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September 8, 2015

Coranne Moss
101 N. 25th Street
Beatrice, NE 68310

RE: *File No. 15-R-135; Blue Rivers Area Agency on Aging; Coranne Moss, Petitioner*

Dear Ms. Moss:

This letter is in response to the correspondence submitted to our office relating to your requests for public records submitted to the Blue Rivers Area Agency on Aging ("Agency"). Specifically, this letter will address your public records request to the Agency dated August 21, 2015. On August 28, 2015, you spoke to the undersigned and indicated that while you had received some documentation, you still had not received the bulk of your public records request, and that you wished to pursue this matter with our office. Consequently, on August 28, 2015, we contacted Julie J. Hippen, Agency Executive Director, and requested a response as to why certain records had not been provided to you. We received Ms. Hippen's response the same day. On September 3, 2015, we emailed follow-up questions to Ms. Hippen relating to your public records request and the Agency's response. We received Ms. Hippen's response on September 4. We have now completed our analysis and have fully considered your correspondence and communications as well as the Agency's responses under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014) ("NPRS"). Our findings are set forth below.

FACTS

As noted above, in a letter dated August 21, 2015, you submitted a public records request to the Agency. Specifically, you requested the following:

> Again this is a document requesting the BRAAA [Blue Rivers Area Agency on Aging] balance sheet, and Statement of Revenue and Statement of Functional Expenses for the fiscal year ending June 30, 2015. These documents DO exist.

> In your July 27th minutes from the BRAAA Board meeting under 5. Updates. You state, i., Carla hands out packets. June 30th end of fiscal year. On back are ALL reports sent to State of Nebraska, Dept. of Health and Human Services and Department of Roads. This is also a document requesting ALL of these reports distributed to BRAAA Board members at the open door meeting.
>
> I am requesting the BRAAA document or income and expense statement for the fiscal year ending June 30, 1015 [sic] for the Beatrice Sr. Center meal program. This is a 12 month document . . . we had obtained an 11 mo. document from you earlier.

(Emphasis in original.) Ms. Hippen responded to your request by letter dated August 25, 2015. She indicated that the financial reports from the July 27, 2015 Board meeting and the expense statement for the Beatrice Sr. Center meal program were enclosed. With respect to the other requested documents, Ms. Hippen stated:

> Regarding the requested balance sheet, and Statement of Revenue and Statement of Functional Expenses for the fiscal year ending July 30, 2015 [sic], it is estimated that such request cannot be fulfilled until at least October 2015, after the auditor has prepared these reports. *See* Neb. Rev. Stat. § 84-712(3)(e). The estimated costs of the print reports is $.25 per page. However, if you would instead prefer an electronic version of the reports at no cost to you, please provide a written request to me which includes your e-mail address.

DISCUSSION

The Nebraska Public Records Statutes generally 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 records, and to obtain copies of records in certain circumstances. Under those statutes, every record "of or belonging to" a public body is a public record which individuals may obtain a copy of unless the custodian of the record can point to a specific statute which allows the record to be kept confidential. There is no provision in the NPRS that requires a custodian of public records to review documents and create abstracts or other lists, to answer questions or to create documents which do not otherwise already exist.

It appears to us that Ms. Hippen has provided you all of the records of or belonging to the Agency which are responsive to your request. She indicates that the balance sheet, the Statement of Revenue and the Statement of Functional Expenses do not currently exist. On September 3, 2015, the undersigned specifically asked Ms. Hippen what documents constituted the "financial report" referenced in the July 27, 2015, meeting minutes, and whether she had provided you all of these records. She indicated that the financial report is the document entitled "2015 Blue Rivers Agency Expenses," which has been provided to you. The undersigned also asked Ms. Hippen what documents were in the "packets" passed out at the meeting and what reports were sent to the State Department of Health and Human Services and the Department of Roads, as referenced in the minutes. Ms. Hippen advised that there were no other documents except for the document entitled "2015 Blue Rivers Agency Expenses." Further, we also understand that you received the requested document relating to the Beatrice Senior Center 2014-2015 meal program.

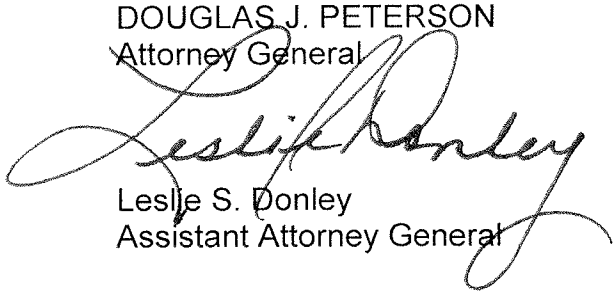
This office can only compel production of documents that the Agency may have in its possession, or is entitled to possess. We cannot compel the Agency to generate records that currently do not exist. Ms. Hippen states in her correspondence that she will provide you the requested records, either in paper or electronically, once those documents are prepared by Agency auditors. She estimates that those documents will be completed sometime in October. We understand that you are adamant that these documents exist. However, in the absence of any evidence from you to the contrary, it may be presumed that Ms. Hippen has faithfully performed her official duties. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (Neb. Ct. App. 2009).

When we receive petitions under Neb. Rev. Stat. § 84-712.03 of the NPRS, our focus is to ensure that citizens have not been improperly denied public records. Based on the information we received from Ms. Hippen, it appears that the Agency provided you all records it had which were responsive to your request. The other requested documents will be made available to you once those documents are prepared by auditors. Consequently, since you will soon be receiving the records at issue, there is no basis to continue our investigation, and we are closing this file.

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



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