

STATE OF NEBRASKA
Office of the Attorney General

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July 12, 2017

Steven M. Jacob
P.O. Box 2500-41659
Lincoln, NE 68542-2500

RE: *File No. 17-R-130; Department of Health and Human Services—Vital
Records Division; Steven M. Jacob, Petitioner*

Dear Mr. Jacob:

This letter is in response to your “Petition for Public Records” dated June 12, 2017, and received by this office on June 15, 2017, in which you sought our assistance in obtaining certain records from the Vital Records Division (“Vital Records”) of the Nebraska Department of Health and Human Services (“DHHS”). By letter to you dated June 16, 2017, we requested that you provide this office with a copy of the public records request which you had mailed to the administrator of Vital Records, Stan Cooper, sometime on or around May 30, 2017.¹ We received a copy of your request on June 27, 2017. The following day we emailed your petition and your request to Mr. Cooper, and requested a response. On June 29, 2017, DHHS legal counsel advised the undersigned that Mr. Cooper had *not* received your request. On July 3, 2017, we received correspondence from Deputy Director Jenifer Roberts-Johnson, DHHS Division of Public Health, who responded on behalf of Vital Records. We also received a copy of Mr. Cooper’s response to you with respect to your public records request. We have now reviewed all of the material in this file in accordance with the Neb. Rev. Stat. § 84-712.03 of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2016) (“NPRS”). Our findings in this matter are set forth below.

FACTS

Your public records request, dated May 30, 2017,² sought the following information:

¹ For the record, we indicated in our letter that our investigation of your petition would begin once we received a copy of your public records request.

² This office obtained a copy of the relevant Outgoing Legal Mail log from the Department of Correctional Services, which confirms that your letter to “NE Vital Records” was mailed on May 31, 2017. Unfortunately, we have no further means to track your correspondence once it left the correctional facility.

- 1) Copies of the death certificates of those persons who died in Nebraska in 2016 for which at least one of the causes of death was Creutzfeldt-Jakob disease (CJD) or suspected CJD. . . .
- 2) A copy of the Nebraska Vital Statistics Annual Report for 2016. If this is available online please provide me with the URL and I can get that copy over the web.

In his July 3, 2017 response to your request, Mr. Cooper indicates that pursuant to Neb. Rev. Stat. § 71-612, the department can only provide certified copies of death certificates. To obtain a certificate, you must provide his office a completed application, proof of identity, the purpose of your request, and a \$16.00 fee. In his letter, Mr. Cooper provided you a copy of the application, a link to access the application, and further instruction regarding the fee and proof of identity. With respect to the Nebraska Vital Statistics Annual Report for 2016, Mr. Cooper indicates that the report has not been completed. Once completed, it will be available online at http://dhhs.ne.gov/publichealth/Pages/ced_vs.aspx.

Ms. Roberts-Johnson's response to your petition essentially repeats the requirements listed in Mr. Cooper's response. She represents that "[t]he Department has no record of receiving [your] May 30, 2017, request." Ms. Robert-Johnson further informs us of the requirements pertaining to viewing death certificates in the Vital Records Office. She reiterates that the statistical report you seek "is not available as a record because it has not been completed as of this date."

DISCUSSION

In Nebraska, death certificates are public records.³ However, as you know from our recent correspondence to you dated May 24, 2017, access to public records in Nebraska is not absolute. Both §§ 84-712 and 84-712.01 indicate that exceptions to disclosure may be created by express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983). In the present case, public access to death certificates is controlled by the provisions in Neb. Rev. Stat. § 71-612 (Cum. Supp. 2016). That statute provides, in pertinent part, as follows:

³ *State ex rel. Adams County Historical Society v. Kinyoun*, 277 Neb. 749, 755, 765 N.W.2d 212, 217 (2009) ("Under Neb. Rev. Stat. § 84-712.05(2) . . . '[m]edical records, other than records of births and deaths,' may generally be withheld from the public. (Emphasis supplied.)"). See also 174 NAC § 3-003.01 ("Birth, death, marriage, and dissolution of marriage certificates are public records unless otherwise provided by law or court order . . .").

Steven M. Jacob

July 12, 2017

Page 3

(1) The department, as the State Registrar, shall preserve permanently and index all certificates received. The department shall supply to any applicant for any proper purpose, as defined by rules and regulations of the department, a certified copy of the record of any birth, death, marriage, annulment, or dissolution of marriage or an abstract of marriage. The department shall supply a copy of a public vital record for viewing purposes at its office upon an application signed by the applicant and upon proof of the identity of the applicant. The application may include the name, address, and telephone number of the applicant, purpose for viewing each record, and other information as may be prescribed by the department by rules and regulations to protect the integrity of vital records and prevent their fraudulent use. Except as provided in subsections (2), (3), (5), (6), and (7) of this section, the department shall be entitled to charge and collect in advance a fee of sixteen dollars to be paid by the applicant for each certified copy or abstract of marriage supplied to the applicant or for any search made at the applicant's request for access to or a certified copy of any record or abstract of marriage, whether or not the record or abstract is found on file with the department.

Your access to death certificates is further prescribed by the provisions in Title 174 *Nebraska Administrative Code*, Chapter 3 (Viewing and Release of Vital Records). Consequently, the above referenced statute and the regulations control your access to death certificates, not the Nebraska Public Records Statutes.

With respect to the annual report you seek, both Mr. Cooper and Ms. Roberts-Johnson represent to this office that the report has not been completed. However, once it is finished, you may access it online.

CONCLUSION

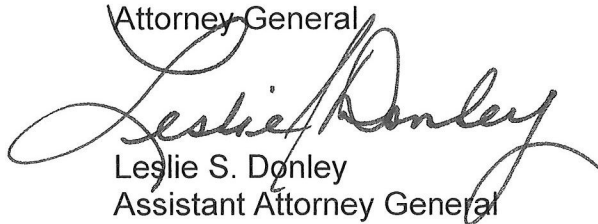
For the reasons explained above, we conclude that the general disclosure requirements in § 84-712 of the Nebraska Public Records Statutes do not apply to your request for death certificates. The Vital Records Division may deny you access to these records unless and until you meet the statutory and regulatory requirements discussed above. Since we have concluded that the Vital Records Division did not unlawfully deny you access to records under the NPRS, no further action by this office is warranted. Accordingly, we are closing this file.

Steven M. Jacob
July 12, 2017
Page 4

If you disagree with the analysis we have set out above, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Dep. Dir. J. Roberts-Johnson

49-1818-29