



STATE OF NEBRASKA  
**Office of the Attorney General**

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ATTORNEY GENERAL

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December 12, 2017

Genine Hovick  
[REDACTED]

RE: *File No. 17-R-146; Village of Elmwood; Genine Hovick, Petitioner*

Dear Ms. Hovick:

This letter is in response to your correspondence received by this office on November 27, 2017, in which you sought our assistance in obtaining a refund from the Village of Elmwood ("Village") for costs paid for the production of certain public records. When we receive petitions of this nature, our normal practice is to contact the entity involved and advise it of its receipt and an opportunity to provide a response to this office. In the present case, we contacted the Village's clerk, Connie Carlton, and advised her accordingly. On December 11, 2017, we received Ms. Carlton's response. We have construed your correspondence to be a petition for review under 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.

**RELEVANT FACTS**

On October 30, 2017, you submitted a public records request to the Village, requesting the following items:

[A] List with dates of all formal and informal park meeting or meetings from November 2016 to present and also the following:

- Notices
- Agendas
- Minutes
- Decisions Made on planning, estimates, contracts, purchases and anything else pertaining to the park.
- Fund Raising activities/events to include notices and detailed lists of costs, proceeds and cash or check donations.

On November 2, 2017, Ms. Carlton emailed you a delay letter (dated November 1, 2017) estimating "the copying costs to be approximately \$75.00 to \$125.00, plus an additional cost for 28-32 hours of labor (beyond the first four hours) @ \$18.43 per hour." She further informed you that

[b]y statute, you have ten (10) business days from the date of receipt of this letter as to whether you want to proceed with the records request as is or to modify your request.

You clarified your request in two separate emails sent to Ms. Carlton on November 2 and 3, indicating that you were seeking information relating to all park meetings, not general board meetings, which you could obtain on your own. You also clarified that you did not "need a copy of the equipment notebook from Burke Playground since the playground purchase was approved by the board and is in existing meeting minutes."

When you picked up the records on November 9, Ms. Carlton presented you an invoice for \$569, an amount which reflected 26.75 hours of labor costs and costs for 304 photocopies. You wrote a check for the amount and left with the records. On November 13, you sent Ms. Carlton a letter requesting a refund for the labor costs. You indicate that you received no response.

According to the documentation provided to this office, you indicated that all of the records produced came from a binder which Ms. Carlton referred to as "Julie's Park Binder."<sup>1</sup> You also indicated that you received no documentation relating to the park project meetings. You further alleged that Ms. Carlton provided you with records that you expressly said you did not want, i.e., Burke playground equipment.

According to Ms. Carlton, the record production involved "reviewing emails, notices, minutes, agendas, fundraising activities, contracts, estimates, purchasing donation details, etc." She indicates that she worked with Julie Anderson to compile the requested information, and not all of the records provided to you were from the binder "Julie's Playground Notebook." Ms. Carlton states that "[t]he additional documents and time needed to assemble the binder that Julie used regarding the playground project was extensive." She states that no documentation (agenda and minutes) relating to the "formal" board meetings was provided, or any documentation relating to the Burke playground. Ms. Carlton stated that you asked her to proceed with your original request, and that you were well aware of the initial estimates, that the invoice was below the estimates, and that her invoice did not include the time necessary to copy the records. Ms. Carlton represents to this office that she believes that she has been more than fair with respect to your request, and "assembled and presented [you] with all the decisions and documents regarding the park that she requested."

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<sup>1</sup> "Julie" is Julie Anderson, who serves on the Village board, and also serves as the Village park commissioner.

With respect to our request that Ms. Carlton confirm that multiple park planning meetings involving Ms. Anderson, et al. had been conducted," Ms. Carlton stated:

There were no formal meetings, that I was aware of, that required a notice or agendas or minutes during the design and installation phases of the new playground equipment. Only informal meetings such as a phone call or email between Julie and the playground equipment rep; regarding color choices, equipment choices, placement, and/or design of the playground. Updates to the project were given twice monthly at board meetings.

