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November 30, 2012

Dawn Maslonka
210 John Street, PO Box 475
Homer, NE 68030

RE: *File No. 12-R-126; Village of Homer, NE; Petitioner Dawn Maslonka*

Dear Ms. Maslonka:

This letter is in response to your e-mail sent to this office on August 21, 2012, in which you requested our assistance in obtaining certain public records belonging to the Village of Homer (the "Village"). As is our normal practice with such requests, we contacted the party against whom the complaint was made. In this case we contacted Jeanine Webb, Village Clerk, and requested a response to your complaint, which we received on August 24, 2012. On August 27, 2012, the undersigned e-mailed you and requested copies of the public records requests you submitted to the Village, and any responses you might have received from the Village. You did not respond to our request. On September 5, 2012, we requested by e-mail, additional information from Ms. Webb, and mailed a letter on this date to both parties indicating that our disposition of this matter would be delayed. Our letter advised that you still had the opportunity to submit the documentation we requested in our e-mail of August 27, 2012. Ms. Webb timely provided us the materials we requested. On September 13, 2012, you e-mailed the undersigned regarding your complaint. You did not provide the requested materials, but did indicate that you had received the requested records from the Village.

We have now considered your August 21, 2012, e-mail, which we have construed to be a petition for access to records under Neb. Rev. Stat. § 84-712.03 (the "Petition"), your September 13, 2012, e-mail to the undersigned, and various documentation from the Village of Homer under the Nebraska Public Record Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2012) ("NPRS"). Our findings and future action in this matter are set forth below.

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FACTS

Our understanding of the facts in this case in based solely upon the contents of the two e-mails you sent to this office and the information provided to us by Ms. Webb on behalf of the Village of Homer.

It appears that you submitted two public records on consecutive days in August 2012. The first request was e-mailed to Ms. Webb and two Village board members—Corbet Dorsey and Angie Kent—on August 14, 2012, at 9:17 a.m. In this e-mail, you requested the following:

> Pursuant to Neb. Laws LB 628, I would like a copy of August's Village Board Agenda, and the meeting minutes.
>
> An electronic copy would be fine.

You go on to state that, as an alternative, you could copy the records at the Village office or at the "Emporium."

The following day, at 4:56 p.m., you e-mailed another public records request to Ms. Webb, and again copied Mr. Dorsey and Ms. Kent. There, you stated, in pertinent part:

> I noticed I never did get the March Meeting Minutes.
>
> Instead of me sending a separate email for each month, I would like Jan - August Meeting Minutes, at your earliest convenience. However you want to do it, email them to me, or we can make copies. doesn't [sic] matter to me. Just let me know.

We note that this e-mail included a forwarded e-mail message from March 27, 2012, which read:

> Hi Jeanine-
>
> I got a receipt in my email today, for the brackets that the village paid for. Would you like me to forward that to you, for your records?
>
> I FINALLY figured out how to add the village board meeting minutes & agenda to the Homer site. And then, after figuring it out, I made some hosting changes, and couldn't upload anything. Ug. Now I seem to be back on track, so if you wouldn't mind sending me minutes and agendas, I'll get them added. :o) Thanks!

It appears that Ms. Webb attempted to respond to your requests on August 16, 2012, well within the statutory deadline of four business days after actual receipt of the requests. In her response to you, Ms. Webb wrote:

> I will make copies for you they are .25 cents a page, I can make them double sided for you so it will cut the cost down, do you still want January – August or do you just want March and August, please let me know I will make the copies and you can pick them up. Thanks.

However, Ms. Webb's e-mail was addressed to drmaslonka@huntel.net. Apparently, on August 24, 2012, you were able to determine from a forwarded e-mail from Ms. Kent, that Ms. Webb's response to your public records request was sent to the "huntel.net" address. You responded to Ms. Webb et al. as follows:

> Jeanine-
>
> Please see that my email is drmaslonka@gmail.com. The requests I send you, are from this email address.
>
> I actually did have the huntel.net email address, but that was years and years ago. I am not sure how your computer sometimes sends them to the right address, and sometimes the wrong one. Is there a way to delete the incorrect email account from your list?
>
> Going forward, please make sure all correspondence goes to my correct email account.
>
> I am so glad we were able to solve the mystery!
>
> Thank you!

Additionally, we are in receipt of your e-mail sent to Ms. Webb on August 28, 2012, at 11:09 a.m., in which you clarified your request for the "Jan-July's minutes." Ms. Webb responded approximately an hour later advising you that the copies were ready to be picked up and would cost $3.50. You then responded: "THANK YOU! If I can get me or my son up there tomorrow, I will, if not, for sure I'll be there Thursday. :o)" You confirmed that you received the records in your September 13, 2012, e-mail to the undersigned. Ms. Webb also confirmed that you paid for and picked up the requested records.

