

STATE OF NEBRASKA
Office of the Attorney General

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ATTORNEY GENERAL

NATALEE J. HART
ASSISTANT ATTORNEY GENERAL

November 30, 2012

David B. Smallman
Smallman Law, PLLC
276 Fifth Avenue, Suite 805
New York, NY 10001

RE: *File No 10-R-135; Bellevue Police Department; Lana Wilson*

Dear Mr. Smallman:

This letter is in response to your request for us to reopen and re-review our response to Ms. Lana Wilson in December, 2010 regarding her public records complaint against the City of Bellevue Fire and Police Departments ("City") for certain records belonging to those law enforcement agencies.

The Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2008, Cum. Supp. 2010, Supp. 2011) contemplate that if an individual disagrees with the determination of this office as to a public records complaint, he or she may bring an action under Neb. Rev. Stat. § 84-712.03 for a writ of mandamus and seek attorney's fees under Neb. Rev. Stat. § 84-712.07.

This office does not routinely review a prior determination it has made as to a public records complaint. However, in this case we have re-reviewed the file on Ms. Wilson's public records complaint, and the response received from the City of Bellevue. We continue to believe that the City may withhold the records it lists in its October 4, 2010 letter under Neb. Rev. Stat. § 84-712.05(5). The records maintained by the City were "developed or received by law enforcement agencies" in the course of their investigations into the incidences referenced therein, as permissible under the Public Records Statutes. The Nebraska Public Records Statutes do not provide this office with a mechanism for in-camera review to determine if a public body is appropriately claiming records may be held confidential. Only the District Court has such authority. Absent such an ability, we must presume that the City, as represented by its public officials, is acting in compliance with all necessary statutes, unless there is specific evidence to the contrary. We are in possession of no facts or evidence that would lead

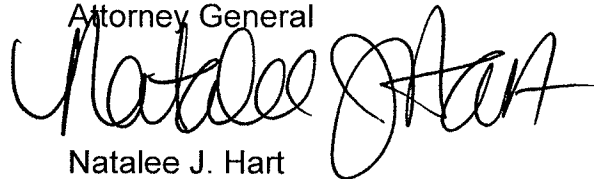
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us to conclude that the City is improperly utilizing the exception found in Neb. Rev. Stat. § 84-712.05(5).

We see no reason to reopen our file in this matter. If you continue to disagree with our conclusion, Ms. Wilson's remedy is to file for a writ of mandamus under Neb. Rev. Stat. § 84-712.03.

Sincerely,

JON BRUNING
Attorney General

A handwritten signature in black ink, appearing to read "Natalee J. Hart". The signature is written in a cursive, flowing style with some loops and flourishes.

Natalee J. Hart
Assistant Attorney General

cc: Michael Polk
Lana Wilson

02-362-30