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July 15, 2022

Via email at [REDACTED]
Samuel W. Flint
[REDACTED]

RE: *File No. 22-R-133; University of Nebraska; Samuel W. Flint, Petitioner*

Dear Mr. Flint:

This letter is in response to your petition received by this office on June 30, 2022, in which you requested our review of the denial by the University of Nebraska (“University”) relating to your June 13, 2022, public records request. On July 7, the undersigned spoke to Jaclyn Klintoe, Director University Records, about your petition. We considered your petition in accordance with the provisions 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 LB 876 and LB 1246. Our findings in this matter are set forth below.

FACTS

By letter dated June 13, 2022, addressed to Ms. Klintoe, you requested “[a]ny documents for FY2019–FY2021 that may be considered covered under Records Retention and Disposition Schedule 170-3, items 18-37 (i.e., the institutional general ledger).” According to the referenced schedule, your request encompasses the following records, listed here by “code,” “sub-category” and “record”:

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| 170-3-18 | Business/Data Warehouse: Accounting Transactions Database |
| 170-3-19 | Year End: Audit and Statement Work Papers, SAP Reports Lead Schedules |
| 170-3-20 | Capital Assets: Bank Statements–Trustee |
| 170-3-21 | Statements: Basic Financial Statements |
| 170-3-22 | Reports: CASB DS2 Disclosure Statements |
| 170-3-23 | Statements: Comprehensive Annual Financial Report |
| 170-3-24 | Reports: DAS Encumbrance Certification |

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| 170-3-25 | Reports: Data Collection Form |
| 170-3-26 | Statements: Federal A133 Audit |
| 170-3-27 | General: Indirect Cost Proposals |
| 170-3-28 | Interdepartmental Charges: Interdepartmental Billings and Department's Journal Entries |
| 170-3-29 | Reports: IPEDS Survey and Documentation, Financial Section |
| 170-3-30 | Interdepartmental Charges: Journal Entries and Allocations by Functional Offices |
| 170-3-31 | Statements: Master Trust Indenture Statements |
| 170-3-32 | Reports: Monthly/Bi-Weekly Payroll – Web Top Copy |
| 170-3-33 | Reports: Monthly Ledgers – Paper Copy |
| 170-3-34 | Reports: Monthly Ledgers – Web Top copy |
| 170-3-35 | Interface: NIS Accounting Feed Data Files |
| 170-3-36 | Capital Assets: Plant Project Files |
| 170-3-37 | Year End: Year End Accruals, Receivables Detail |

Ms. Klintoe responded to your request on June 21. She informed you that the general ledger was part of the University's financial system, and that under § 84-712(3)(e), "the University [was] not required to create a new record in response to your request." Ms. Klintoe further advised that your access to the University's financial systems was denied for security reasons pursuant to § 84-712.05(8).

Your petition challenges that portion of the University's denial which asserts that production of the general ledger would require creating a new record.

DISCUSSION

Under § 84-712, Nebraska citizens and other interested persons have the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those records, and to obtain copies of records in certain circumstances. The purpose of § 84-712 is "to guarantee that public government records are public." Introducer's Statement of Purpose for LB 505, 72nd Nebraska Legislature (1961). Section 84-712(3)(a) provides, in part, that copies of public records "may be obtained in any form designated by the requester in which the public record is maintained or produced, including, but not limited to, printouts, electronic data, discs, tapes, and photocopies." However, § 84-712(3)(e) does not "require a public body or custodian of a public record to produce or generate any public record in a new or different form or format modified from that of the original public record."

We have considered whether § 84-712(3)(e) provides a valid basis to deny you access to the requested records, and conclude it does not. Public bodies are required to produce public records in whatever form those records may be maintained by the public body. They are not required to create a record in a different form or format. As explained during the following exchange on LB 628 in 2000:

Senator Matzke: [A] couple of more [*sic*] questions, if you will. These records are kept in hard copy, not on floppy disk, I'm advised, yet the requester insisted that . . . the information be supplied on a floppy disk. What would be the responsibility of the county official in that regard?

Senator Brashear: . . . The requester is out of luck. The bill provides that if the records requested are kept on floppy disk, then that floppy disk must be made available to the requester. In the instance you've identified, based on the facts as you have set them forth, . . . since the records are only maintained in hard copy, that's the only way the custodian has an obligation to provide them to the requester. The requester will have to decide how to get them on floppy disk.

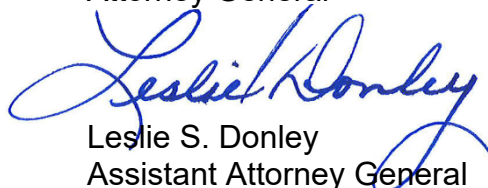
Floor Debate on LB 628, 96th Neb. Leg., 2nd Sess. 11215-11216 (March 22, 2000).

You have requested public records from the University's financial system, and we believe the University has an obligation to produce those records in accordance with the NPRS, which allows public bodies to charge the actual added cost of making the records available. Accordingly, we have requested Ms. Klintoe to prepare an estimate of costs for your review and consideration. However, please keep in mind that you have requested *tens of thousands* of records from the University, and it is very likely that the estimate you receive from Ms. Klintoe will be cost prohibitive. In this respect, we believe you should consider refining your request so that you may be able to obtain University records without incurring significant costs or delays.

Since you will be receiving an estimate from the University relating to your request, you have not been denied access to public records. Consequently, we are closing this file. If you disagree with our analysis set forth above, you may wish to consult with your private attorney to determine what, if any, additional remedies might be available to you under the NPRS.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General