### DISCUSSION

You have alleged that the Village of Elmwood overcharged you for the records you received on November 9. The production of public records is governed primarily by the provisions in Neb. Rev. Stat. § 84-712(3) and (4) (2014). In particular, subsection (4) provides, in pertinent part, that

[u]pon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, an estimate of the expected cost of the copies and either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request. *The requester shall have ten business days to review the estimated costs, including any special service charge, and request the custodian to fulfill the original request, negotiate with the custodian to narrow or simplify the request, or withdraw the request.* If the requester does not respond to the custodian within ten business days, the custodian shall not proceed to fulfill the request.

(Emphasis added.) As you can see, there are several requirements placed on the custodian of records pertaining to timely responses, estimating costs, delaying production and producing records. In 2013, provisions were added to the statute which required requesters of public records to review the costs estimated by the custodian, and either (1) ask the custodian to fulfill the request, (2) negotiate with the custodian to narrow or simplify the request, or (3) withdraw the request. These options were available to you

when you received Ms. Carlton's November 1<sup>st</sup> delay letter, which contained estimated labor costs between 28-32 hours at \$18.43/hour and copy costs of \$75 to \$125. And although you were apprised of these costs, you informed Ms. Carlton to proceed with your original request anyway. The invoice presented to you on November 9 was consistent with, if not lower than, the original estimates.

In addition to requesting documentation relating to park project meetings, you also requested "[d]ecisions made on planning, estimates, contracts, purchases *and anything else pertaining to the park.*" (Emphasis added.) And while Ms. Carlton has confirmed that no park meeting documentation exists, it is our understanding that she provided you 300+ pages of other records responsive to your request. There also appears to be a question as to whether you were provided documents relating to the Burke playground in light of Ms. Carlton's representation to this office that she specifically did *not* copy the contents of the "Burke Playground' equipment notebook" because you stated it was not required.

We have also considered your allegation that you did not receive records pertaining to the purported park project meetings with no explanation from Ms. Carlton. In those instances where an individual has requested a certain record or records under § 84-712, and no such record(s) exist, we believe that it is incumbent on the custodian of records to advise, in writing, that there are no responsive records. However, in the present case, you asked for items beyond park meeting documentation and, as noted above, received responsive records. As a result, we do not believe that the statute required Ms. Carlton to specifically point out to you that no park meeting documentation existed. Ultimately, to the extent you were seeking clarification as to what occurred at the park project meetings, you have now received confirmation that no such meetings were convened. Consequently, based on the foregoing, we are unable to conclude that you were overcharged for the records you received from the Village of Elmwood on November 9.

As a final matter, we will point out to Ms. Carlton again, by providing her a copy of this letter, that the form used by her office to process public records requests submitted to the Village is improper. As we noted in our disposition letter to *File No. 16-R-108, Village of Elmwood; Dana Krass, Petitioner* (March 8, 2016), the Village cannot require individuals requesting public records to make the certifications set out in the form, as follows:

I hereby declare that I do not intend to and will not:

- a. Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or

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b. Sell, give, or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person who resides at any address listed.

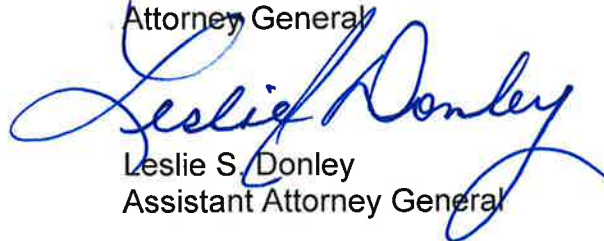
As we previously conveyed, "the provisions of Neb. Rev. Stat. § 84-712 do not require any showing by a person requesting access to public records of the reason for his or her review of those records. See *State ex rel. Sileven v. Spire*, 243 Neb. 451, 500 N.W.2d 179 (1993)." See disposition letter at 2-3.

### CONCLUSION

Since we have concluded that you are not entitled to a refund of the costs of the records production at issue, no further action by this office is warranted and we are closing our file. 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: Connie Carlton

49-1909-29