STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
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JON BRUNING
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

October 9, 2014

Laura McCormick
7414 Valley St.
Omaha, NE 68124

RE: *File No. 14-R-129; Douglas County Juvenile Court; Laura McCormick, Petitioner*

Dear Ms. McCormick:

This letter is in response to your email correspondence sent to the undersigned attorney on September 24, 2014, in which you requested our assistance in obtaining certain records from the Douglas County Juvenile Court Administrator, Raymond J. Curtis II. We considered your correspondence to be a petition for access to public records under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Supp. 2013). Our response to your petition is set out below.

FACTS

According to the documentation we received from you, on July 9, 2014, at 5:57 p.m., you emailed Mr. Curtis and requested the following:

> I would like to review any and all job descriptions for all employees reporting to you. I would also like to review your job description.
>
> In addition, I would like to review any and all policies and procedures governing the attorney payment process unit you head. I am not sure of the exact name of this unit, but Auditor Foley wrote about the unit at length.
>
> Please also clearly indicate the last date job descriptions and/or policies and procedures were revised.

You indicated in your request that you did not need copies, that you had a scanner and would scan the documents you were seeking. You also indicated that you wished to review the documents at Mr. Curtis' office. You followed up with another email on July 16, 2014, in which you wrote: "NO RESPONSE. PLEASE ADVISE."

According to Mr. Curtis, he responded to your email request by letter dated July 15, 2014. Mr. Curtis' letter reads as follows:

> This letter is in response to your records request sent via email dated July 9, 2014. Enclosed are job descriptions for court administration employees. Please remember you had previously requested the court-appointed payment process in your records request sent via email titled "Public Records Request, 10/12/12, Payment Processing, Financial Reporting request – Juvenile Court." I previously provided you with this information as an attachment included with my response letter to you dated October 16, 2012.[1]

You subsequently filed your petition with our office. You indicate that you "originally made the request to the custodian of the records on July 9, 2014. No response." You further indicate that you "believe NE law prescribes procedure governmental employees are to follow when a public records request is received . . . but I am not an attorney, so I am writing you for assistance."

ANALYSIS

We will begin by clarifying the timeframe in which a public body must respond to a request for public records. Neb. Rev. Stat. § 84-712(4) (Supp. 2013) provides, in pertinent part, that

> [u]pon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, ***but not more than four business days after actual receipt of the request***, an estimate of the expected cost of the copies and either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate

[1] A copy of Mr. Curtis' July 15, 2014, letter is attached.

> of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request. . . . .

(Emphasis added.) Applying the statutory language to the present case, since you emailed your public records request to Mr. Curtis after the end of the July 9 business day, "actual receipt" of your email request was July 10. The four business days would begin to run the day after receipt, i.e., July 11. Skipping the weekend, July 14 would be Day 2, July 15 would be Day 3, and July 16 would be Day 4. Thus, a response would have to be postmarked no later than July 16 in order to comply with the statute. Consequently, your July 16 follow-up email to Mr. Curtis was premature. We would advise you, in the future, to give the public body at issue the time allowed under the statute to formulate its response before contacting it regarding the status of a pending request.

As to the merits of your petition, Mr. Curtis represents to us that he provided you the requested job descriptions by letter dated July 15, 2014. Mr. Curtis further represents that he previously provided you payment processing information in response to your public records request to his office in October 2012.[2] In the absence of any evidence from you to the contrary, we have no reason to believe that Mr. Curtis is not operating in good faith, and has not produced the records to you as stated. Moreover, to the extent you sought to review the requested records at the office of the Juvenile Court Administrator, it now appears that Mr. Curtis has already provided you all of the records responsive to your request. However, in the event you did not receive these records, please so advise, and we will ask Mr. Curtis to resend them. Finally, based on the record before us, we are unable to conclude that you have been denied access to public records in violation of the Nebraska Public Records Statutes. Since we see no reason to continue our investigation, we are closing this file.

