

STATE OF NEBRASKA
Office of the Attorney General

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JON BRUNING
ATTORNEY GENERAL

August 19, 2010

Mr. Henry Cordes, Reporter
Omaha World-Herald
1314 Douglas Street – Suite 700
Omaha, NE 68102

Re: File No. 10-R-125; UNL; Cordes

Dear Mr. Cordes:

This letter is in response to your earlier email correspondence which you sent us on August 4, 2010. You requested our assistance in obtaining certain records from the University of Nebraska, Lincoln ("UNL" or the "University"). We considered your email to be a petition under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Supp. 2009), and in particular, under § 84-712.03. Our response to your petition is set out below.

FACTS

Our understanding of the facts in this instance is based upon the materials you sent us along with materials provided to us by counsel for the University.

In May and June, 2010, there was a great deal of speculation and interest in the possibility that UNL might change its athletic conference affiliation from the Big Twelve conference to another conference, such as the Big Ten. On May 13, 2010, ESPN made a public records request to the University seeking correspondence between the Chancellor or the Athletic Department and other conferences between February 1 and May 12, 2010. The University responded to that request for records. A similar request then came to the University on May 20 from the Dallas Morning News, and the University, by agreement with the reporter involved, provided the same records in response to that request that it had provided to ESPN.

On June 4, 2010, you made a public records request to the University for "copies of all documents and correspondence by university officials related to the University of Nebraska-Lincoln possibly becoming a member of the Big Ten Conference." Carmen Maurer, Associate General Counsel for the University, states that she called you on Monday, June 7 to discuss your records request. She also states that she told you that

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UNL would either separately process your records request or, in the alternative, provide you with the same materials which were previously provided to ESPN and the Dallas Morning News. Ms. Maurer understood that you chose to accept the materials provided to the other media organizations as responsive to your records request in order to expedite the records response process. As a result, UNL provided you with the previously compiled documents, and did not process your request further.

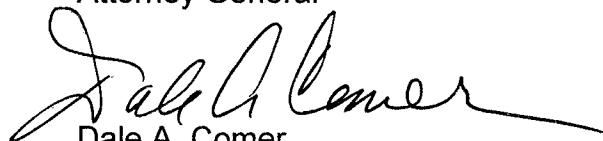
In a subsequent email to UNL Chancellor Harvey Perlman, you inquired as to whether there were any additional documents prepared as a result of a meeting with Big Ten officials in May which were not produced to you in response to your original records request. Chancellor Perlman responded that any documents prepared for the meeting in question were prepared under advice of counsel for purposes of negotiation, and were subject to the attorney-client privilege. You then contacted our office to determine if the University's response to your original request was sufficient under the Public Records Statutes.

ANALYSIS

From all the materials we have reviewed in this case, it appears that counsel for the University reasonably believed that you effectively agreed in June to amend your original records request and to accept the records which they had provided to other media organizations in the place of a separate response to your somewhat broader records inquiry. Under those circumstances, UNL had no obligation to proceed further with your separate records request, or to provide you with a denial letter under § 84-712.03 in the event that you were denied access to particular records. We also do not believe that your July email correspondence with Chancellor Perlman constituted a specific request for records regarding the meeting with Big Ten officials at issue. As a result, it appears to us that UNL has not improperly denied you access to records at this point in time. However, as we discussed, you remain free to renew your records request to the University so as to specifically seek access to any records regarding the May meeting with Jim Delany. In the event that such a renewed request results in a denial of access to records by UNL, we can review the propriety of that denial at that time.

Sincerely,

JON BRUNING
Attorney General



Dale A. Comer
Assistant Attorney General
Chief, Legal Services Bureau

cc. Joel D. Pedersen