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October 7, 2013

Gary Owens
8702 Pinkney Street
Omaha, NE 68134

RE: *File No. 13-R-124; Sarpy County District Court; Gary Owens, Petitioner*

Dear Mr. Owens:

We are writing in response to your e-mail received by this office on September 20, 2013, in which you seek our assistance in determining whether the Sarpy County District Court has unlawfully denied you access to public records under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008 & Cum. Supp. 2012) ("NPRS"). As is our normal practice with such requests, we contacted the party against whom the complaint was made and requested a response. In this case, we directed your correspondence to Carol Kremer, Clerk of the Sarpy County District Court. On September 30, 2013, we received correspondence from Deputy County Attorney John W. Reisz, who responded on behalf of Ms. Kremer. We considered your September 20, 2013, e-mail to be a petition against the Clerk under § 84-712.03 of the NPRS.

On October 3, 2013, the undersigned received additional correspondence from you, in which you stated:

> I gave every above named party, and a copy to your office, of my LB 363, written request on 09-11-2013, and I have received no response to my requests in 4 days, by the above individuals, as required by statue [*sic*].
>
> The 4 days are way past. I also gave each one another copy requesting access or written denial on 10-01-2013.
>
> I request immediate written replies declining my request or allowed access to the public records. The case and requests were mentioned in a letter,

Sarpy Clerk of District Court, Court File, CI 13 5396, on 09-12-2013, also I believe, allowing me access.

While your September 11, 2013, request for records listed various governmental officers and staff, including Attorney General Bruning, the Sarpy County Attorney and the Clerk of the Sarpy County Court, the petition filed here only named the Clerk of the Sarpy County District Court. However, we will consider your October 3, 2013, correspondence as a petition against the Sarpy County Attorney and the Clerk of the Sarpy County Court. Our dispositions in those matters will be issued in accordance with the timeline explained below.

PROCEDURAL MATTERS

Before we begin, we would like to discuss several procedural matters relating to our enforcement duties under the Nebraska Public Records Statutes. Under Neb. Rev. Stat. § 84-712.03, our review is limited to whether a record may be withheld from public inspection or whether the public body has otherwise failed to comply with the Nebraska Public Records Statutes. Under recent amendments to the statute by LB 363 [2013 Neb Laws LB 363, § 1], we are also required to determine whether the fees charged by the public body for producing public records are appropriate under § 84-712. Pursuant to § 84-712.03, this office is given fifteen (15) calendar days after submission of the petition in which to make a determination.

Please note that it is unnecessary for you to send us your public records requests at the same time your requests are submitted to the public body. In the event you need to file a petition with us, you can then attach your request, and any documentation you might have received from the public body, to your petition. We also do not need from you any supplemental or background information as to why you may be seeking a public record. The underlying reason for your public records request is not relevant in determining whether the public body has complied with these statutes, and we do not consider it in our analysis. *See State ex rel. Sileven v. Spire*, 243 Neb. 451, 500 N.W.2d 179 (1993) (Neb. Rev. Stat. § 84-712 of the NPRS does not require any showing by a person requesting access to public records of the reason for his or her review of those records).

We would also suggest that you refrain from referencing "LB 363" in your overall correspondence for access to public records. As we informed you in our disposition letter dated September 26, 2013, Neb. Rev. Stat. § 84-712 of the NPRS was amended with the enactment of Legislative Bill 363 during the 2013 legislative session. However, you should cite to the relevant statute—§ 84-712—and not the legislative bill that amended it. In this regard, a "LB 363 request" or a "LB 363 complaint" has little significance, and may in fact be confusing to some individuals. Ultimately, any public records request that references the "Nebraska Public Records Statutes" should suffice.

RELEVANT FACTS

Our understanding of the facts in this case is based on the information contained in your petition and the county's response. As mentioned above, on September 13, 2013, this office received a copy of your public records request, dated September 11, 2013, addressed to "Attorney General Bruning and Sarpy County Officials."

According to your public records request, you sought to "review and copy any and all records, search warrants, arrest warrants, files, tapes, exhibits, affidavits, allegations and reports, filed on Gary Owens, or with Gary Owens name on them." Your request further stated:

> You should not be able to get someone arrested in secret. I request all Court Records of when, what, where and who made statements to the Court. I request access to public Court Proceedings. I will pay immediately all Court Transcripts, Bill of Exceptions, fee's. . . .

