



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

**NATALEE J. HART**  
ASSISTANT ATTORNEY GENERAL

August 4, 2015

Leanne A. Gifford  
10111 S. 11<sup>th</sup> St.  
Bellevue, NE 68123

RE: *File No. 15-R-131; City of Bellevue; Leanne Gifford, Petitioner*

Dear Ms. Gifford:

This letter is in response to your Public Records petition received by us on July 20, 2015. You seek our review of an estimate of fees related to a request made by you to the City of Bellevue ("City") for certain records belonging to the City. As is our normal practice with such requests, we contacted the party against whom the complaint was made; in this case, we contacted Angela Forss Schmit, attorney for the City of Bellevue, to provide a response to your petition. The City responded on July 28, 2015. We have carefully reviewed your request under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2014). Our findings in this matter are set forth below.

### **FACTS**

Our understanding of the facts in this case is based on your public records petition, your public records request and its modification, and the City's responses to your public records request and modification thereto.

On or about July 13, 2015, you made a public records request for ten categories of documents from the City of Bellevue, Bellevue Fire Department. One of those requests included written communications between various Fire Department officials, City officials, and members of the City Council. Your public record petition concerns only this request. On July 17, 2015, the City responded that the communications you requested involved 27 individuals and would require a search of each of their e-mails. Because the IT employee who would perform the search was out of the office at the time of the City's reply, the City was unable to accurately estimate the potential costs involved in fulfilling your request. However, the City did state that the City attorneys would be required to review each e-mail before providing it to ensure protected

information was not released, at a rate of \$150.00 per hour. The City requested a deposit in the amount of \$1,200.00 before beginning to process your records request and provided you an opportunity to modify or prioritize your request.

On July 20, you modified your request as to the individuals whose correspondence you seek and provided search terms to narrow your request. The City responded on July 24, with a revised estimate of costs for fulfilling your records request, which did not include any estimate of attorney time to review the e-mails for privilege.

### **ANALYSIS**

The Nebraska Public Records Statutes (“NPRS”) are found at Neb. Rev. Stat. §§ 84-712 through 84-712.09. The custodian of records may charge a fee for providing copies of requested records. This fee may include the “actual added cost” of making copies of public records, including the reasonably apportioned cost of supplies such as toner, paper, etc. Public bodies may also charge for the time of staff in locating and copying public records to the extent that such time exceeds four cumulative hours. Neb. Rev. Stat. § 84-712(3) (2014). However, Neb. Rev. Stat. § 84-712(3)(c) makes clear that a public body “shall not include any charge for the services of an attorney to review the requested public records seeking a legal basis to withhold the public records from the public.”

We understand from the City’s response that they have provided you with a revised cost estimate, following your July 20 modification of your request. That cost estimate does not include charges for attorney fees. Your public records petition only requested us to review the City’s proposed charges for attorney time. Since the City’s revised cost estimate does not include costs for attorney review of the records you seek, we see no basis for further action by this office and we are closing this file.

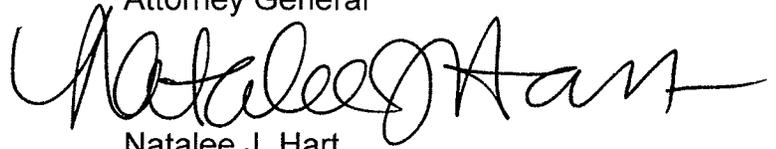
### **CONCLUSION**

As the City has revised its cost estimate to you based upon your modified public records request, we will take no action regarding your petition. If you disagree with our analysis under the Public Records Statutes set out above, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, are available to you under those statutes.

Leanne Gifford  
August 4, 2015  
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Sincerely,

DOUGLAS J. PETERSON  
Attorney General

A handwritten signature in black ink, appearing to read "Natalee J. Hart". The signature is fluid and cursive, with a long horizontal stroke at the end.

Natalee J. Hart  
Assistant Attorney General

cc: Angela Forss Schmit

02-517-29