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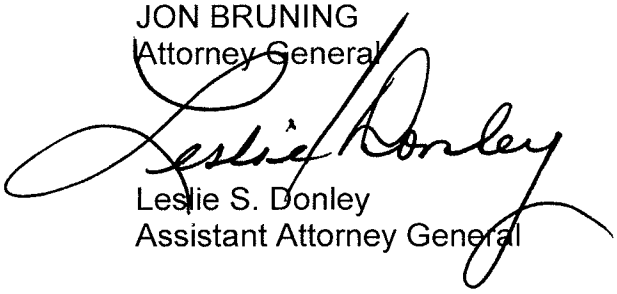
[2] *See* our attached Disposition Letter in File No. 12-R-140, *Douglas County Juvenile Court, McCormick [Petitioner]*, dated November 6, 2012, in which we discussed your receipt of "various records relating to payment processing, approval and accounting procedures performed by the staff of the Juvenile Court," and specifically a January 20, 2011, memo entitled "Revised Instructions for Submitting Attorney Fees," prepared by Mr. Curtis.

If you disagree with our analysis, you may wish to contact 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
Assistant Attorney General

Attachments

c: Raymond J. Curtis II
Judge Elizabeth Crnkovich
Corey Steel

49-1223-30

The Separate Juvenile Court
of Douglas County
RAYMOND J. CURTIS, II
COURT ADMINISTRATOR
600 HALL OF JUSTICE
OMAHA, NEBRASKA 68183

OFFICE OF THE
ADMINISTRATOR

402-444-7885
402-444-6896 FAX

July 15, 2014

Ms. Laura McCormick
7414 Valley Street
Omaha NE 68124

RE: Your email dated July 9, 2014 titled "Job descriptions/policies and procedures juvenile court"

Ms. McCormick,

This letter is in response to your records request sent via email dated July 9, 2014. Enclosed are job descriptions for court administration employees. Please remember you had previously requested the court-appointed payment process in your records request sent via email titled "Public Records Request, 10/12/12, Payment Processing, Financial Reporting request – Juvenile Court". I previously provided you with this information as an attachment included with my response letter to you dated October 16, 2012.

Sincerely,

Raymond J. Curtis II
Court Administrator

Enclosures: AS

cc: Judges of the Separate Juvenile Court

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JON BRUNING
ATTORNEY GENERAL

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

November 6, 2012

Ms. Laura A. McCormick
336 Beverly Drive
Omaha, NE 68114

Re: *File No. 12-R-140; Douglas County Juvenile Court; McCormick.*

Dear Ms. McCormick:

This letter is in response to your correspondence dated October 21, 2012, regarding access to various public records. We received your correspondence by email on October 22, 2012, and we considered that correspondence to be a petition for access to public records under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2010, Supp. 2011). Our response to your petition is set out below.

FACTS

Our understanding of the facts in this instance is based upon your correspondence and the materials you provided to us with it. We have also received some materials from Mr. Raymond J. Curtis II, Court Administrator for the Separate Juvenile Court of Douglas County.

On September 11, 2012, at a meeting of the Douglas County Child and Youth Services Committee, you made a request, "on the record," for various records relating to payment processing, approval and accounting procedures performed by the staff of the Juvenile Court. Subsequently, Mr. Curtis sent you various photocopied materials which you state did not contain the information which you had requested at the earlier meeting. As a result, you made a formal records request for particular records to Mr. Curtis on October 12, 2012. However, as of October 21, 2012, the date of your letter to us, you had still not received the document which you requested. From your petition to us, it appears that the record which you seek is a copy of the memo entitled "Revised Instructions for Submitting Attorney Fees," dated January 20, 2011, which was authored by Mr. Curtis.

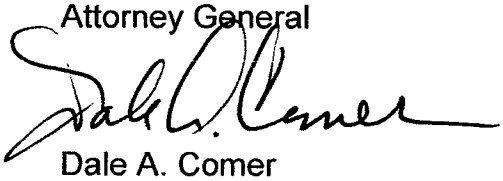
ANALYSIS

On the same day that we received your records petition by email, we received a copy of a letter to you from Mr. Curtis dated October 20, 2012. In that letter, Mr. Curtis indicated that he had attached the memo dated January 20, 2011, which was the object of your records request and your records petition. Therefore, it appears that you were provided with a copy of the document which you asked us to obtain for you. Since you have now received that record, there is no need for further action by this office, and we are closing this file.

If you disagree with the analysis set out above, you may wish to discuss this matter further with your private attorney to discuss what, if any, additional remedies are available to you under the Public Records Statutes.

Sincerely,

JON BRUNING
Attorney General



Dale A. Comer
Assistant Attorney General
Chief, Legal Services Bureau

cc. Raymond J. Curtis II

05-428-30