Petition at ¶ 13. You state that your public records request was personally delivered to the Clerk of the District Court on September 11, 2013. You indicate that when you inquired about your request, which we understand was sometime on or around September 20, 2013, no one in the Clerk's office could give you information about its status. You state that "[i]t is way past the 4 days and I request access to my request or a written denial as LB 363 dictates so I may file a writ."

According to Mr. Reisz, on August 26, 2013, you filed a motion in the Sarpy County District Court captioned "Motion – Search Warrants, GPS, Home, Cellular and Home Landline." In your motion, you requested the court to "unseal the search warrants and affidavits issued unlawfully against this Pro Se." District Court Judge Kelch entered an order denying your motion the following day. In his order, Judge Kelch wrote:

> In regard to the motion filed by Gary Owen, the Court has reviewed every sealed search warrant and all other pleadings contained within the miscellaneous file for the year 2013 for the District Court of Sarpy County, Nebraska. No application for search warrant or search warrant contained within the miscellaneous file for the year 2013 for the District Court of Sarpy County referenced a Gary Owen or the phone number listed on the motion filed by Gary Owen, 402-681-3083. [Note: The county court files were not reviewed as those do not involve the district court which was referenced in the pending motion.] Therefore, without having a copy of an alleged document issued by the District Court of Sarpy County, Nebraska, to reference, there is no current justiciable issue before the Court.

Mr. Reisz further informs us that with respect to some of the other information sought, e.g., reports, allegations and statements, the District Court does not have these items. He states that records relating to the forgery allegations referenced in your request "are subject to the criminal discovery process at CR13-5756, a matter on file in with Sarpy County Court . . . ." He further states the Clerk of the District Court is not the custodian of items such as tapes and exhibits. Mr. Reisz states that you have not been denied access to public records in the possession of the Clerk of the District Court.

Finally, in the e-mail from Ms. Kremer to you dated October 1, 2013, Mr. Kremer states:

> The request dated 9-11-2013, #1—you wanted to view your file, we have the copies of your file—the original file was sent to Douglas County. As I told you in our phone conversation last Thursday [September 26, 2013], you need to come in our office and mark the pleadings that you want copied and we will make the copies. We have your certified copy of my memo that was sent to Douglas County that you have not picked up yet, I believe that you called on Monday September 30th. Please pick it up at your earliest convenience. The cost is .25 cents for the copy and $1.00 for the certification.
>
> ***The other request are not anything that we have in District Court, so I won't be able to give that information.***

(Emphasis added.)

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. The NPRS do not require a public body to review documents and create abstracts or other lists, to answer questions or to create documents which do not otherwise exist.

Your first attempt to obtain records pertaining to the forgery allegations involved filing a motion in the district court. Judge Kelch indicated to you in his August 27, 2013, order that the 2013 miscellaneous district court file contained <u>no application for search warrant or search warrant referencing you or your phone number</u>. Judge Kelch further

advised that the county court files were not reviewed because those files do not involve the district court.

You then filed your September 11, 2013, public records request with various Sarpy County officials. In her October 1, 2013, e-mail, Ms. Kremer indicated that she would make copies of a certain file for you if you would come to her office and indicate what pleadings you wanted. However, Ms. Kremer also indicated that her office did not have anything pertaining to your other request, which we understand is the criminal matter. Mr. Reisz informs us that the records you seek relate primarily to the forgery allegations which are now the subject of a pending criminal complaint in the Sarpy County Court [CR 13-5756]. He also represents that the District Court does not have the requested records.

Upon review of the entire record, it does not appear to us that the Clerk of the District Court has denied you access to public records. To the contrary, Ms. Kremer has attempted to make available to you any records of and belonging to the Sarpy County District Court which are responsive to your requests. Her October 1, 2013, e-mail evidences her willingness to do so. Consequently, we conclude that the Clerk of the District Court did not unlawfully deny you access to public records, and we are closing this particular file.

However, we are concerned that it does not appear that the Clerk's office responded to you within the time frame set out in § 84-712. We would advise Ms. Kremer, by sending a copy of this disposition letter to Mr. Reisz that, in the future, a timely response must follow any request for public records. Further, the Clerk's response must fully comport with the requirements set out in Neb. Rev. Stat. § 84-712(4). And, in the event access to particular records is denied, that the Clerk include all of the components set out in Neb. Rev. Stat. § 84-712.04 in its denial letter.

If you disagree with our legal analysis set out herein, you may wish to consult with your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

JON BRUNING
Attorney General

Leslie S. Donley by D. Lemer

Leslie S. Donley
Assistant Attorney General

cc: John W. Reisz
49-1029-30