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JON BRUNING
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May 5, 2011

Ivy Harper
4000 South 56th Street
Lincoln, NE 68506

RE: *File No. 11-R-116; University of Nebraska at Omaha; Ivy Harper, Petitioner*

Dear Ms. Harper:

This letter is in response to your petition dated April 19, 2011, and received by us on April 20, 2011, in which you requested our assistance in obtaining certain records from the University of Nebraska at Omaha ("UNO"). Specifically, you have asked us to review a request for public records which you e-mailed to UNO in February 2007. We have reviewed your petition in accordance with Neb. Rev. Stat. § 84-712.03 of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2010), and our findings are set forth below.

FACTS

According to the documentation you provided us, on an undisclosed date, you submitted five questions to UNO, as follows:

1) Did the 18/19 attendees (Teaching Faculty/Visiting Faculty) pay for their own lodging /rooms, etc. at the Lied Lodge?

2) Did the 18/19 attendees (Teaching Faculty/Visiting Faculty) pay for their own lodging/room, etc. at the Lied Lodge to be reimbursed at a later date by the University of Nebraska-Omaha, The Department of Communications, Fine Art and Media and/or the Writers Workshop Program or any UN-O-affiliated foundation/non-profit organization?;

4) [sic] Did the Lied Lodge receive public funds/monies/reimbursement via the University of Nebraska-Omaha or the Department of

> Communications, Media, etc. or the Writers Workshop Program, UN-O affiliated arts foundations or UN-O affiliated non-profit organizations to pay for any lodging/food, etc. of any/all of the 18/19 Teaching Faculty/Visiting Faculty who attended the three sessions?;
>
> 5) [sic] How many spouses of the 19 attendess [sic] (Teaching Faculty/Visiting Faculty) attended each of the three sessions?
>
> 4) [sic] With regard to your answer to my Question 7 in which I asked about the ballpark ages of the 37 students enrolled in the program, it is my understanding that I am entitled to have that information tracked.

Wade Robinson, then Associate Vice Chancellor for Student Affairs, responded on behalf of the university on February 7, 2007. In response to your first three questions, Dr. Robinson stated: "This is not public records request." In response to the last two questions, Dr. Robinson stated: "This is not a record maintained at UNO." Subsequently, you have contacted our office seeking review of the propriety of the University's response. In support of your petition, you state that "[i]t remains my contention that the information I was seeking, indeed, falls under Nebraska's Open Records statutes."

ANALYSIS

The basic rule in Nebraska for access to public records is set out in Neb. Rev. Stat. § 84-712 (2008). That statute provides, in relevant 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 the same, 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.

The Nebraska Public Records Statutes are not absolute, and do allow public bodies to withhold public records through express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983). And while the Act provides for access to and copies

of public records, it does not require public officials to answer questions, or to create records which do not otherwise exist.

We further note that Neb. Rev. Stat. § 84-712.01(1) defines public records 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. Data which is a public record in its original form shall remain a public record when maintained in computer files. (Emphasis added.)

With this statutory framework in mind, we have carefully reviewed each of the questions you posed to UNO. However, none of these questions can be considered a request for public records. For example, in question no. 1, you asked UNO whether the attendees paid for their own lodging at the Lied Center. Your question required a "yes" or "no" response. You did not request a particular record or document, e.g., an expense reimbursement or accounting document, which may have resolved your inquiry. Ultimately, you were seeking information from UNO which, under the Nebraska Public Records Statutes, it was not required to provide. For this reason, we do not believe that you have been improperly denied access to public records, or that your petition requires further action by this office at this time. Consequently, we are closing this file.

If you disagree with our legal analysis set out herein, you may wish to consult with your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes. Finally, we would suggest that, in the future, if you want to get a particular question answered with respect to university operations, that you consider what particular documents you could request in the university's possession that will allow you to answer your question.

Sincerely,

JON BRUNING
Attorney General

Leslie S. Donley
Assistant Attorney General

49-606-30