YOUR ALLEGATIONS AND THE RESPONSE FROM THE VILLAGE

In your petition filed with this office on August 21, 2012, you allege, in pertinent part, that

> I have asked the clerk repeatedly for minutes in writing through email. She does not respond. She will respond to other requests, just not for minutes. I have never been given a reason why I can't have them. In the past, if I have needed a copy of village codes or something, I have had to escalate it to a board member. This time, even that isn't working, and frankly, I am tired of this silliness. I just want a copy of the minutes of the last meeting. . . . I asked the clerk 5 business days ago for the minutes, and copied two village board members as well, hoping she would respond. She did not. I did send her a copy of the statute on this website, saying she needed to respond by allowing me to have a copy, or giving me a reason why I could not have a copy. I would like it resolved by simply having her give me copies as requested, in a reasonable time frame. We are a village of under 500 people. I can't imagine why it takes weeks and months to get copies of public records, if you are lucky enough to get them at all.

In her response to this office, Ms. Webb informs us that she has sent you several e-mails in the past to the "huntel.net" address, which we understand, as recently as August 28, 2012, was still an active e-mail address. Ms. Webb also expressly refutes your claim that she has not provided you copies of meeting agendas and minutes. She states that "[f]rom September 2011 until July 2012 I have emailed her the agenda and minutes . . . ." Ms. Webb states that you have never told her during this time period that you had not received the records. She further states that "[n]o information has ever been withheld from Dawn or any other citizen[;] they are more than welcome to stop in the Village office and look at any paperwork that is public knowledge for free, or they may obtain copies or copies of CD's of the meetings . . . ."

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. A public body is not required, however, to create documents that do not otherwise exist, or to answer questions made to the public body under the guise of a public records request.

The facts of this case are not in dispute. Ms. Webb inadvertently responded to your public records requests using an e-mail address you no longer use. She did not receive an error or failed delivery message. According to her response to this office, there was no attempt to withhold the requested records from you, and that you did, in fact, receive the requested records sometime on or around August 29 or 30. We find Ms. Webb's representations with respect to providing you public records very credible. We are unable to conclude, therefore, that the Village of Homer unlawfully denied you access to public records, in violation of the Nebraska Public Records Statutes. Consequently, we will simply remind Ms. Webb to contact you in the future using your gmail address. We would also suggest that you deactivate e-mail addresses you no longer use to avoid confusion of this nature in the future.

Since you have received the records which were the subject of your public records request, our normal course of action would be to simply close the file. However, in the present case, we have identified a number of factors which we found to be problematic and which warrant further comment. One such factor was your failure to provide this office any documentation to support your allegations, which we requested from you twice. Another example is the fact that you waited over two full weeks to let us know that you had received the requested records from the Village. Additionally, we view your comment in the September 13, 2012, e-mail, that "[a]s far as [you] were concerned, this matter is resolved" equally troublesome, as you seem to ignore the fact that this official investigation was still ongoing.

The underlying purpose of the Nebraska Public Records Statutes is to guarantee that citizens and other interested individuals attain access to public records in the State of Nebraska. Neb. Rev. Stat. § 84-712.03 requires this office to investigate and make determinations as to whether a public body has unlawfully denied access to public records or has otherwise failed to comply with the Public Records Law. We further note that Neb. Rev. Stat. § 84-712.09 (2008) of the NPRS expressly provides that

> [a]ny official who shall violate the provisions of sections 84-712, 84-712.01, and 84-712.03 to 84-712.08 shall be subject to removal or impeachment and in addition shall be deemed guilty of a Class III misdemeanor.

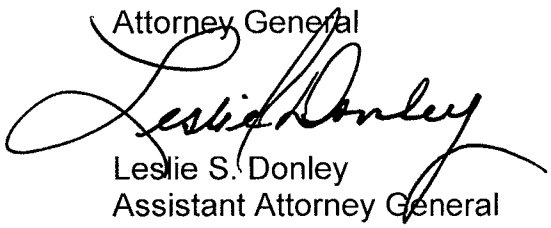
As you can see, anyone convicted of violating the NPRS may be removed from public office and could face up to ninety days in jail. In other words, there are serious consequences for public officials who violate these statutes.

After careful consideration of all of the material received, it appears to us that you had access to these records all along, starting sometime in the fall of 2011. It also appears to us that the Petition you submitted to this office was motivated by a personal dispute with the Village Clerk and/or other members of the Village Board, perhaps over

the content of your Homer website. However, whatever the reason, we believe that the Petition you filed with this office constitutes a misuse of the Public Records Law. The resources of this office cannot and will not be used to help wage personal battles against governmental officials or to intimidate or harass them. We would strongly suggest that, in the future, you be extremely circumspect in filing any complaint or petition with this office or any governmental agency charged with the duty of investigation.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
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cc: Jeanine Webb
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49-919-30