



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
ATTORNEY GENERAL

LAURA A. NIGRO
ASSISTANT ATTORNEY GENERAL

October 13, 2020

Via email at [REDACTED]
Calvin Fishburn

RE: *File No. 20-R-134; Sarpy County Attorney's Office; Calvin Fishburn, Petitioner*

Dear Mr. Fishburn:

This letter is in response to your petition received by this office on October 6, 2020, in which you requested that we review an alleged violation by the Sarpy County Attorney's Office ("County Attorney") of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2018, Supp. 2019) ("NPRS"). On October 6, 2020, we contacted Bonnie Moore, Chief Deputy Sarpy County Attorney, and advised her of the opportunity to provide this office a response to the petition. We received a response from Ms. Moore on October 8, 2020. Also on October 6, 2020, we contacted you and requested that you provide us a copy of your public records request as well as any correspondence exchanged between you and the County Attorney. We received your response on October 6, 2020. We have fully considered your petition and the County Attorney's response in accordance with the NPRS. Our findings in this matter are set forth below.

FACTS

Our understanding of the facts in this matter is based upon your petition, the documentation you provided this office, and the response and information we received from the County Attorney.

You state in your petition that you "submitted a FOIA request demanding all government records related to this case in possession of the [S]arpy [C]ounty [A]ttorney. . . ." However, when asked, you were unable to provide this office a copy of your request. In response to our request, you stated that "[t]he original request was filed via the [S]arpy [C]ounty [C]lerk's automated system thus I did not receive a copy of the request." You also provided numerous emails exchanged between you and employees

in the County Attorney's Office. We received the same emails from the County Attorney. These emails contain nothing which could be construed as a public records request. Further, in the County Attorney's response, Ms. Moore confirms that you did not make a written request for any records to the County Attorney's Office.

DISCUSSION

Neb. Rev. Stat. § 84-712(1) (2014) sets out the basic rule for access to public records in Nebraska. 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(4) (2014) contains procedural provisions relating to requesting and responding to requests for public records and provides, in pertinent part:

Upon 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. The requester shall have ten business days to review the estimated costs, including any special service charge, and request the custodian to fulfill the original request, negotiate with the custodian to narrow or simplify the request, or withdraw the request. If the requester does not respond to the custodian within ten business days, the custodian shall not proceed to fulfill the request.

(Emphasis added.)

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Your petition and the correspondence exchanged between you and the County Attorney do not establish that you submitted a written request for public records to the Sarpy County Attorney. Absent a written request as required by § 84-712(4), the Sarpy County Attorney was under no obligation to respond under the NPRS. Thus, you were not denied access to public records. As indicated above, public records requests must be in writing and directed to the custodian of the records sought. While you may have submitted a public records request to the Sarpy County Clerk's Office, that office is not the custodian of records of or belonging to the Sarpy County Attorney. In the event you submit a written request for public records to the County Attorney's Office, and are denied access to those records, you may then petition our office for assistance.

Since there is no basis for further review by this office, we are closing this file. If you disagree with the conclusion reached above, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, are available to you under the NPRS.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Laura A. Nigro
Assistant Attorney General

c: Bonnie Moore

35-121-29