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Office of the Attorney General

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DOUGLAS J. PETERSON
ATTORNEY GENERAL

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May 4, 2018

Via email at [REDACTED]
Mike Weaver

RE: *File No. 18-R-116; Papillion LaVista Community Schools: Mike Weaver, Petitioner*

Dear Mr. Weaver:

This letter is in response to your petition which you emailed to our office on April 19, 2018, in which you sought our assistance in obtaining certain salary information from the Papillion LaVista Community Schools ("District"). At our request, you supplemented your petition later that day. Also on April 19, we forwarded a copy of your petition and supplementary materials to Dr. Renee Hyde, Ed.D., District Assistant Superintendent of Human Resources, and advised her of the opportunity to provide a response to this office. The undersigned subsequently spoke to Dr. Hyde about your petition on April 20, and received Dr. Hyde's written response on April 21. We have considered your petition and the information we received from Dr. Hyde under 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

Our understanding of the facts is based on your petition and the supplemental documentation you provided this office on April 19, April 30, and May 1, in addition to emails we received from Dr. Hyde on April 21 and 23. The focus of your petition is your purported public records request submitted to Dr. Hyde on April 4:

So this is the current salary sheet? I saw the BOE gave Admin a 3.25% raise, is this reflected in this spreadsheet? Also, I asked for ALL Central office and Admin staff, Including those reclassified in I believe 2014?¹

¹ This office did not receive a copy of any previous request in which you asked for this information, despite our request to provide us all pertinent information.

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Dr. Hyde responded to you on April 4. She informed you that she could not provide 2017-2018 data because the year was not over, and that work hours could vary from week to week. She asked that you “help [her] understand clearly what you are asking for.”

On April 9, you emailed Dr. Hyde the following:

. . . I am interested in seeing ALL Employees out of Central office whether they are considered “Management” or not, which is why I was clear in stating all Certified and Uncertified, classified or unclassified info is needed. My goal is to give people perspective on how much Admin and supporting Staff costs us. If there is another term you use for supporting staff like Mr. [], please let me know for future reference.

I realize the figures aren’t available yet for the next year, but for now can you send me “Current” salaries and benefits for those staff members?

(Emphasis added.) On April 12, you followed up with another email to Dr. Hyde:

I was wondering if I was going to get the additional salary info I requested last week? I know you said you don’t have the 2018-2019 spread sheet, but I think I made it perfectly clear I will accept, and very much need the 2017-2018 figures. Once again this District is in violation of the Public Records laws, so please get me the info I am requesting ASAP!

Dr. Hyde responded to your emails on April 13,² indicating that she was pulling the information from the District’s system, and would have the information to you by Friday [April 20] or Monday [April 23]. She also indicated that “[o]ur information is not in the format you are requesting as a ‘routine report’ so I am creating it. I could be charging you for our time and effort to aggregate the information you have requested but am not doing so. We are functioning within the timelines provided by the Public Records laws. . . .

On April 19, despite the fact that Dr. Hyde had represented to you that she would produce the requested records on April 20 or 23, you filed your petition with this office, alleging as follows:

I would like to file a formal complaint against the Papillion LaVista Community Schools for a violation of my rights under public records law Statute: 84-712 and 84-712.04 Also: 84-712.03.

² We note that on April 7, Dr. Hyde provided you spreadsheets containing salary and benefit information for the years 2017-2018 and 2018-2019.

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I made my request to Dr. Renee Hyde Assistant Superintendent of Human Resources on 4/4/18, As of today they have not complied with my request for the salary information, they haven't even given me a reason they have not or cannot comply. . . .

On April 23, Dr. Hyde emailed you a pdf document entitled "2017-2018 Staff Hourly Rate of Pay for PLCS Central Office Staff." She stated in her email, in pertinent part:

This along with the previous administrator and manager spreadsheet of the 2018-19 anticipated salaries constitute ALL staff who serve in a district-wide function. You will note that the Central Office may not be where they spend their time working, but rather it is a "home building" used when an individual serves many buildings. Also included are our Buildings and Grounds, Warehouse and Technology staff as you requested. The contract salaries listed are largely certified staff working on special assignment.

She also indicated to you that it would be June or July before the classified hourly wages are set for the 2018-2019 school year. Dr. Hyde concluded: "I believe this fulfills your public records request. Please let me know if you have additional questions or if I can provide clarification for you."

