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ATTORNEY GENERAL

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August 13, 2010

Richard Hardesty
1000 West Main St.
PO Box 158
Sargent, NE 68874

RE: *File No 10-R-126; Custer County Sheriff; Richard Hardesty*

Dear Mr. Hardesty:

This letter is in response to your Public Records complaint received by us on August 3, 2010. You seek our review of a denial of a request by you to the Custer County Sheriff ("Sheriff") for certain records belonging to the Sheriff. We have carefully reviewed your request, its supporting materials, and the response of the Sheriff received by our office, under the Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2008, Supp. 2009). Our findings in this matter are set forth below.

FACTS

Our understanding of the facts in this case is based on your public records complaint. You made a public records request to the Sheriff on or about June 25, 2010 for the records of the Sheriff regarding an incident that occurred between you and another individual on June 23, 2010. You characterize this incident as an assault upon you. The Sheriff denied your request for these records on June 29, 2010. You have concluded, and we agree, that the Sheriff denied this record as an investigatory record under Neb. Rev. Stat. § 84-712.05(5) of the Nebraska Public Records Statutes.

ANALYSIS

The Nebraska Public Records Statutes are found at Neb. Rev. Stat. §§ 84-712 through 84-712.09. Neb. Rev. Stat. § 84-712.05 (2009) provides for public records which may be withheld from the public by the custodian:

The following records, unless publicly disclosed in an open court, open administrative proceedings, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

> (5) Records developed or received by **law enforcement agencies** and other public bodies charged with duties of investigation or examination of persons, institutions or businesses, **when the records constitute a part of the** examination, **investigation**, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of an amount or concentration of alcohol or drugs in any body fluid of any person.

The records of the Sheriff certainly qualify as investigatory records of a law enforcement agency. The Sheriff may choose to withhold any such records, including those requested by you regarding the incident of June 23, 2010. Therefore, we conclude that you have not been denied access to public records.

You also believe the County Attorney has improperly revealed that her office maintains records of citizen complaints made by you. You believe this violates Neb. Rev. Stat. § 84-712.05(5). However, this statute does not *require* the records listed therein to be kept confidential; it *allows* the custodian to withhold records. ("The following records *may be withheld* from the public by the lawful custodian of the records." Neb. Rev. Stat. § 84-712.05) Therefore, the County Attorney did not violate the Public Records Statutes in her July 8, 2010 letter.

While the Sheriff did not improperly deny you access to public records, we nonetheless note that his denial letter is insufficient under the Public Records Statutes.

> 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, 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.

Neb. Rev. Stat. § 84-712 (2008)(emphasis added). Neb. Rev. Stat. § 84-712.04(1) (2008) requires the public body to include the following information in a denial letter:

(a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial;

(b) The name of the public official or employee responsible for the decision to deny the request; and

(c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

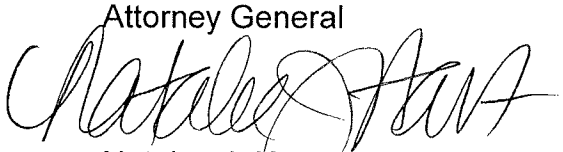
While the Sheriff did respond within four business days, his response letter did not comply with the Public Records Statutes, as he did not provide you with the information required by Neb. Rev. Stat. § 84-712.04. We will remind the Sheriff, through a copy of this letter, that all denials of public records requests must contain the information required by § 84-712.04. As the Sheriff's letter was written on the advice of the Deputy County Attorney, we will also provide a copy of this letter to that office.

CONCLUSION

For the reasons stated above, we do not believe that you have been denied access to public records. If you disagree with our analysis under the Public Records Statutes set out above, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, are available to you under those statutes.

Sincerely,

JON BRUNING
Attorney General



Natalee J. Hart
Assistant Attorney General

cc: Custer County Sheriff
Custer County Attorney

02-152-30