STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

JON BRUNING
ATTORNEY GENERAL

DALE A. COMER
ASSISTANT ATTORNEY GENERAL
CHIEF, LEGAL SERVICES BUREAU

April 13, 2011

Mr. Kent M. Franzen
P.O. Box 251
Wayne, NE 68787

Re: *File No. 11-R-113; Lower Elkhorn Natural Resources District; Franzen*

Dear Mr. Franzen:

In a letter dated March 11, 2011, you asked us to review a response to a public records request which you received from the Lower Elkhorn Natural Resources District (the "District") under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2010). We received your letter on March 14, 2011. On March 29, 2011, we responded to your earlier letter, and informed you that, after a preliminary review of the matters described in your correspondence, it appeared to us that the District's response to your records request was appropriate. However, we also told you that our investigation was not complete, and that we still had matters that we needed to review. Therefore, we indicated that we would provide you with a final response to the issues raised in your letter on or before April 8, 2011.

As it turns out, our final review of the matters alleged in your letter took somewhat longer than we anticipated due to the general press of business in this office. Nevertheless, we have now completed our final review of your public records inquiry, and our detailed response and analysis is set out below.

FACTS

Our understanding of the facts in this case is based upon your letter and the materials you provided to us with it. We also discussed this matter on several occasions with Mr. Staab from the District, and we received cost analysis materials from him.

On Sunday, March 6, 2011, you sent an email to Mr. Staab in which you requested:

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> . . . the actual transactions pages from the LENRD credit card accounts that include the transactions done by or for Mr. Staab and Mr. Berney for 2009, 2010 and to date for 2011. The pages I am interested in contain the listings for the charges made by Mr. Staab and Mr. Berney as I am not interested in pages that may be part of the bill but do not list transactions by others or other information regarding the account. I also request any information needed to identify which transactions were completed by Mr. Staab and Mr. Berney individually.

Mr. Staab responded to you on March 11, 2011, and indicated that the "estimated charge for staff time, document preparation, copies and legal review is $358.00." Mr. Staab indicated further that the District would proceed with preparation of the copies you requested upon payment of the $358.00. He estimated that the time to deliver the documents in question was 1-2 months.

Mr. Staab's response precipitated your inquiry to this office. You question the propriety of the charges which are included in the cost estimate from the district. You also question the time frame listed by Mr. Staab for a response from the district. Finally, you wish to have some detailed explanation of the how the cost estimate for the copies was determined.

ANALYSIS

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 therefrom, and to obtain copies of records in certain circumstances. Apart from those basic provisions, several other observations can be made about what the Public Records Statutes do, and do not, require. We will basis our analysis of your public records inquiry upon the following aspects of the Public Records Statutes:

1. The Public Records statutes simply provide for citizen access to specific public records. They do not require public officials to answer questions, to interpret or explain records, or to create records which do not otherwise exist.

2. When an interested person requests photocopies of public records in Nebraska, the agency providing the copies is entitled to recover the reasonably calculated actual cost of making the photocopies. This office has taken the position that the actual cost of making photocopies of records includes the cost of copy paper, toner, copy machine rental, etc., *plus* an appropriate amount for the staff time of public employees involved in locating the records, making copies and returning the records to the proper files. Op. Att'y Gen. No. 01029 (August

2, 2001). In that regard, we generally will not look behind a charge of $.25 per page for photocopies *in addition to* the costs of staff time of the public employees involved. *Id.* This office has also taken the position that the actual cost of making photocopies of records can include the cost of having the records reviewed by counsel to determine if there is any basis to keep the records confidential.

3. If copies of records requested under the Public Records Statutes are estimated by the custodian of those records to cost more than $50, the custodian may require the requestor to furnish a deposit prior to fulfilling the copying request. In our view, the amount of the deposit which may be requested by the custodian of the records can include the entire amount of the estimated charges for the copies.

4. The legislative history of 2000 Neb. Laws LB 628 makes it clear that the custodian of public records is not required to abandon all other public duties in order to accommodate a request for copies of public records. Accordingly, we believe that the custodian of public records can take a reasonable amount of time to respond to a request for copies, particularly when the custodian is required to conduct a search through voluminous documents to find the records requested.

Our analysis of your public records inquiry will be based upon those requirements of the Public Records Statutes.

In your public records request to the District, you asked for the actual transactions pages from the District credit card accounts that include the transactions done by or for Mr. Staab and Mr. Berney for three years – 2009, 2010 and to date in 2011. You also requested the information needed to identify which transactions were completed by Mr. Staab and Mr. Berney individually. When we discussed this issue with you on April 12, 2011, you indicated further that the records which you seek are the monthly account statements for any District credit cards which reflect charges by Mr. Staab or Mr. Berney. You do not wish copies of the underlying receipts for individual purchases by either of those gentlemen.

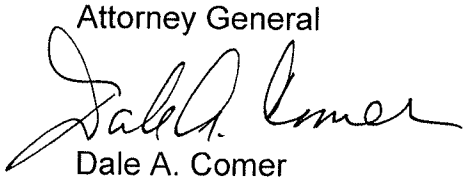
It has now become apparent to us, through our conversations with Mr. Staab, that there was confusion with respect to what records were the subject of your public records request. The District officials understood that you were seeking copies of the underlying receipts for individual purchases by Mr. Staab and Mr. Berney. Instead, you seek copies of monthly credit card account statements which include purchases by those individuals. As a result, the charges quoted to you for copies by the District are based upon costs associated with producing the wrong records.

It is our understanding that the District will provide you with a revised response to your public records request which will reflect the actual cost of providing copies of the account statements which you seek. In that regard, Mr. Staab has informed us that both he and Mr. Berney have their own District credit cards which generate monthly statements, and copies of those statements will be provided to you. However, the District is also entitled to charge you for the actual costs of providing those copies, and those costs include: 1. actual costs of making copies – toner, paper, etc. (we won't look behind a charge of $.25 per page), 2. costs of staff time associated with finding the statements, making copies and returning them to the proper file, and 3. to the extent necessary, costs of legal review of the records (we agree with you that those costs should be minimal here, given the nature of the records). In the event that the actual costs appear to exceed $50, the District may still ask you to pay the entire deposit for copies before it begins the copying process. In any event, we anticipate that the copying costs and the time frame needed for a response will be less than the figures originally described to you because of the nature of the records which you seek.

Since the District will provide you with a revised public records response, there is no need for further action by this office at this time. 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 yours,

JON BRUNING
Attorney General



Dale A. Comer
Assistant Attorney General

cc. Mr. Stan Staab

05-264-30