

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 16, 2019

Larry Geiger
2155 Pester Ridge Road
Lincoln, NE 68523

RE: *File No. 19-R-113; Crete City Clerk; Larry Geiger, Petitioner*

Dear Mr. Geiger:

This letter is in response to your petition dated March 29, 2019, and received by us on April 1, 2019, in which you requested our assistance in obtaining the contact information for the board members of the Crete Airport Authority. Upon receipt of your petition, we contacted the City of Crete Clerk, Judi Meyer, and subsequently discussed your petition with City Attorney Wendy Elston on April 5. We considered your petition under the provisions of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2018) ("NPRS"), and our findings in this matter are set out below.

FACTS

Our understanding of the facts in this case is based on your petition, which included your request for public records, correspondence between you and Ms. Meyer, and the information we received from Ms. Elston.

On March 26, 2019, you completed a Request for Open Public Records form seeking "Contact information for the Airport Board -- Names, Addresses, Phone Numbers, Email." In a letter dated March 28, 2019, Ms. Meyer partially denied your request. She indicated that although she was providing you the names of the board members, part of your request, i.e., "addresses, personal phone numbers, or email" were "not subject to disclosure under the Nebraska Public Records Act." In that regard, Ms. Meyer advised that those items were being withheld under Neb. Rev. Stat. § 84-712.05(7) ("Personal information in records regarding personnel of public bodies other than salaries and routine directory information[.]").

You followed up with Ms. Meyer the next day. You indicated that you were simply requesting "routine directory information," and that "there is no way to contact the board

Larry Geiger
April 16, 2019
Page 2

members as the City of Crete website has no phone numbers or email addresses for the Crete Airport Authority listed.” You noted that “[a]ll other city elected officials have some kind of contact information.” You also requested that the contact information be posted on the website or made available upon request.

According to Ms. Elston, the contact information for the members of the Airport Authority Board is the same as the City Clerk’s contact information, i.e., city hall. She confirmed that the members of the Airport Authority Board do not have official City of Crete email addresses, like the members of the city council. And like the city council members, board members do not have individual city phone numbers. Ms. Elston stated that the response you received from the City Clerk reflected their decision not to disclose the personal information of officials, and their understanding that such disclosure was not required. Ms. Elston indicated that the City Clerk and others are more than willing to work with you to get any information to the board members as necessary.

In your petition, you indicate that you are seeking this contact information (phone numbers and email addresses) so you can contact these officials *directly*.

DISCUSSION

The basic rule for access to public records is set out in Neb. Rev. Stat. § 84-712(1) (2014). That provision states that

[e]xcept 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.

This statute is not absolute, however. Section 84-712 “provide[s] that exceptions may be created by express and special provisions.” *Orr v. Knowles*, 215 Neb. 49, 55, 337 N.W.2d 699, 703 (1983).

As noted above, the City Clerk is relying on the exception to disclosure set out in Neb. Rev. Stat. § 84-712.05(7) (Cum. Supp. 2018) as her basis to deny you access to the personal addresses, phone numbers, and email addresses of the board members. That provision states, 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, 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. *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 907 N.W.2d 301 (2018); *Farmers Cooperative v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017). In discerning the meaning of a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense. *Id.*; *Davis v. Gale*, 299 Neb. 377, 908 N.W.2d 618 (2018). The plain and ordinary reading of § 84-712.05(7) indicates that public bodies may lawfully withhold *personal* information regarding its personnel, except for salary and routine directory information. In this context, “personal” may be defined as “2. private; individual; affecting individuals; peculiar or proper to a certain person or to private actions or character” Webster’s New Universal Abridged Dictionary 1338 (2nd ed. 1983). There is little question that private addresses, phone numbers, and email addresses constitute personal information. These items do not constitute salary information. Nor do they constitute routine directory information, which we have generally construed to include an employee’s name, job title, *work* telephone number and address and dates of hire and separation.¹

In *Steckelberg v. Nebraska State Patrol*, 294 Neb. 842, 885 N.W.2d 44 (2016), the Nebraska Supreme Court discussed the exception to disclosure in § 84-712.05(7). *Steckelberg* involved a State Patrol trooper who sought records relating to an interview and selection process for a position within the State Patrol, a position he interviewed for but did not get. The court determined the State Patrol could rely on § 84-712.05(7) to withhold the requested records, stating that

[section] 84–712.05(7) exempts “[p]ersonal information in records regarding personnel.” The district court found that the information in the records sought did contain personal information. And the information was about employees, otherwise known as personnel, of the State Patrol. There is no requirement in § 84–712.05(7) that in order to be exempt, the records must be kept within an employee's personnel record, as used as a term of art;

¹ See the Classified System Personnel Rules—Chapter 12 – Personnel Records, Title 273, *Nebraska Administrative Code*, Chapter 12, § 001.01 (October 30, 2006).

Larry Geiger
April 16, 2019
Page 4

the records need only be personal information about personnel, defined as persons employed by an organization.

Steckelberg, 294 Neb. at 849-850, 885 N.W.2d at 50 (internal citations omitted) (emphasis added).

We understand that you seeking this contact information so you can contact these officials directly. However, we are unaware of any provision of law that requires individuals be given direct access to a public official. And the fact that these officials do not have official government phone numbers and email addresses does not mean you get access to their personal phone numbers and email addresses by default. Rather, your access to the members is essentially through the City Clerk, with correspondence addressed to the Crete City Hall. Ultimately, since the records you seek constitute personal information pertaining to the members of the board of the Airport Authority, the City Clerk may continue to withhold this information under the exception in § 84-712.05(7).

Finally, we note that the webpage for the Crete Airport Authority contains the following statement:

For contact information on individual board members, please contact City Clerk Judi Meyer at 402.826.4313 or email.

It appears that you did as instructed and asked Ms. Meyer for the contact information. In return, you received the names of the individuals serving on the board (which are already posted on the webpage), and no contact information. We understand your frustration. We believe the response should have contained the requested contact information discussed above (city hall, etc.) and a statement to the effect that these officials do not have official government email addresses, like the city council members. There was no reason to deny you access to personal records because you did not request personal information *per se*—only contact information. In this regard, we suggested to the City Attorney that the webpage should be modified to reflect that all communications to the board members of the Airport Authority be directed to the City Clerk.

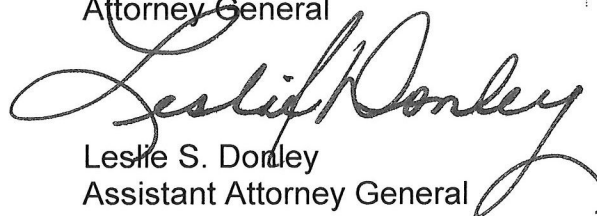
Larry Geiger
April 16, 2019
Page 5

CONCLUSION

Based on the foregoing, we conclude that the City Clerk may continue to withhold the personal addresses, phone numbers and email addresses of the members of the Airport Authority Board under the exception in § 84-712.05(7). If you disagree with the conclusion 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.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Dorley
Assistant Attorney General

c: Wendy Elston
Judi Meyer

49-2187-29