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January 30, 2014

Mark Koch
500 Edith
PO Box 280
Sargent, NE 68874

RE: *File No. 14-R-103; City of Sargent; Mark Koch, Petitioner*

Dear Mr. Koch:

This letter is in response to your Public Records complaint received by us on January 15, 2014, in which you requested our review of a public record request made by you to the City of Sargent ("City") for a large number of documents. We have considered your complaint under the Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2008, Cum. Supp. 2012, Supp. 2013), and our findings in this matter are set forth below.

RELEVANT FACTS

On December 27, 2013 you made a request to inspect and copy, with your own copying equipment, the following documents from the City:

1. Each of the Sargent Mayor and City Council member packets of information prepared for each Sargent City Council meeting from January, 2009 through December, 2013;
2. The signed Sargent City Council Minutes for 2009-2013;
3. The signed Sargent City Health Board minutes for 2009-2013;
4. The information packets prepared for the Sargent City Health Board Meetings for 2009-2013;
5. The copy of the new ordinances passed in 2009-2013 by the City of Sargent;
6. All building permits issued between January 2009 and December 2013; and
7. The loose leaf three ring binder The City of Sargent has kept "With Mark Koch's name on the cover that was present at the Sargent City Council Meeting 6 months ago."

The City replied, stating that you have requested a large amount of information, and the staff of the City Clerk's office is small – 1.5 employees. As a result, the City offered to copy the documents you requested at no charge and provide them to you in approximately ten business days.

Alternatively, the City provided you with an estimate for the cost of allowing you to inspect and copy the documents yourself in their offices. In order to provide the service necessary to dedicate an employee to your presence in the office of the City Clerk to provide the large number of documents you requested, the City states it would be required to bring an additional employee in for the three to four days they estimate it would take to produce all the above-listed documents for your inspection and copying. The City has estimated that the cost of this additional employee would be $500. The City has required you to place a deposit of $444.00 and provide them with three days' notice before you would be permitted to inspect and copy the documents requested.

You have objected to being required to provide payment to the City in order to view and copy the documents requested.

DISCUSSION

Generally speaking, the Nebraska Public Records Statutes 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 public records, and to obtain copies of public records in certain circumstances. A public body is not required, however, to stop all other work in order to fulfill a public records request.

The City has asked you to place a deposit before you will be permitted to examine and make copies of the documents you have requested. Neb. Rev. Stat. § 84-712 (3)(c) permits the custodian of records to charge for the costs of "searching, identifying, physically redacting, or copying" records, if that time is in excess of four hours. However, we believe this provision is applicable only if the requestor has made a request for the custodian of the records to make copies of the records under § 84-712 (1)(b). Your request has been made under § 84-712 (1)(a), to examine and make copies using your own copying equipment. In that instance, the custodian is not authorized by statute to charge any fees, including those for compiling the records sought. Consequently, the City is not authorized to charge you a fee for accessing the records you have requested.

You have requested what amounts to hundreds of documents, and thousands of pages, over a period of five years. We understand the City's position that providing you with these records will, effectively, shut down the City Clerk's office for the period of time you are examining and copying the records you seek. While the City may not charge you a fee for providing you access to the records you seek, the City may impose reasonable time limitations upon the manner in which you are permitted to examine and copy the records. Doing so would not be a violation of the Public Records Statutes.

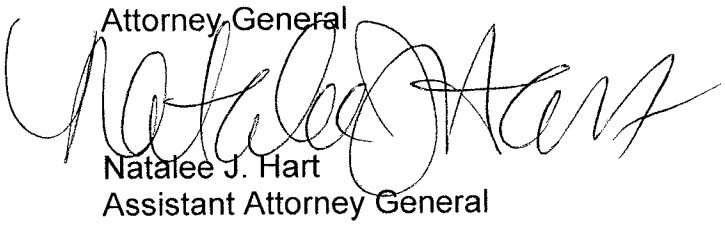
CONCLUSION

For the reasons stated above, we disagreed with the City's interpretation of Neb. Rev. Stat. § 84-712 and the provisions for the costs of providing records. We trust that the City will provide you access to the records you seek, without charge, and will undertake this in good faith. Thus, no further action will be taken by this office with respect to this complaint.

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: Gwenda Horky

02-397-30