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JON BRUNING
ATTORNEY GENERAL

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ASSISTANT ATTORNEY GENERAL

September 4, 2014

Gary Owens
8702 Pinkney Street
Omaha, NE 68134

RE: *File No. 14-R-122; Douglas County District Court Administrator, et al.; Gary Owens, Petitioner*

Dear Mr. Owens:

We are writing in response to your correspondence received by this office on August 20 and 26, 2014. Specifically, you have requested our assistance in obtaining certain records from the Douglas County District Court Administrator and the Douglas County Clerk of the District Court. We considered your correspondence to be a petition under Neb. Rev. Stat. § 84-712.03 of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008 & Supp. 2013) ("NPRS"). Our findings in this matter are set forth below.

RELEVANT FACTS

It appears from your correspondence that you submitted a "Request for Public Records" on or about August 6, 2014. It was addressed to the Douglas County District Court Administrator, Douglas H. Johnson, and the Douglas County Clerk of the District Court, John Friend. Your request is captioned "Gary Owens Plaintiff vs. Marta Owens Defendant," and references Case No. CI 11 3229. Specifically, you requested the following records:

> 1. All the names of the Attorneys, billing records of the Attorneys or GALS, who were paid with public funds for being a Gal and or a Attorney appointed for minor children in District Court. Names of the Attorneys and Gal, Court Case Numbers, and amount paid since 2010.

> 2. I request all of the public records of Attorney Berger and or Gal Berger being paid by the Clerk or Court Administrator with public money. Case numbers, billing records, and amount paid, since 2010.

You requested "complete access to all of these public records" so you could copy the ones you wished to present to the court.

It appears that on August 19 you filed your August 6 request with the Clerk of the District Court under Case No. CI 11 3229. References to Mr. Johnson and Mr. Friend were struck and replaced with "LB 363 Request — Johnson."[1] Numerous other statements and allegations were handwritten on this document.

You subsequently filed your petition with this office. In addition to Attorney General Bruning, you addressed your correspondence to Chief Justice Heavican, Senator Avery, Senator Chambers, Supreme Court Administrator Steel, and Mr. Johnson. In your petition, you indicate that you received no written response to your August 6 request. You renewed your request for records "of every Attorney and every GAL'S names, appointed by the Douglas County District Court, that have and been appointed and paid for, by the District Court/Douglas County, to represent minor children in Court, since 2008." However, it appears that you expanded your original request by requesting records relating to a purported indigency order in Case No. CI 11 3229, and additional records relating to attorneys and guardians ad litem appointed in Douglas County District Court.

We note that your August 20 correspondence also included an August 18 order from Judge Peter C. Bataillon, entered in the above referenced case. Judge Bataillon's order stated:

> This matter came before this Court on its own Motion as to contact with the Plaintiff and court personnel. In order that there be less confrontation and more clarity as to requests and decisions with regard to request of Plaintiff, Plaintiff is to direct all requests to the Court as to any and all matters dealing with the cases before this Court. This includes the Plaintiff having contact with the Court as opposed to the Court Administrator or anyone else in the Court Administrator's office.
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> IT IS SO ORDERED.

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[1] If you recall, in previous correspondence to you we suggested that you refrain from referencing "LB 363" in your correspondence for access to public records. We advised that while Neb. Rev. Stat. § 84-712 of the NPRS was amended with the enactment of Legislative Bill 363 during the 2013 legislative session, you should cite to the statute—§ 84-712—and not to a legislative bill that amends it. We continue to believe that references to a "LB 363 request" or a "LB 363 complaint" may be somewhat confusing to some individuals who receive your correspondence, and that you would be better served by referring to the statute specifically or the "NPRS."

With respect to the correspondence we received on August 26, addressed to Attorney General Bruning, Mr. Steel, Senator Avery, and Judge Bataillon, you allege (1) that you filed the attached public record requests to Mr. Johnson on August 6, 2014; (2) the State Auditor released a report critical of the Douglas County Juvenile Court; (3) that your "requests for public records should be granted because the taxpayers are paying these attorneys & GALS"; and (4) that Mr. Johnson is required under LB 363 to respond to your public record request. You ask that we "inform him to provide copies, access or denial letter" so an appeal can be taken. Attached to this letter was another public records request, dated August 23, 2014, addressed to the Douglas County District Court Administrator, which stated as follows, in pertinent part:

> 1. CI 11 3229 – Minor children's Order of In Forma Pauperis or Orders deeming the children to be Indigent. . . .
>
> 2. I request a copy of Attorney Berger's Bill, CI 11 3229 and other Court Cases, contracts, billing records, case numbers, qualifications, letters to Judges, and the amounts of money she has been paid with public funds.
>
> 3. I request a complete list, letters, contracts, case numbers, billing records, qualifications, amounts paid, or all Attorneys/GALS, appointed for minor children, by the Judges, in Douglas County District Courts, and paid for by Douglas County, since 2010.
>
> Please forward to Judge Bataillon and Mr. Johnson.

