STATE OF NEBRASKA
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JON BRUNING
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

October 18, 2013

Gary Owens
8702 Pinkney Street
Omaha, NE 68134

RE: *File No. 13-R-128; Sarpy County Court; Sarpy County Attorney; Gary Owens, Petitioner*

Dear Mr. Owens:

We are writing in response to letter dated October 1, 2013, and received by us on October 3, 2013, in which you seek our assistance in determining whether the Sarpy County Court and the Sarpy County Attorney have unlawfully denied you access to public records under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008 & Cum. Supp. 2012) ("NPRS"). In accordance with our standard procedure, we contacted each affected party and requested a response to your petition. On October 10, 2013, we received a response from Sarpy County Court Judicial Administrator Barb Pousson, and on October 15, 2013, we received correspondence from Deputy County Attorney John W. Reisz, who responded on behalf of his office. We considered your October 1, 2013, letter to be a petition under § 84-712.03 of the NPRS.

RELEVANT FACTS

You filed your September 11, 2013, public records request with various Sarpy County officials, as well as a state senator and Attorney General Bruning. Specifically, you sought to "review and copy any and all records, search warrants, arrest warrants, files, tapes, exhibits, affidavits, allegations and reports, filed on Gary Owens, or with Gary Owens name on them." Petition at ¶ 1. You also requested "all Court Records of when, what, where and who made statements to the Court. I request access to public Court Proceedings. I will pay immediately all Court Transcripts, Bill of Exceptions, fee's. . . ." Petition at ¶ 13. Your request related to a pending criminal matter against

you involving allegations of forgery. According to your petition, on October 1, 2013, you gave each Sarpy County office another copy of your September 11, 2013, request.

Ms. Pousson acknowledges receipt of your public records requests. However, she represents to us that she verbally told you she did not possess the records and could not give you something she did not have. She indicates that she conferred with Presiding Judge Steinheider on this matter, and he agreed with Ms. Pousson's position.

Mr. Reisz indicates that you were recently arraigned in Sarpy County Court on criminal charges related to the forgery allegations in CR 13-5756. Mr. Reisz states that at your arraignment, the county court ordered mutual and reciprocal discovery.[1] Mr. Reisz also states that his office does not have "any court document or judicial writing" which indicates why the warrant originally sought was not issued. Mr. Reisz states that you have received substantial discovery from his office on other matters, e.g., CR 13-2663, and that the Sarpy County Attorney "has every intention of complying with ongoing discovery as these matter[s] progress."

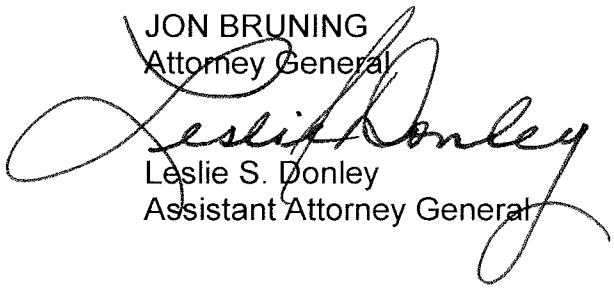
DISCUSSION

When we receive petitions under Neb. Rev. Stat. § 84-712.03, our focus is to ensure that citizens have not been improperly denied public records. Based on the information we received from Ms. Pousson and Mr. Reisz, it appears that any records that may be responsive to your public records request will be made available to you by the Sarpy County Attorney's office pursuant to court-ordered discovery. Consequently, since you will soon be receiving the records at issue, there is no basis to continue our investigation, and 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.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

Attachment
cc: Barb Pousson
John W. Reisz
49-1038-30

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[1] A copy of Judge Harmon's journal entry and order for the October 8, 2013, hearing is attached.

Image ID: D00509987C59

JOURNAL ENTRY AND ORDER

IN THE COUNTY COURT OF SARPY COUNTY, NEBRASKA

ST V. GARY A OWENS
DOB: 1/28/1962
Case ID: CR 13 5756
Citation:

Printed on 10/08/2013 at 2:38
Room 59C04
Page 1
Date of Hearing 10/08/2013

CHARGES(AMENDMENTS/PLEAS/FINDINGS/FINES/PRESENTENCE/JAIL/DISMISSALS)

CHARGE	STATUTE	DESCRIPTION	CLASS	TYPE
01	28-603	Forgery-2nd degree/$300 or less	1	MSD
Charge dismissed on the motion of the prosecutor without prejudice				
02	28-609	Impersonate a public servant	3	MSD
Plea: Not Guilty				
03	28-911	Abuse of public records	2	MSD
Plea: Not Guilty				

APPEARANCES AND ADVISEMENT

Judge Thomas Harmon
Defendant GARY A OWENS
Prosecutor Lee K Polikov

Defendant advised of the nature of the above charges, all possible penalties, effect of conviction on non-citizens, and each of the following rights: Counsel; Appointed Counsel; Trial; Jury Trial; Confront Accusers; Subpoena Witnesses; Remain Silent; Request Transfer to Juvenile Court; Defendant's Presumption of Innocence; State's Burden of Proof Beyond Reasonable Doubt (clear and convincing in cases of probation violations); Right to Appeal.

ARRAIGNMENT

Defendant enters above pleas.
Charges dismissed as shown above.

ADDITIONAL ENTRIES OF RECORD

Discovery will be mutual and reciprocal.

FUTURE COURT APPEARANCES

Case continued to 10/22/2013 at 9:00 AM
in County Courtroom 04 for Pretrial.

Hon. Thomas Harmon 10/08/2013 Date Bailiff

Tape Nos. 2013 Digital Recording

E-mailed: Polikov,Lee,K
notices@sarpy.com

CASE FILE COPY

FILED BY
Clerk of the Sarpy County Court
10/08/2013

JOURNAL ENTRY AND ORDER