought our assistance in obtaining your original exhibits in *Jacob v. Frakes, et al.*, Case No. CI16-2592 (Lancaster County District Court). Upon receipt of your petition, we contacted staff at Secretary of State John Gale's office, who provided us the correspondence you submitted to his office referenced in your March 27, 2018 letter. We also reviewed certain documents in your court case relating to your request for the exhibits. We have considered this material under the provisions 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

In a letter to Secretary Gale, dated January 26, 2018, you requested that he facilitate "the return of documents that are in evidence as Exhibits in the case: *Jacob v. Frakes*, CI 16-2592." Your letter included an index of 27 exhibits subject to your request. Your request was prompted, for the most part, because many of the exhibits are certified copies and you wish to preserve them for future use. Your letter indicated that you were writing to Secretary Gale in his capacity as the State Records Administrator, and that you had filed a motion in district court for the return of the exhibits under Neb. Rev. Stat. § 24-1004.¹ You offered to provide photocopies to replace the original exhibits, and asked that

¹ Neb. Rev. Stat. § 24-1004 (2016) states that

[t]he Supreme Court shall provide by rule for the preservation of all records and of all exhibits offered or received in evidence in the trial of any action. When the records of the district court do not show any unfinished matter pending in the action, a judge of the district court if satisfied they are no longer valuable for any purpose may, upon such notice as the

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Secretary Gale contact the judge in your case if your proposal to replace the exhibits was satisfactory to him.

You followed up with another letter to the secretary dated February 26, 2018. You indicated the judge in your case denied your motion, and that you were writing again to seek the secretary's approval to substitute the original exhibits with photocopies. Your letter further discussed provisions in the *Nebraska Administrative Code* pertaining to the State Records Administrator and state records, and you requested that Secretary Gale respond to you in accordance with 430 NAC Ch. 8 § 003.01.²

You subsequently filed your petition with this office under the provisions of Neb. Rev. Stat. § 84-712.03(1)(b), requesting that we contact Secretary Gale "and ask him to comply with [your] request(s)."

DISCUSSION

Under Neb. Rev. Stat. § 84-712.03(1)(b) of the NPRS, this office is required "to determine whether a record may be withheld from public inspection or whether the public body that is the custodian of such record has otherwise failed to comply with [§§ 84-712 to 84-712.03]" Since none of what you have presented to this office involves a denial of access to records under a request made pursuant to § 84-712, or allegations of noncompliance of the NPRS by the records custodian, § 84-712.03 provides no basis for our review. As a result, we are closing our file.

However, we will inform you that, in Nebraska, "public records" are defined as

all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing.

Neb. Rev. Stat. § 84-712.02(1) (2014). In the present case, the exhibits you seek are public records *of or belonging to* the Supreme Court. The Clerk of the Lancaster County District Court is the custodian of those records. To the extent Neb. Rev. Stat. § 24-1004 has any applicability in this matter, it is likely in the context of the State Records Administrator's duty to approve records retention schedules submitted by state and local

judge may direct, order the destruction, return, or other disposition of such exhibits as he deems appropriate when approval is given by the State Records Administrator pursuant to sections 84-1201 to 84-1220.

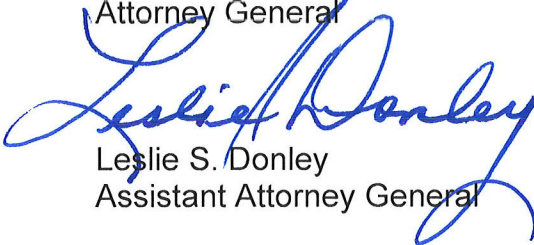
² This regulation provides that "[t]he Administrator shall make all determinations required of him by the Records Management Act [Neb. Rev. Stat. §§ 84-1201 to 84-1227 (2014, Cum. Supp. 2016, Supp. 2017)] and the Rules and Regulations promulgated thereunder in writing in standard letter form, which letter shall carry his signature and the seal of his office."

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agencies in accordance with Neb. Rev. Stat. § 84-1212.01 (2014) of the Records Management Act. In this regard, it appears that Secretary Gale, in his capacity as the State Records Administrator, approved such a schedule for the Supreme Court and the Court of Appeals on December 19, 2013. Beyond this statutory duty, neither the Secretary of State nor the State Records Administrator has anything to do with the disposition of exhibits in Case No. CI16-2592, or any other court file.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Colleen Byelick
General Counsel

49-1994-29