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July 29, 2013

Kenneth J. Winters
15420 Copper Corral Drive
Plattsmouth, NE 68048-5006

RE: *File No. 13-R-119; City of Plattsmouth; Kenneth J. Winters, Petitioner*

Dear Mr. Winters:

We are writing in response to your correspondence received by this office on July 12, 2013, in which you requested our assistance in obtaining certain public records belonging to the City of Plattsmouth (the "City"). As is our normal practice with such requests, we contacted the party against whom the complaint was made and requested a response. In this case, we directed your e-mail to the city administrator, Ervin L. Portis. On July 24, 2013, we received correspondence from City Attorney Roger K. Johnson, who responded on behalf of the City. We considered your e-mail to be a petition for access to records under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2012) ("NPRS"). Our findings in this matter are set forth below.

RELEVANT FACTS

Our understanding of the facts in this case is based on the information contained in your petition and the response we received from the City.

On June 24, 2013, at 7:30 p.m., you hand delivered a request for public records to Mike Wilson, Fire Chief for the Plattsmouth Volunteer Fire Department. Approximately one hour later, you hand delivered a copy of your request to Mr. Portis. Specifically, you stated, in pertinent part:

> Under Nebraska Public Records Law, State Statute 84-712, I hereby request a copy of the resignation letter from the Plattsmouth Volunteer

Fire Department, submitted to you personally by Mike Wood, director of EMS for the City of Plattsmouth.

According to your petition, neither Mr. Wilson nor Mr. Wood "is a paid employee of the volunteer fire department." You indicate that pursuant to "state statute and city ordinance, the members of the volunteer fire department are considered employees of the City for the purposes of workers' compensation coverage only . . . ." However, you also indicate that Mr. Wood is employed by the City as the director of its emergency medical services operation.

Sandra J. Meyer, the city clerk, responded to your records request by letter dated June 27, 2013. She indicated that "the City declines to provide the information requested." Ms. Meyer stated that the City was relying on Neb. Rev. Stat. § 84-712.05(7) as its basis to deny you access to the requested record, in that your request sought "personal information other than salaries and routine directory information."

DISCUSSION

Before we begin, we note that your petition sets out several arguments in which you dispute the City's denial of your public records request. You also indicate that "[a]s an elected member of the Plattsmouth Rural Fire Protection District Board of Directors, I feel it is in the best interest of the taxpayers I represent to know what this letter contains in order to ensure our tax dollars are not being misused." For your information, section 84-712 of the Nebraska Public Records Statutes does not require any showing by a person requesting access to public records of the reason for his or her review of those records. As noted in *State ex rel. Sileven v. Spire*, 243 Neb. 451, 457, 500 N.W.2d 179, 183 (1993), "§ 84-712 . . . applies equally to all persons without regard to the purpose for which the information is sought."

With that in mind, 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. 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 burden of showing that a statutory exception to disclosure applies to particular records rests upon the custodian of those records. *State ex rel. Nebraska Health Care Association v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998).

Neb. Rev. Stat. § 84-712.05 of the NPRS 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 City has claimed the exception set out in subsection (7) as its basis for denying you access to the requested record. That subsection provides, in pertinent part:

> The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:
>
> (7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

"Routine directory information" is not defined in the Public Records Statutes. However, in the State of Nebraska Classified System Personnel Rules [Title 273, *Nebraska Administrative Code*, Ch. 12, § 001.01], "public information" in the personnel files of state employees consists of "[i]nformation concerning an employee's or former employee's name, position, gross salary, date of hire, date of separation and agency where employed . . . ." We believe this list provides a useful example for City employees as well. Consequently, a public body may lawfully withhold from public disclosure any personal information in an employee's personnel file which does not fall within any of these categories.

Ultimately, the City has represented to us that the record you seek—a letter of resignation—is in Mr. Wood's personnel file, and is neither salary nor routine directory information. We agree. Consequently, the City did not violate the Nebraska Public Records Statutes when it denied you access to this record under Neb. Rev. Stat. § 84-712.05(7).

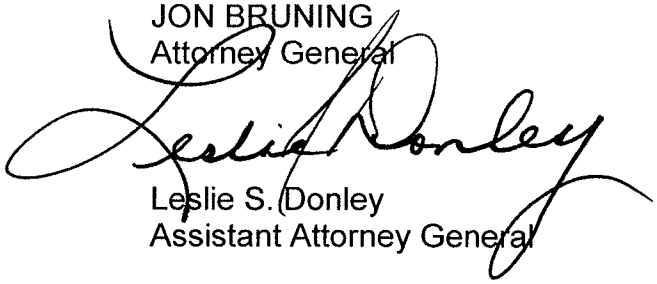
CONCLUSION

We believe that the requested document belonging to the City may be kept confidential under the exception set out in Neb. Rev. Stat. § 84-712.05(7). Since we conclude that the City of Plattsmouth did not unlawfully deny your request under the Nebraska Public Records Statutes, no further action by this office is warranted, and we are closing this records 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

cc: Roger K. Johnson

49-1014-30