On April 23, you emailed the undersigned indicating that you had received a response from Dr. Hyde, but felt the records were incomplete and that the District did not fully comply with the public records law. On April 30, in response to our request to fully explain how the District failed to comply with the NPRS, you provided us, among other things, an email you purportedly sent to Dr. Hyde:

I am in receipt of the salary information I requested back on April 4th 2018. I haven't had the time to go over it yet, but my initial response is something seems to be missing. I'm going to compare this to the older spread sheets, are there more names missing? Have there been additional person's "reclassified" or has there been a reduction in staff? Also, The new spreadsheet only has the base salaries, am I right?

Upon receipt of your email, the undersigned again inquired as to the manner and extent of the District's noncompliance with the NPRS. On May 1, 2018, you emailed the undersigned the following:

Before I waste a lot of time putting all this together to PROVE they violated the 4 days required by Nebraska law, and even though she finally gave me most info but not all, are you saying there are no consequences for violating these rules?

(Your emphasis.)

In her response to our office, Dr. Hyde informs us that in those instances when you request something that is readily available, her office generally provides it to you within four days. She states that when her office has to create/format the information, most of the time you receive it within a four-day timeline. However, when requests have to be clarified and a report generated, as is the case here, it can take a little longer. Dr. Hyde states that “[p]lease know that we work very hard to be transparent with Mr. Weaver and all of our patrons, even when it substantially disrupts our work flow.”

DISCUSSION

Generally speaking, the Nebraska Public Records Statutes allow interested persons in Nebraska the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those public records, and to obtain copies of public records in certain circumstances. A public body is not required to create documents that do not otherwise exist, or to answer questions made to the public body under the guise of a public records request.

In the present case, you believe your rights under the Nebraska Public Records Statutes have been violated because you did not receive the requested records four days after your April 4 request. In this regard, Neb. Rev. Stat. § 84-712 (2014) provides, in pertinent part:

(4) Upon 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.

(Emphasis added.)

As you can see, § 84-712(4) contains no provision that requires the custodian of public records to produce records in *four days*. The statute does require the custodian to *respond* to the requester no more than four business days *after* actual receipt of a written request. The custodian can respond in four different ways: (1) provide the requester with

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the records; (2) deny access to the records, and provide the basis for denying access; (3) indicate that it needs more time to produce the records; or (4) inform the requester that there are no records responsive to the request. Here, Dr. Hyde responded to your April 4 request the same day. She attempted to clarify what information you were seeking, and informed you that to the extent you were seeking certain 2017-2018 information, that information did not exist because the year was not over. Dr. Hyde expressly asked you to clarify your request. Upon receipt of your April 9 request, Dr. Hyde responded to you within the four business day time frame [April 13], and indicated that she would provide you responsive records no later than April 20 or 23. The requested information was subsequently emailed to you on April 23. We note further that the information was specially compiled for you at no charge.

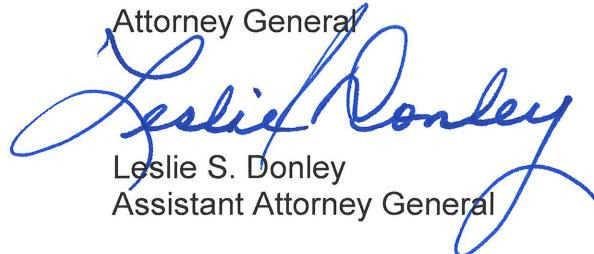
As we advised you in our May 1 email, Neb. Rev. Stat. § 84-712.03(1)(b) requires this office to determine whether you have been denied access to public records, or whether the school district is otherwise not in compliance with the provisions of the Nebraska Public Records Statutes. On April 23, you received the records you requested. To the extent you argue that the records do not appear as you think they should does not equate to a denial of public records. Moreover, as discussed above, Dr. Hyde is under no obligation under the law to provide you records four days from the date of your request. For these reasons, we believe that the District's handling of your request for public records complied in all respects with the provisions of the NPRS. Therefore, we plan no further action with this petition, and we are closing this file.

CONCLUSION

We conclude that the Papillion LaVista Community Schools has not denied you access to public records or failed to comply with the provisions of the NPRS. To the contrary, we believe that the emails that you provided to this office demonstrate Dr. Hyde's commitment to work cooperatively with you, and provide you the information you seek. 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: Dr. Renee Hyde (via email)
49-2010-29