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April 6, 2012

Valerie J. Harper
4000 S. 56th Street, #103A
Lincoln, NE 68506

RE: *File No. 12-R-107; University of Nebraska-Lincoln, Valerie J. Harper, Petitioner*

Dear Ms. Harper:

This letter is in response to your petition dated March 20, 2012, and received by us on March 22, 2012, in which you requested our assistance in obtaining certain records from the University of Nebraska-Lincoln (the "University"). Specifically, you have asked us to direct the University to release certain documents listed on page two of your submitted petition. 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, Supp. 2011), and our findings are set forth below.

FACTS

According to your petition, you recently made a public records request with the University Records Officer, William Lynch. You indicate that your request entailed "a large group of documents spanning a near four year period, from several University agencies, clinics, and departments." You further indicate that upon picking up the documents, you noticed that certain key documents had been omitted. You have requested that we direct the release of these documents from the University.

Mr. Lynch informs us that you have made several public records requests to the University. In particular, sometime on or around January 20, 2012, you wrote to Mr. Lynch and requested

> the release of all documents submitted by me, or concerning me from the following University of Nebraska departments and agencies.

Services for Students with Disabilities — Viva Cheney, Director
The CAPS clinic — Dr. Robert Portnoy, Director
Dr. Gail Lockard and Dr. Amy Chatelain, Psychologists
Dean of Students — Dr. Matthew Hecker
Vice Chancellor of Student Affairs — Dr. Juan Franco
Equity Access and Diversity — Dr. Arturo Perez, Associate Director
Corporation Secretary — Board of Regents
President Miliken
Johnny Carson School of Theatre and Film — Paul Steger, Chair

You indicated that these records spanned a large period of time while you were enrolled at the University, i.e., January 2008 through December 17, 2011. According to Mr. Lynch's response to you, dated March 16, 2012, your request elicited 303 pages of records. However, as previously mentioned, you state that certain documents were omitted.

DISCUSSION

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 have identified two main components to your petition, which we have set out below.

I. Omitted Documents

We note that your January 20, 2012, public records request was very broad, in that you requested from a variety of University department and agencies "[a]ll documents submitted by me, or concerning me . . . ." However, you were able to provide this office a very specific list of documents, which you allege exist but were not produced. It appears to us that the simplest resolution here is for you to make another public records request to Mr. Lynch at the University, and attach the "List of Needed Documents." In that way, Mr. Lynch can make specific inquiry with respect to the existence of these documents. We would ask Mr. Lynch to expedite this process to the extent possible, since these documents, if they exist, should have been identified while processing your January 20, 2012, request.

II. Withheld Documents

As indicated above, the Nebraska Public Records Statutes contain exceptions to disclosure by express and special provisions. Neb. Rev. Stat. § 84-712.05 is comprised of eighteen categories of documents which may be kept confidential from the public at the discretion of the agency involved. In the present case, the University has provided us correspondence which indicates that by letter dated December 5, 2011, it withheld certain requested records in the possession of the UNL Police Department relating to events occurring in August 2011.[1] Specifically, the University claimed the "investigatory records" exception set out in § 84-712.05(5), which provides in relevant part:

> (5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person; . . .

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[1] Your specific request was for "[c]opies from the University Police of all documentation concerning my person and Dr. Amy Chatelain and Dr. Mary Fran flood [*sic*] and events which occurred between the dates of August 4, 2011 and August 11, 2011."

Without question, the UNL Police Department is a public body charged with the duty to investigate criminal matters generally, and in particular, the two disturbances referenced in your petition. Consequently, we believe the University's reliance on the exception was appropriate, and the records at issue may be lawfully withheld under § 84-712.05(5).

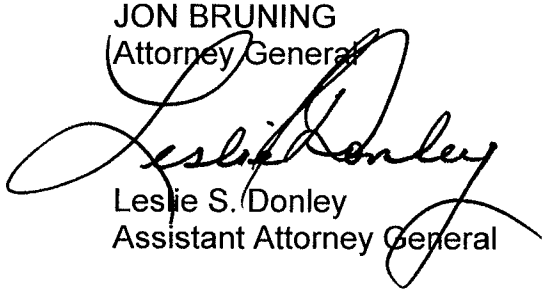
CONCLUSION

At this time, we do not believe that you have been improperly denied access to public records by the University, or that your petition requires further action by this office. However, we will leave this file open pending resolution of your submittal of the "List of Needed Documents." Keep in mind that there is always the possibility that these documents simply do not exist, and we will not further question any representations made by the University in this regard.

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.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

cc: William Lynch

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