



STATE OF NEBRASKA  
**Office of the Attorney General**

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
CAPITOL FAX (402) 471-3297  
TIERONE FAX (402) 471-4725

**JON BRUNING**  
ATTORNEY GENERAL

**NATALEE J. HART**  
ASSISTANT ATTORNEY GENERAL

August 23, 2010

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

RE: *File No 10-R-128; Nebraska State Fire Marshal; Richard Hardesty*

Dear Mr. Hardesty:

This letter is in response to your Public Records complaint received by us on August 10, 2010. You seek our review of a public records request made by you to the Nebraska State Fire Marshal ("Fire Marshal"). We have carefully reviewed your request under the Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2008, Supp. 2009). We also spoke with the legal counsel for the Fire Marshal with respect to this issue. Our findings in this matter are set forth below.

### **FACTS**

Our understanding of the facts in this case is based on your Public Records Request. You requested records of the Fire Marshal which would support statements made in a December 2, 2009 letter from Fire Marshal Falgione. Your letter was received by the Fire Marshal's office on March 4, 2010. However, as of the date of your complaint to this office, the Fire Marshal had not yet responded to that request. Your complaint is that the Fire Marshal did not respond within the four business days required by statute.

We confirmed with the Fire Marshal's office that they had not responded to you as of August 10, 2010. The Fire Marshal was packing and moving offices at the time your request was received, and in the move, it was misplaced.

## ANALYSIS

The Nebraska Public Records Statutes are found at Neb. Rev. Stat. §§ 84-712 through 84-712.09. Neb. Rev. Stat. § 84-712 (2008) provides:

- (4) 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(4) requires the custodian of the records to reply within four business days of the receipt of a written request for records. That reply can request additional time to compile the records, but it must give an approximation as to the date the public body anticipates providing the records. We understand the Fire Marshal misplaced your letter in the move of that office in March 2010. However, the Fire Marshal is now drafting a response to your request. As of August 16, 2010, the Fire Marshal was awaiting a response from one of its district offices to determine if that office had any records responsive to your request. If you have not received that response, it will be forthcoming.

We spoke with the legal counsel for the Fire Marshal regarding the requirements of the Public Records Statutes to provide a reply within four business days to all public records request.

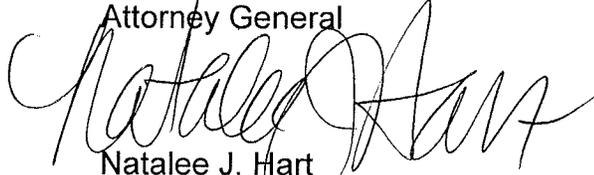
As it appears that the Fire Marshal will be providing any records it has responsive to your request, and the lack of a response within four business days was not intentional, this office will take no further action relating to this matter and will close our file accordingly.

## CONCLUSION

For the reasons stated above, we do not believe that you have been improperly denied access to public records. If you disagree with our analysis under the Public Records Statutes set out above, you may wish 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: Regina Shields, Nebraska State Fire Marshal's Office

02-153-30