



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
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November 3, 2023

Via email at [REDACTED]
Kent Lorenzen

RE: *File No. 23-R-132; Bennet Rural Fire Protection District Board of Trustees;
Kent Lorenzen, Petitioner*

Dear Mr. Lorenzen:

This letter is in response to your petition received by this office on October 10, 2023, in which you requested our assistance in obtaining certain public records from the Bennet Rural Fire Protection District Board of Trustees (Board) relating to your public records request submitted to the Board on September 28, 2023. In accordance with our normal practice, we forwarded a copy of your petition to the Board. On October 13, we received a response to your petition from Emily Bausch, Board Secretary. On October 25, we wrote to you indicating that we had conducted a preliminary investigation of your petition but needed additional time to finalize our response. We have now completed our review of your petition and the Board's response in accordance with the provisions of the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2022). Our findings in this matter are set forth below.

RELEVANTS FACTS

On September 28, 2023, you emailed Board officials Don Montgomery and Ms. Bausch requesting the following records:

1. Copies of the letter discussed in the September 27, 2023 Bennet Rural Fire Board meeting (hereafter "Letter"), in any format it exists.
2. All written or electronic correspondence, emails, memoranda, reports, or other documents related to the Letter or the subject matter of the Letter.
3. Any notes, minutes, or records of meetings, discussions, or communications related in any way to the Letter.

4. Any drafts, revisions, or versions of the Letter.
5. Any records of communications, including but not limited to emails, letters, faxes, and other written or electronic correspondence, between or to Bennet Rural Fire Board members, officials, or representatives related in any way to the Letter or the subject matter of the Letter.

Ms. Bausch timely responded to your request on October 3, providing you a copy of the requested letter, copies of emails, and meeting minutes. On October 4, you emailed Ms. Bausch about the documents you received. You stated that “[t]here are a few that I feel are missing from this request,” specifically relating to item numbers 2 and 5. In response, Ms. Bausch indicated that she provided you everything she had, except for “communication with our Attorney which is not subject to open records.” She asked you to “be more specific with what you are looking for[.]” Ms. Bausch further stated that “I do not have any other records responsive to your request and I can not produce records that do not exists [sic].” In response to one of various questions you posed to Ms. Bausch on October 4, e.g., “How did you set up the meeting?,” Ms. Bausch provided you the September 27, 2023, meeting agenda and the proof of publication.

You assert in your petition that the Board supplied “only a few of the items requested.” You state that

[t]here was no information supplied about the email shared between the board and I have heard of more email between the board and the department. I also have not been given a reason for the redacted items. I have asked for them missing items and have been told there are none but I did not see any emails where they shared the “Letter” with each other or had any discussion about it which I find hard to believe. There had to be correspondence about this to even set up a meeting.

In her response to this office, Ms. Bausch states that she redacted personal email addresses, phone numbers, and details about a sexual harassment complaint. She further states that “I do not have emails from individual board members to fire department members, if there were any and I do not believe there are any. Rural Board Member [sic] were asked to not email about this issue and legal counsel was sought. There were no other emails sent to the Rural Board related to the Grievance letter from any other Fire Department member.”

DISCUSSION

Section 84-712 of the NPRS generally allows Nebraska citizens and other interested persons the right to examine public records in the possession of public agencies during normal agency business hours and to obtain copies of records in certain circumstances. “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. § 84-712.01(1). This office has concluded that § 84-712 does not require a public body to review documents and create abstracts or other lists, to answer questions or to create documents which do not otherwise exist. 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).

You allege that the Board is withholding emails and that you “heard” there is other emails between the Board and the fire department. However, absent evidence that these emails exist, we are unable to conclude that you have been denied access to public records. Ms. Bausch has represented to this office, in her capacity as Board secretary, that there are no other records. Ms. Bausch has also provided this office information about the letter and meeting at issue, and an investigation pertaining to the letter. Consequently, we are satisfied that the Board has no other records to provide to you.¹

We are concerned, however, that the Board’s response did not comply with § 84-712.04, which requires a public body to provide the following information, in writing, any time it denies access to public records:

- (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.

Neb. Rev. Stat. § 84-712.04 (2014). While Ms. Bausch informed you that “communications” with the Board’s attorney were being withheld, she did not provide you any further description of those records or the statutory basis to withhold them.² Ms. Bausch also failed to inform you of the basis for the redactions in the letter and various email, which we understand was based on the investigatory records exception in Neb.

¹ We did identify one email at the end of an email thread provided to us by Ms. Bausch that may have been inadvertently omitted. This email was sent on September 9, 2023, at 6:15 p.m., to members of the Board by “Chad Sparr.” We will request that Ms. Bausch provide you a copy of this email at her earliest possible convenience.

² Under the exception to disclosure in Neb. Rev. Stat. § 84-712.05(4), records pertaining to attorney client confidential communications and attorney work product may be withheld at the discretion of the lawful custodian of the records so long as those records have not been “publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties”

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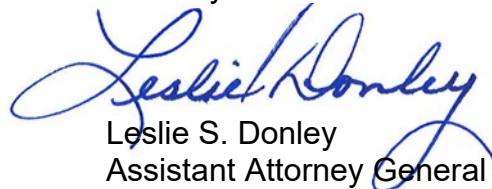
Rev. Stat. § 84-712.05(5). Nor did she provide you the name of the individual responsible for the decision to withhold and redact the records and information. Consequently, we will advise Ms. Bausch, by sending her a copy of this disposition letter, that strict adherence to § 84-712.04 is required in the event the Board denies access to public records in the future.

CONCLUSION

For the reasons discussed above, we conclude that the Board has provided you all responsive records related to your September 28, 2023, public records request. Since we have concluded that you were not improperly denied access to public records, no further action by this office is necessary and we are closing this file. If you disagree with the conclusion reached in this matter, you may wish to consult with your private attorney to determine what, if any, additional remedies might be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Emily Bausch (via email)