STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

JON BRUNING
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

October 16, 2014

Laura McCormick
7414 Valley St.
Omaha, NE 68124

RE: *File No. 14-R-130; 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 30, 2014, at 8:08 p.m., in which you requested our assistance in obtaining certain records from the Douglas County Juvenile Court and its 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

Our understanding of the facts in this instance is based upon your correspondence. We have also received some materials from Mr. Curtis, which we considered in our analysis.

According to the documentation we received from you, you purportedly sent an email to Mr. Curtis on September 24, 2014, at 9:08 a.m. Your email reads as follows:

> Dear Mr. Curtis-
>
> This is a public records request pursuant to NE 84 712. I do not require copies. I have a scanner and am able to scan the documents when I review them. I can also provide a new in box flash drive, should the records be in electronic format.

> I am requesting any and all invoices submitted from January 1, 2013 to August 31, 2014 to the Douglas County Juvenile courts by Ms. Jane McNeil. Her invoices are for work performed in the Douglas County Juvenile Courts.
>
> The Douglas County Comptroller does not receive invoices. All invoices are directed to Mr. Ray Curtis, Juvenile Court Administrator.
>
> Please let me know when I will be able to review these documents.

You apparently sent your email meant for Mr. Curtis to Deputy Douglas County Attorney Theresia M. Urich. Ms. Urich responded to your email ten minutes later, informing you of your error. As a courtesy, Ms. Urich cc'd Mr. Curtis on her email to you.

We received Mr. Curtis' response to your public records request on October 2, 2014. Mr. Curtis indicated to you that "[t]he Juvenile Court maintains your request is not subject to the public records statutes and is denied at this time." He advised you of your administrative and judicial rights of review under Neb. Rev. Stat. § 84-712.03. Mr. Curtis also reminded you that you had made a similar request in December 2012, which the Juvenile Court similarly denied.

You subsequently filed your petition with our office, which consisted of the following: "No response. Please see below. Request was made to custodian of the records in accordance with NE 84 712."

ANALYSIS

In our most recent correspondence to you, dated October 9, 2014, we began our analysis by clarifying the timeframe in which a public body must respond to a request for public records. We advised you that, pursuant to Neb. Rev. Stat. § 84-712(4), a public body has four business days after actual receipt of a public records request in which to respond to the requester. Under the circumstances here, and assuming Mr. Curtis received your request on September 24, his response would have to be postmarked no later than September 30. In this regard, there is nothing in the NPRS that requires Mr. Curtis to respond to you by email. Depending on the speed of mail delivery, a mailed response may not arrive until one to three days after the four business days. However, we note that you emailed the undersigned with your petition on the evening of September 30. Consequently, we will again suggest to you to give the public body involved the time allowed under the statute to formulate and send its response. Moreover, we do not believe that it is unreasonable for you to wait one or two days after the four business days to see if you receive a response in the mail prior to filing a petition with our office.

With respect to your petition, as you know 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 burden of showing that a confidentiality statute applies to particular records rests upon the custodian of those records. *State ex rel. Nebraska Health Care Association v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998).

In the present case, Mr. Curtis has indicated in his response to you that the requested records are not subject to disclosure under the NPRS. In support of his contention, Mr. Curtis calls our attention to Neb. Rev. Stat. § 43-2,130—"Juvenile court; files; how kept; certain reports and records not open to inspection without order of court; exception" (2008, *amended by* 2014 Neb. Laws LB 464, § 25)—which provides, in pertinent part:

> (3) As used in this subsection, ***confidential record information*** shall mean all docket records, other than the pleadings, orders, decrees, and judgments; case files and records; reports and records of probation officers; and information supplied to the court of jurisdiction in such cases by any individual or any public or private institution, agency, facility, or clinic, which is compiled by, produced by, and in the possession of any court. In all cases under subdivision (3)(a) of section 43-247,[1] access to all confidential record information in such cases shall be granted only as follows: (a) The court of jurisdiction may, subject to applicable federal and state regulations, disseminate such confidential record information to any individual, or public or private agency, institution, facility, or clinic which is providing services directly to the juvenile and such juvenile's parents or guardian and his or her immediate family who are the subject of such record information; (b) the court of jurisdiction may disseminate such

---

[1] This subsection provides:

> (3) Any juvenile (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; or who is in a situation or engages in an occupation, including prostitution, dangerous to life or limb or injurious to the health or morals of such juvenile . . . .

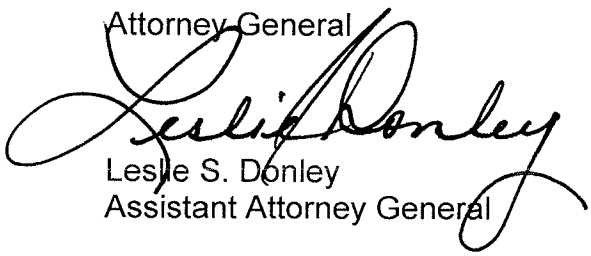
> confidential record information, with the consent of persons who are subjects of such information, or by order of such court after showing of good cause, to any law enforcement agency upon such agency's specific request for such agency's exclusive use in the investigation of any protective service case or investigation of allegations under subdivision (3)(a) of section 43-247, regarding the juvenile or such juvenile's immediate family, who are the subject of such investigation; and (c) the court of jurisdiction may disseminate such confidential record information to any court, which has jurisdiction of the juvenile who is the subject of such information upon such court's request.

(Emphasis added.) Mr. Curtis represents to us that the invoices you seek are information supplied to and in the possession of the court in individual juvenile cases. The invoices do not constitute "pleadings, orders, decrees, and judgments" which, under the statute, are subject to disclosure. Consequently, since release of the requested invoices appears to be prohibited under Neb. Rev. Stat. § 43-2,108, we do not believe that Mr. Curtis or the Douglas County Juvenile Court has denied you access to public records. Since no further investigation by this office is warranted, we are closing this records file.

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

c: Raymond J. Curtis II
Corey Steel

49-1229-30