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June 24, 2022

Lisa Leick
[REDACTED]

RE: *File No. 22-R-127; Department of Health and Human Services; Lisa Leick, Petitioner*

Dear Ms. Leick:

This letter is in response to your petition in which you sought our review of the handling of your May 24, 2022, public records request by the Department of Health and Human Services ("DHHS"). We received your petition on June 6, 2022. At our request, you provided us supplemental documentation relating to your petition on June 8. We then forwarded your petition to DHHS attorney Jaime Hegr and requested a response, which we received on June 14. The undersigned also discussed your petition with Ms. Hegr on June 24. We considered your petition and the DHHS response in accordance with the provisions of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2020, Supp. 2021), amended 2022 Neb. Laws LBs 876 and 1246. Our findings in this matter are set forth below.

RELEVANT FACTS

You are employed by DHHS CFS as an Office Technician. On May 24, 2022, you submitted a public records request to DHHS Public Records, seeking the following:

A document that contains the job profile/classification names and identification numbers for all members of the Support Staff Team (including Supervisors) for DHHS CPS located at the Project Harmony Building in Omaha Nebraska, including the job profile identification number for any new members joining this Team in 2022. Examples of the numbers I am referring to begin with a Letter that shows such as "A", "S", "M", "V", etc. and followed by a series of numbers. (i.e. S01011 Office Technician.)

All documents created by Keaton Donovan called Coverage Plans. These were provided to her Team for phone and duties coverage in her absence(s). These were created between April 2021 and 5/25/2022.

Following a brief delay, DHHS provided you responsive records on June 2. Those records consisted of (1) a spreadsheet with job codes and position titles for DHHS staff at Project Harmony; and (2) eight pages of coverage plans created by Ms. Donovan. Certain information pertaining to the type of leave taken by Ms. Donovan was redacted in two instances pursuant to Neb. Rev. Stat. § 84-712.05(7).

In your petition, you claim that DHHS failed to provide you “the full list of names and identifying information of employees as requested.” You allege that the coverage plans did not include the “telephone coverage plans” created by Ms. Donovan. You also challenge the propriety of the redactions, arguing that “[n]ames of Leave are not personal information.” You indicate that Ms. Donovan sent the coverage plans to several parties, including an individual who is not part of the support staff team. Emails indicating the type of leave used were also sent to staff. You assert that “[i]f an employee shares publicly in a public document the type of Leave being used in one’s absence as a Supervisor, it most certainly was not intended to be a private fact, and the information is public.”

Ms. Hegr informs us that DHHS construed your request for “the job profile/classification names and identification numbers for all members of the Support Staff Team (including Supervisors) for DHHS CPS” to include only the job classifications and identification numbers. She indicates that DHHS believed the document prepared for you was responsive,¹ and was in no way intended to deny you access to public records. Ms. Hegr indicated that DHHS staff will provide you a new spreadsheet containing employee names and corresponding job classifications and job identification numbers as soon as possible.

In response to your argument that the redactions do not constitute personal information because the plans were disseminated to support staff and you already know what was redacted, Ms. Hegr asserts that this would require DHHS to treat your request differently than any other requester. Ms. Hegr states that the fact that you received the plans or received emails containing the leave information in the regular course of your employment with DHHS does not change DHHS’s analysis under the NPRS. She asserts that DHHS properly withheld the requested information under § 84-712.05(7) since “[t]he information requested is personal information about an employee beyond salary information or routine directory information.” She indicates that DHHS would redact the same information in response to a similar records request from any other member of the public.

¹ We note that § 84-712 does not require public bodies to create records that do not otherwise exist. See 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).

Lastly, Ms. Hegr indicates that any telephone coverage information is contained in the documentation provided to you. She confirmed that DHHS provided you all records responsive to this particular request.

DISCUSSION

Since DHHS will be providing you additional records relating to the first item in your request, the sole issue remaining is whether the redactions in two of the coverage plans were appropriate. In our disposition letter to you dated January 18, 2022,² we discussed the exception to disclosure in § 84-712.05(7) and confirmed that DHHS's reliance on the exception to withhold certain supervisory files maintained on you was appropriate. We noted that "the exception is not limited to an employee's personnel file" and that a "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 File No. 19-R-129,³ we considered whether the Little Blue Natural Resources District could withhold the time cards and time logs of district staff, including its manager, under § 84-712.05(7). Relying on the plain language of the exception and the language broadly construing the exception in *Steckelberg v. Nebraska State Patrol*, 294 Neb. 842, 885 N.W.2d 44 (2016),⁴ we concluded that the time sheets and logs could be lawfully withheld under the exception. We applied the same rationale in File No. 21-R-133,⁵ where the records at issue included the "time records" of a certain employee, showing "clock in/clock out times and/or daily hours worked." We determined that the time sheets were neither salary nor routine directory information and contained information personal to the employee. Consequently, we determined the time sheets fell within the exception in § 84-712.05(7).

² See File No. 22-R-101; *Department of Health and Human Services; Lisa Leick, Petitioner*.

³ See File No. 19-R-129; *Little Blue Natural Resources District; Kevin Kissinger, Petitioner* (December 5, 2019).

⁴ The Nebraska Supreme Court determined that the State Patrol could withhold certain records generated during the interview process for a position sought by Steckelberg under § 84-712.05(7), holding 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; *the records need only be personal information about personnel, defined as persons employed by an organization.*

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

⁵ See File No. 21-R-133; *City of Plattsmouth; Matthew Sutter, Petitioner* (September 29, 2021).

We come to the same conclusion in this case. There is no question that the redactions at issue here contain personal information about Ms. Donovan, an DHHS employee. However, you argue that since those records have been publicly disclosed, the information is now public and cannot be redacted. We disagree. Section 84-712.05 allows public bodies to withhold records falling within the enumerated exceptions unless the records have been “publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties” In *State ex rel. Nebraska Health Care Association v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998), the Nebraska Supreme Court clarified “that records that have been ‘disclosed’ within the meaning of § 84-712.05 are only those records that a public body has, in its official capacity, already made available to the general public.” *Id.* at 795, 587 N.W.2d at 108. Such disclosure did not occur here. The coverage plans were created by Ms. Donovan and shared on a limited basis with internal staff in preparation for her absence from the workplace. There is nothing in the record to suggest that the coverage plans were shared with the general public. Ultimately, since the type of leave used by a public employee is personal information, and the coverage plans were only distributed internally, we find DHHS’s redactions of the leave information appropriate.

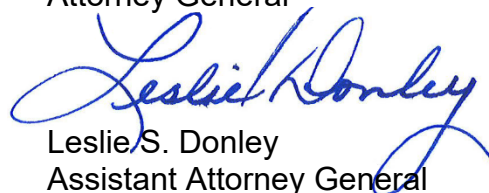
CONCLUSION

Ms. Hegr has represented to the undersigned that DHHS will provide you additional information relating to the first item of your request, including the names of the support staff. We find that DHHS’s redactions relating to Ms. Donovan’s leave were appropriate under § 84-712.05(7), and that no other additional telephone coverage information exists.

Since no further action is warranted by this office, we are closing our file. If you disagree with our analysis of this matter, you may wish to consider the other remedies available to you under the NPRS.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
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