



STATE OF NEBRASKA
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DOUGLAS J. PETERSON
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February 22, 2022

Via email at [REDACTED]
Elina Newman, PhD, CPhT

RE: File No. 22-R-105; *Lincoln-Lancaster County Health Department; Elina Newman, Petitioner*

Dear Dr. Newman:

This letter is in response to your petition received by this office on February 2, 2022, in which you requested the assistance of the Attorney General in obtaining certain records from the Lincoln-Lancaster County Health Department ("LLCHD"). At our request, you supplemented your petition on February 4. In accordance with our normal policy, we forwarded your petition to Assistant City Attorney Rick Tast, and advised him of the opportunity to provide our office a response. We received Mr. Tast's response on February 11, which included the affidavit of LLCHD Director Patricia D. Lopez. We considered your petition and the LLCHD's response in accordance with the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2020, Supp. 2021). Our findings with respect to this matter are set out below.

RELEVANT FACTS

On January 30, 2022, you emailed Ms. Lopez the following request:

For each hospital in Lancaster County, provide for the past 6 months ... August, September, October, November, December, January ...

-a digital copy of any document that provides the following:

- covid definitions for "vaccinated," "unvaccinated," "fully vaccinated" ... specifically address, if a person is vaccinated with shot 2 on March 1, are they considered vaccinated on March 1, according to your reporting, or March 15?

- the percentages of patients in the hospital (**specifically FOR COVID**) versus (another reason but tested positive for COVID)
- a digital copy of the document defining the **382 total** individuals who passed, percentages of those who died **with** COVID (COVID+something else) versus **from** COVID (COVID only) as well as their vaccination status as defined by the definitions above
- a digital copy of the document that defines the process used to determine the strain of COVID
- a digital copy of the document that defines the protocol used to treat COVID patients, including
- forms they sign for treatment
 - funding, billing, and reimbursement model used for the protocol (i.e., vent (\$ reimbursed), remdesivir (\$ reimbursed))
- a digital copy of the document that defines the process used to evaluate (pros versus cons) the protocol and its last evaluation date, including the names of all experts consulted. (Emphasis in original.)

On January 31, Mr. Tast informed you that the City of Lincoln had no documents responsive to your request. He referred you to the respective hospitals to obtain the requested information.

You assert that the denial presents one of two situations: You are being misled or there is no data. You believe that responsive data exists, but that the LLCHD “does not want to share it because it may expose that the reasoning for the past year and a half has been and continues to be flawed.”¹ With respect to your request, you believe that you are “being denied pertinent information, information that not only I should be able to know but also this entire community should know.”

Mr. Tast informs us that your request implicates seven facilities in Lancaster County: Bryan Medical Center, Bryan West, CHI Health St. Elizabeth Regional Medical Center, Lincoln Surgical Hospital, Lincoln Regional Center, Madonna Rehabilitation Hospital, and the Nebraska Heart Hospital. With respect to these facilities, Ms. Lopez states in her affidavit that “[t]he LLCHD does not own, operate, or regulate any hospital

¹ For your information, “[t]he public records statutes apply ‘equally to all persons without regard to the purpose for which the information is sought.’ As a general rule, citizens are not required to explain why they seek public information.” *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, 943 N.W.2d 231, 247 (2020) [“*BH Media*”]. Accordingly, we do not consider the reason or purpose for a records request when making our determination under § 84-712.03(1)(b).

in Lincoln or Lancaster County, Nebraska.” She states that “the LLCHD does not maintain or dictate definitions of ‘vaccinated,’ ‘unvaccinated,’ or ‘fully vaccinated’ to any hospital in Lincoln or Lancaster County, Nebraska.” Ms. Lopez avers that as a result of collaboration with the local health systems during the pandemic, the LLCHD “receives data regarding the aggregate number of patients admitted with COVID-19 and the aggregate total number of patients admitted to Bryan Health and CHI Health St. Elizabeth.” Ms. Lopez also states that the LLCHD receives information from hospitals regarding all individuals who have died, including the specific cause(s) of death. As it relates to COVID-19, the LLCHD receives the vaccination status of deceased individuals, if known. With respect to all other items in your request, Ms. Lopez states that the LLCHD has no responsive documents.

DISCUSSION

Neb. Rev. Stat. § 84-712.03 states, in pertinent part, that “[a]ny person denied any rights granted by sections 84-712 to 84-712.03 may . . . [p]etition the Attorney General to review the matter to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections” In his January 31, 2022, response, Mr. Tast represented to you that the LLCHD had no records responsive to your request. Ms. Lopez has represented to this office that while the LLCHD receives some COVID-19 information from the facilities, as discussed above, the LLCHD does not have documents containing the specific information you seek. You have not been denied any rights granted to you under §§ 84-712 to 84-712.03 because the LLCHD has no such records. There is no relief available to you. Moreover, “absent contrary evidence, public officers are presumed to faithfully perform their official duties.” *Thomas v. Peterson*, 307 Neb. 89, 98, 948 N.W.2d 698, 706 (2020). In this regard, you have presented no evidence to support your assertion that the LLCHD has documents, but does not want to provide them to the public. Consequently, since there are no responsive documents, and no obligation to create records or compile lists,² the LLCHD’s response to your records request was appropriate.

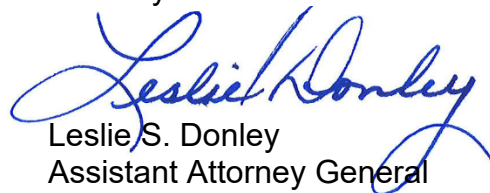
² Section 84-712 does not require a public agency to review documents and create abstracts or other lists, to answer questions or to create documents which do not otherwise exist. Op. Att’y Gen. No. 94092 (November 22, 1994); Op. Att’y Gen. No. 94035 (May 11, 1994); Op. Att’y Gen. No. 87104 (October 27, 1987).

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Since no further action by this office is necessary, we are closing our file. If you disagree with the conclusion reached above, you may wish to review the other remedies available to you under Neb. Rev. Stat. § 84-712.03.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Rick Tast (via email only)

49-2883-30