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April 22, 2015

Mike Champion
15007 S. 24th Ave.
Bellevue, NE 68123

RE: *File No. 15-R-115; City of Bellevue; Michael Champion, Petitioner*

Dear Mr. Champion:

This letter is in response to your Public Records petition received by us on April 7, 2015. You seek our review of a denial of a request made by you to the City of Bellevue ("City") through the City Attorney, for certain records belonging to the City. As is our normal practice with such requests, we contacted the party against whom the complaint was made. In this case, we spoke with Patrick Sullivan on April 16 and received a written response from Angela Schmit on April 20, 2015. We have carefully reviewed your request and the response of the City received by our office, under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2014). Our findings in this matter are set forth below.

FACTS

Our understanding of the facts in this case is based on your public records petition, the two e-mails between you and the City Attorney, Ms. Schmit, regarding your request for a copy of a recording of an arbitration hearing, along with the response of the City to your petition. You made a public records request via e-mail on April 2, 2015 for the recording of a termination arbitration hearing on November 17, 2014 concerning your former employment with the City. Your request does not reference the Nebraska Public Records Statutes; however, what you seek is a public record, as that term is defined in Neb. Rev. Stat. § 84-72.01 (2014). On April 6, 2015, Ms. Schmit replied:

> At this time the City is not willing to provide a copy of the arbitration hearing. The City does not have a past practice of providing such information. Further, you have not expressed any cause or basis for such information. As you are aware, the underlying issue was not fully arbitrated and the hearing ended before the matter was fully presented in order for the parties to conduct settlement negotiations. An agreement

> was successfully reached which fully resolved the underlying issue. A copy of the fully executed agreement is attached. Subsequently, you voluntarily resigned from employment with the City of Bellevue.
>
> If this request is being made in anticipation of litigation, please advise. Additionally, if you have retained legal counsel to represent you, please provide me with his or her contact information so that I may correspond directly with your legal counsel in the future.

You seek a review of the City's denial by this office. Following receipt of your Petition, the City informed us that they would be providing you with a thumb drive containing the recording you requested by the end of the week of April 20.

ANALYSIS

The Nebraska Public Records Statutes ("NPRS") are found at Neb. Rev. Stat. §§ 84-712 through 84-712.09. Your request for records was denied by the City. Neb. Rev. Stat. § 84-712 (4) (2014) requires:

> 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) <u>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</u> (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) (emphasis added). Neb. Rev. Stat. § 84-712.04 (2014) governs denials of public records requests and provides:

(1) Any person denied any rights granted by sections 84-712 to 84-712.03 shall receive in written form from the public body which denied the request for records at least the following information:

(a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial;

(b) The name of the public official or employee responsible for the decision to deny the request; and

(c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

(2) Each public body shall maintain a file of all letters of denial of requests for records. This file shall be made available to any person on request.

The City's denial from Ms. Schmit on April 6, 2015 did not comply with Neb. Rev. Stat. § 84-712.04(1)(a). The public body is required in their response to include information in a denial letter as to the particular legal basis for denial of a public record, which is typically one of the provisions found in Neb. Rev. Stat. § 84-712.05 (2014), the name of the public official responsible for the denial of the request, and the right to review of that determination. We will remind the City, through a copy of this letter to Ms. Schmit, that all public records requests must be provided proper responses under Neb. Rev. Stat. § 84-712.

While we believe the City's response to your public records request was deficient, 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 will now be providing the record which is responsive to your public records request, we see no basis for further action by this office and we are closing this file.

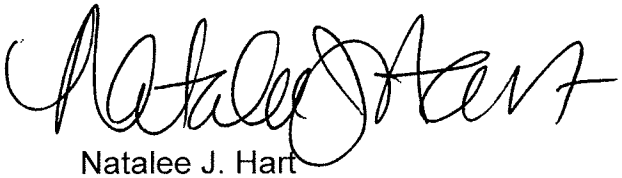
CONCLUSION

As the City will be providing you with the recording you requested by the end of this week, we will take no action regarding your petition. If you disagree with our analysis under the Public Records Statutes set out above, you may wish to discuss this

matter with your private attorney to determine what additional remedies, if any, are available to you under those statutes.

Sincerely,

DOUG PETERSON
Attorney General



Natalee J. Hart
Assistant Attorney General

cc: Angela Schmit

02-490-29