



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

October 13, 2022

Via email at [REDACTED]
Robert J. Borer

RE: *File No. 22-R-152; Lancaster County Election Commissioner; Robert J. Borer, Petitioner*

Dear Mr. Borer:

This letter is in response to your email sent to this office on September 28, 2022, in which you asked us to review Lancaster County Election Commissioner David Shively's response to your September 23, 2022, public records request. We construed your email to be a petition under § 84-712.03(1)(b) of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2020, Supp. 2021), amended 2022 Neb. Laws LBs 876 and 1246. Our findings in this matter are set forth below.

On September 23, 2022, you emailed Mr. Shively requesting "a digital copy of the document itemizing *all* expenses and income related to the Lancaster County 2022 Primary." (Your emphasis.) Mr. Shively responded on September 26, indicating that his office had no records responsive to your request. Deputy County Attorney Eric Synowicki subsequently informed the undersigned that Mr. Shively normally prepares a detailed expense report for each election held, but due to the number of elections he conducted this year, and with the pending general election, the report has not been created yet. It is our understanding that a report relating to the county's primary election will be prepared at some time in the future.

As we have informed you multiple times,¹ there is no requirement in the NPRS to *create* records that do not otherwise exist in response to a request made under § 84-712. Mr. Shively informed you in his September 26 letter that his office had no "records

¹ See File Nos. 21-R-109; 22-R-108; 22-R-124; 22-R-131.

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matching your request.” There simply is no record responsive to your request at this time. However, as noted above, Mr. Shively will be creating such a report and you will be able to get a copy of his report once completed.

Since we have concluded that Mr. Shively did not unlawfully deny you access to public records, no further action by this office is necessary and we are closing this file. If you disagree with our findings, 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: David Shively (via email only)
Eric Synowicki (via email only)

49-3072-30