Also attached was a copy of the request you filed with the Douglas County District Clerk's Office on August 19.

DISCUSSION

As you know, the Nebraska Public Records Statutes generally allow interested persons in Nebraska the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those records, and to obtain copies of records in certain circumstances. Under those statutes, every record "of or belonging to" a public body is a public record which individuals may obtain a copy of unless the custodian of the record can point to a specific statute which allows the record to be kept confidential. The NPRS do 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.

In our disposition letter to you, File No. 13-R-142 dated December 27, 2013, we discussed Attorney General Opinion No. 04030 (December 27, 2004), where we

addressed whether certain judicial records, i.e., briefs and legal memoranda, were public records. We concluded that there was both a common-law right for members of the public to access briefs and legal memoranda in Nebraska, and a statutory basis to access judicial records.[2] In addition, we stated:

> Cases from the Nebraska Supreme Court have considered the public's right to access judicial records in two different contexts. [I]n *State v. Cribbs*, 237 Neb. 947, 469 N.W.2d 108 (1991), the court indicated that there is a common-law right of access to judicial records, as recognized by the United State [sic] Supreme Court in *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978). The *Cribbs* case involved access to psychiatrist reports, medical and mental evaluations and other documents made a part of the official record in a hearing conducted to review the status of a person acquitted of first degree murder on grounds of insanity. *In Cribbs, the court also stated that the common-law right to inspect and copy judicial records is not absolute, but that "'[e]very court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes,' such as in divorce cases."* *Cribbs*, 237 Neb. at 950, 469 N.W.2d at 110 (quoting *Nixon v. Warner Communications, Inc.*, 435 U.S. at 598). . . .[3]

(Emphasis added.)

In the present case, it appears to us that the court has asserted its supervisory control over the records at issue, but only to the extent that all requests must be made to the court, and only the court. It is not clear to us from the submissions to this office that you are in compliance with the court's August 18 order, particularly when you consider that your August 23 public records request was directed to the *Douglas County District Court Administrator*. In any event, we do not believe that an order requiring you to work with and through the court on these matters denies you access to public records.

We have also considered the fact that your public records requests were made in the context of the litigation currently pending before the court. We are aware of at least one other district court judge who has taken the position that public records requests may not be used to "supplement or supplant discovery rules" in the course of pending litigation. In that particular case, the judge ruled that permitting record production other than through the Nebraska Discovery Rules "would undermine this Court's authority in

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[2] *See State v. Cribbs*, 237 Neb. 947 (1991); Neb. Rev. Stat. §§ 84-712 and 84-712.01 (2008, Supp. 2013).

[3] *See* Op. Att'y Gen. No. 04030 (December 27, 2004) at 1-2.

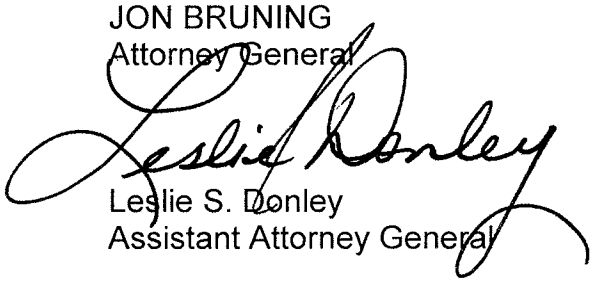
case control, litigation response times, and in setting pretrial progression orders and discovery deadlines."[4]

Judge Bataillon has asked that all requests be made directly to the court, and that you do not involve the District Court Administrator and his staff. This is not an unreasonable request given the nature and scope of the requests and this litigation. Since we do not believe that you have been denied access to public records in violation of the Nebraska Public Records Statutes, we are closing this file.

If you disagree with our legal analysis set out herein, you may wish to consult with a 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

c: Hon. Peter C. Bataillon
John Friend
Douglas H. Johnson

49-1204-30

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[4] *Nebuda, et al. v. Dodge County School District 0062*, District Court of Dodge County, Nebraska, Case No. CI 12-608, Protective Order at 2, ¶ 4 (January 4, 2013).