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January 31, 2014

Mark Koch
500 Edith
PO Box 280
Sargent, NE 68874

RE: *File No. 14-R-103; City of Sargent; Mark Koch, Petitioner*

Dear Mr. Koch:

This letter is in response to your Public Records complaint received by us on January 16, 2014, in which you requested our review of a public record request made by you to the City of Sargent ("City") for a building permit issued in 2003. We have considered your complaint under the Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2008, Cum. Supp. 2012, Supp. 2013), and our findings in this matter are set forth below.

RELEVANT FACTS

On June 12, 2013 you made a request to the City for a building permit issued in 2003 for sidewalk construction across a portion of your property. The City responded that they do not have a copy of the building permit you have requested.

DISCUSSION

Generally speaking, the Nebraska Public Records Statutes 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 public records, and to obtain copies of public records in certain circumstances. A public body is not required, however, to create documents that do not otherwise exist, or to answer questions made to the public body under the guise of a public records request.

The building permit you requested dated to 2003. The Records Retention Schedule for City and Village Clerks, on file with the Nebraska Secretary of State, allows the City to dispose of building permits ten years after work is completed or one year after a denial. As you requested the building permit at issue ten years following any work that was done, the City Clerk was no longer required to maintain that record. The City cannot produce a document that no longer exists. The City is not in violation of the Public Records Statutes and we cannot find that you have been improperly denied access to public records.

Sincerely,

JON BRUNING
Attorney General

Natalee J. Hart
Assistant Attorney General

cc: Gwenda Horky

02-398-30