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March 30, 2018

Jeri James
[REDACTED]

RE: *File No. 18-R-108; Corey R. Steel, State Court Administrator; Jeri James, Petitioner*

Dear Ms. James:

This letter is in response to your petition received by this office by email on March 28, 2018, in which you sought our assistance in obtaining certain records from Corey R. Steel, State Court Administrator. We have fully considered your petition in accordance with 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 March 16, 2018, you emailed a public records request to the State Court Administrator's office, seeking "a copy of all the documents submitted to the nominating committee regarding my application to the Douglas County Juvenile Court vacancy." By letter dated March 20, 2018, Mr. Steel denied your request, indicating that "[s]uch records are confidential pursuant to Neb. Rev. Stat. § 24-812."

You indicate in your petition that you agree with Mr. Steel's decision that the records at issue "are confidential and cannot be disclosed to the public." However, you assert that "the statute as written includes the prospective judicial candidate in the circle of those with whom communications may be shared." You further argue that an alternative interpretation of the statute effectively denies a candidate the ability to rebut any communications sent to the commission that may be "false or misleading."

DISCUSSION

Neb. Rev. Stat. § 84-712 (2014) of the Nebraska Public Records Statutes sets out the general rule for access to public records in Nebraska. That statute provides, in pertinent part, that

[e]xcept as otherwise expressly provided by statute, all citizens of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

Neb. Rev. Stat. § 84-712(1) (2014) (emphasis added). "Public records" are defined as follows:

Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

Neb. Rev. Stat. § 84-712.01(1) (2014) (emphasis added). As indicated by the emphasized language above, access to public records is not absolute. In those instances where the Legislature has provided that a particular record shall be confidential or may be withheld at the discretion of the records custodian under the categories of records set out in § 84-712.05, there is no right of access. The burden of showing that a statutory exception applies to disclosure of particular records rests upon the custodian of those records. *State ex rel. Nebraska Health Care Association v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998).

In the present case, Mr. Steel relies on Neb. Rev. Stat. § 24-812 (2016) as the legal basis to deny you access to the requested records. That statute provides that

[a]ll communications between members of judicial nominating commissions and between any member of the commission and any prospective

candidate for judicial office and all other communications with members of the commission except those at the public hearing, shall be confidential. Additionally, all such communications including those at the public hearing shall be privileged from use in any legal action, except one charging misconduct in office of a member of a judicial nominating commission or one involving contempt of court, or misconduct of an attorney, based on such communication.

In Nebraska, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. *Farmers Cooperative v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017). Under the plain language in § 24-812, the following subsets of records are *confidential*:

- (1) All communications between the members of a judicial nominating commission;
- (2) All communications between a member of a commission and a prospective judicial candidate; and
- (3) All other communications with members of the commission, except those communications disclosed at the public hearing.

You have specifically requested “all the documents submitted to the nominating commission regarding my application to the Douglas County Juvenile Court vacancy.” Your request would include records that may have been provided to members of the commission by third parties. There is no indication that the records you seek were disclosed during the public hearing. We find no validity in your assertion that the statute allows candidates to “share” in any communications received by a member of the commission. To the contrary, the statute makes clear that communications between a commission member and a candidate are confidential. In addition, there is no exception which would permit disclosure of any confidential communications to a candidate, regardless of the reason for the request, i.e., to rebut potentially false or misleading information. Consequently, since the requested records fall squarely under subsection (3) above, they are confidential records and not subject to disclosure.

CONCLUSION

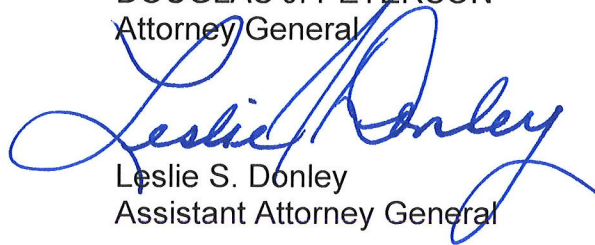
For the reasons discussed above, Mr. Steel was correct in denying you access to any communications received by members of the nominating commission pertaining to your application for the Douglas County Juvenile Court vacancy. Under the express language in Neb. Rev. Stat. § 24-812, the requested records are confidential and not subject to disclosure. Finally, there is no provision in the statute that would permit disclosing confidential communication to judicial candidates, or any other party.

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Since we have concluded that the records at issue are not public records, no further action by this office is necessary and we are closing this file. Finally, if you disagree with our analysis, you are free to consider any additional remedies that might be available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Corey R. Steel
State Court Administrator

49-1980-29