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

DOUGLAS J. PETERSON
ATTORNEY GENERAL

NATALEE J. HART
ASSISTANT ATTORNEY GENERAL

April 10, 2015

Tom Nesbitt
7510 Sonatta Ct.
Lincoln, NE 68516

RE: *File No. 15-R-113; City of Lincoln, Parks and Recreation; Tom Nesbitt, Petitioner*

Dear Mr. Nesbitt:

We are writing in response to your letter hand delivered to the Attorney General on March 26, 2015, in which you requested our assistance in obtaining certain public records belonging to the City of Lincoln Parks and Recreation Department ("City.") As is our normal practice with such requests, we contacted the party against whom the complaint was made. In this case, we spoke to Jocelyn Golden of the City's Law Department on March 26, 2015. We consider your letter to be a petition for access to records under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014). Our findings are set forth below.

RELEVANT FACTS

Our understanding of the facts in this matter is based on your public records request, the City's response dated March 18, your letter to this office, and our phone conversation with Ms. Golden on March 26. In a letter dated March 2, 2015, you sent a public records request to the City for various documents related to the Lincoln Parks and Recreation Golf Division. Lynn Johnson, Parks and Recreation Director, wrote you on March 18, 2015 stating that they would be unable to fulfill your request within four business days and estimating that the records you requested would be provided by March 24, 2015, at no cost to you. You filed your petition on March 26, 2015.

We contacted Ms. Golden on March 26. She informed us that the records you requested were mailed via United States Postal Service, first class, by the City on March 24 to the address you provided. The records consisted of several pages from the City's finance department and contained no redaction of information.

We do note that your request to the City was dated March 2, 2015 and the City's initial response to you was dated March 18, 2015. Even considering time for mailing of your request to the City, the City's initial response was not made timely. Neb. Rev. Stat. § 84-712 (2014) states:

> (4) Upon 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 of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request. The requester shall have ten business days to review the estimated costs, including any special service charge, and request the custodian to fulfill the original request, negotiate with the custodian to narrow or simplify the request, or withdraw the request. If the requester does not respond to the custodian within ten business days, the custodian shall not proceed to fulfill the request. The four business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. Business day does not include a Saturday, a Sunday, or a day during which the offices of the custodian of the public records are closed.

Neb. Rev. Stat. § 84-712 (4) requires the custodian of the records to reply within four business days of the receipt of a written request for records. The City's letter of March 18, 2015 explains that Mr. Johnson had been out of the office when your request was received, and following his return, Ms. Golden was then out of the office. Thus, the City's response was delayed. However, the Nebraska Public Records Statues specifically require a public body to respond within four business days. We understand that personnel may be out of the office, however, a public body has a responsibility to ensure that all public records requests are dealt with timely. We will remind the City, through a copy of this letter, that all public records requests must be responded to in writing within four business days.

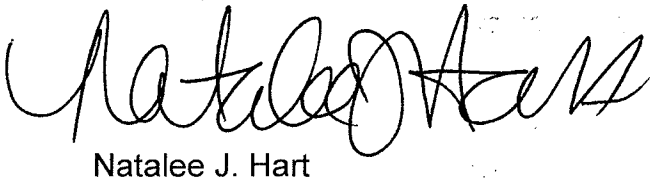
DISCUSSION

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 create documents that do not otherwise exist, or to answer questions made to the public body under the guise of a public records request.

When we receive petitions under Neb. Rev. Stat. § 84-712.03, our focus is to ensure that citizens have not been improperly denied public records. Since the City has provided the records which are responsive to your public records request, we see no basis for further action by this office and we are closing this file.

Sincerely,

DOUG PETERSON
Attorney General



Natalee J. Hart
Assistant Attorney General

cc: Jocelyn Golden
Lynn Johnson

02-485-29