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JON BRUNING
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October 2, 2014

James Clark
229 Wendy Heights Road
Council Bluffs, IA 51501

RE: *File No. 14-R-126; Westside Community Schools; James Clark, Petitioner*

Dear Mr. Clark:

This letter is in response to your Public Records complaint received by us on September 17, 2014, in which you requested our review of a public record request made by you, through your former attorney, to the Westside Community Schools ("Westside") for certain documents belonging to Westside. 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

In 2012 and 2013, your attorney(s) made public records requests to Westside for a number of documents. A request in October 2012 shows twelve categories of documents sought. An additional public records request in April 2013 lists an additional four categories of documents. All related to the circumstances surrounding your dismissal as an accountant from Westside in 2010, a criminal investigation into alleged embezzlement being conducted regarding your employment with Westside, and documents you believe would exonerate you if produced. You have not provided us with some of the public records requests made by your attorney or Westside's responses[1] thereto. Consequently, we are unable to get a clear picture of exactly what has been requested and provided to you in the last two years. Additionally, we are unclear as to the exact nature of your complaints in your public records petition. However, we understand your complaint to be that some of the documents in your various requests were not provided to you. Westside states that it has provided you

[1] You state that you have had four attorneys in the last four and a half years and do not have copies of all the public records requests and responses made to Westside during this time.

with all documents which existed at the time of your requests[2].

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. This office has previously stated that Neb. Rev. Stat. § 84-712 (2008) does not require a public agency to review documents and create abstracts or other lists, to answer questions or to create documents which do not otherwise exist. Op. Att'y Gen. No. 94092 (November 22, 1994); Op. Att'y Gen. No. 94035 (May 11, 1994); Op. Att'y Gen. No. 87104 (October 27, 1987). This means the requestor is entitled only to make a request for specific documents or records, and the custodian is required only to provide documents or records responsive to the records request, if they exist. The requestor is not entitled to ask, and the custodian is not required to answer, any questions in the request. The custodian is also not required to create documents that do not exist, or to interpret a public records request to determine what records are being requested.

Our review of your Public Records Petition and the information contained therein indicates that some the documents requested by you in 2012 and 2013 no longer existed as of the dates of your request. You claim the documents were destroyed. Westside states that some of the documents may never have existed at all. Nonetheless, Westside assures this office that they have produced, in good faith, everything in their possession that was responsive to your public records requests. They cannot produce records which do not exist, whether they were destroyed or whether they never existed.

You also complain that responses were not given to you within the four business day statutory time-frame. However, as you have not provided us all correspondence concerning your requests and the responses of Westside, it is impossible for us to know whether there was a violation of Neb. Rev. Stat. § 84-712 (4). Given that your requests were made in the midst of a criminal investigation and pending litigation, it is possible that extensions were voluntarily granted by your attorney who made the request on your behalf, or that Westside informed your attorney, under Neb. Rev. Stat. § 84-712 (4) that additional time would be required to fulfill your requests. Without specific evidence to the contrary, we must presume that a public body is acting in compliance with the Public Records Statutes. We are in possession of no facts or evidence that would lead us to conclude that Westside violated the Public Records Statutes as to this portion of your

[2] You state that Westside shredded a quantity of documents several months after your dismissal from your position. Westside disputes that documents you have requested were destroyed. Judge Joseph Bataillon of the United States District Court, District of Nebraska held in April 2014 that any document destruction that may have occurred was not undertaken in bad faith and that you had not shown the materials that may have been shredded were "necessarily exculpatory" or that they could not be reproduced.

complaint.

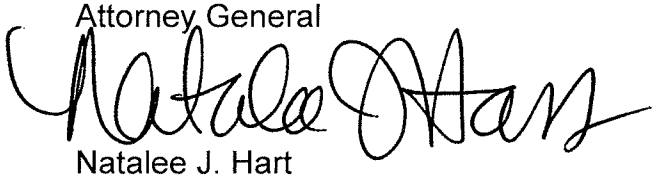
In your e-mail to this office, you have also sought the assistance of the State Auditor. You will need to contact that agency directly should you wish to pursue matters governed by the State Auditor. Additionally, as you have previously been advised by our office, allegations in your complaint relating to budget reports or the destruction of financial information is outside the scope of our authority.

CONCLUSION

Based on the foregoing, we cannot find 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: Margaret Hershiser, Koley Jessen

02-442-30