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January 5, 2016

Thomas R. Lovell, III
1900 Boyce St.
Hastings, NE 68901

RE: *File No. 15-R-153; Hastings Police Department; Thomas R. Lovell, III, Petitioner*

Dear Mr. Lovell:

We are writing in response to your correspondence dated December 20, 2015, in which you requested our assistance in obtaining certain public records belonging to the Hastings Police Department ("HPD"). We consider your correspondence to be a petition for access to records under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014). As is our normal practice with such requests, we contacted the party against whom the complaint was made. In this case, we contacted HPD and received a response from Captain Gene Boner. Our findings are set forth below.

RELEVANT FACTS

Our understanding of the facts in this matter is based on your correspondence of December 20, our phone conversation with you on December 22, and the HPD response. On September 13, 2015, you hand delivered a public records request for

> public records that delineate the scenario of on or about August 14th at 10:30 a.m involving myself and the neighbor directly north of our property on West Lawn. A report was taken by HPD Officer Adams. I am seeking a copy of the report written by Adams and certified by Sergeant Hinrichs.

Your petition calls your request a "failed FOI[1] request." We contacted you to clarify whether the records you requested had been denied by HPD and to get a copy of that

[1] The Freedom of Information Act, or FOIA, is a federal law, codified at 5 USC § 552, which generally provides that any person has the right to request access to *federal* agency records and information. You are seeking information from HPD, an law enforcement agency in the State of Nebraska. FOIA does not apply to HPD. The Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 ("NPRS"), govern access to records of and belonging to HPD. Consequently, our analysis will be related only to the NPRS and not to FOIA.

denial letter. On December 22, you indicated that you never received any response from HPD regarding your public records request. The HPD denies this. They state that after your request was received, the report you seek was printed and the HPD secretary called you to inform you it was ready to be picked up. The HPD left a message explaining that the fee to obtain the copy was $5.00 and upon payment, you would be given the report. HPD states that you never came in to get the report.

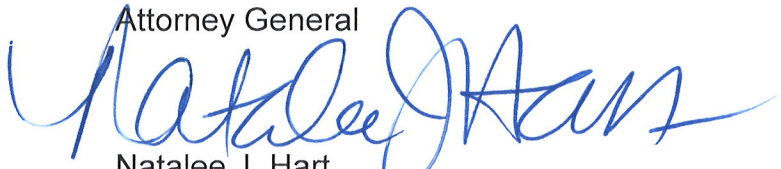
DISCUSSION

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.

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. The HPD has indicated to us that the public record you seek has been waiting for you since the time of your request, and you have not returned to retrieve it. HPD still has the record you requested, ready for you to pick up upon payment of fee for the record. Your request to the HPD sought a "waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of Officer Adams bias and failure to accurately detail the definitive occurrences of the event." There is no such waiver provision in the Nebraska Public Records Statutes. As you have not been improperly denied access to public records, we see no basis for further action by this office and we are closing this file. If you disagree with our analysis under the Public Records Statutes set out above, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, are available to you under those statutes.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Natalee J. Hart
Assistant Attorney General

cc: Capt. Boner, HPD

02-596-29