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

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

September 10, 2015

Larry Nedrow
10331 N. 145th St.
Waverly, NE 68462

RE: *File No. 15-R-136; City of Waverly; Larry Nedrow, Petitioner*

Dear Mr. Nedrow:

This letter is in response to your email correspondence sent via the AGO Constituent Complaint Form on August 24, 2015, in which you sought our assistance pertaining to a request for public records submitted to the City of Waverly ("City"). On August 24, 2015, this office also received in the U.S. Mail a packet of email correspondence between you and City of Waverly officials, including Doug Rix, City Administrator/Clerk. On August 26, 2015, via email, you confirmed that you wished to file a petition with our office under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014). Consequently, on August 28, 2015, we contacted Mr. Rix and requested a response to your petition. We received Mr. Rix's response on August 31, 2015. We have now completed our analysis and have fully considered your petition and correspondence as well as the response and correspondence we received from Mr. Rix on behalf of the City of Waverly. Our findings are set forth below.

FACTS

According to the correspondence we received from both parties, on August 6, 2015, you emailed Mr. Rix, Mayor Mike Werner and City Councilman Joe Dalton, and requested a written statement from City Council John Hestermann relating to a purported conflict of interest. Mr. Rix responded to your request on August 11, 2015, indicating that "[t]here was no financial benefit." Later that day, you emailed Mr. Rix et al. and requested copies of two statements that you believe Councilman John Hestermann should have prepared and delivered to the City Clerk. On August 13, 2015, you emailed Mr. Rix et al. again, requesting acknowledgement of your previous request and "a copy of the required NACD [sic] Form C-2a for potential conflict of interest due to city employment of Logan Hestermann . . . [and] a copy of the statement

of potential conflict in the compensation of Copper Oak Investments, LLC, owned by Councilman Hestermann." Mr. Rix responded to you on August 19, 2015, indicating "that since Logan Hestermann has received no 'financial benefit,'" a filing in this matter was not necessary. As to your other request, and "per the recommendation from the Accountability and Disclosure Commission, an NADC Form C-3 was completed" and attached. It appears that your subsequent email correspondence with Mr. Rix, on August 19, 21 and 24, 2015, involved your repeated requests for NADC Form C-2a instead of Form C-3. We note that in one particular exchange, sent August 24, 2015, at 10:44 a.m., you wrote:

> Mr. Rix: Thanks for the acknowledgement to my email. You are amazing.
>
> Once again you have totally misrepresented my request in order to provide a convoluted response. Ya [sic] got to be aware, however, that I have all the time in the world to play word games with you. Thanks for the acknowledgement to my email.

In addition to the documents requested above, by email sent August 16, 2015, to Mr. Rix, Mr. Werner, and Mr. Dalton, you also sought an "electronic copy of the Plan approved by the Waverly City Council regarding the Waverly Area B Redevelopment Bucket TIF including approx. 150 or more parcels within Waverly."

According to Mr. Rix, the City of Waverly has provided you all of the requested information (except for NADC Form C-2a), including the 2013 city council minutes, the TIF Redevelopment Plan in Area B (referenced above), and NADC Form C-3. With respect to the form, Mr. Rix indicates that he spoke to Frank Daley, Executive Director of the Nebraska Accountability and Disclosure Commission, who indicated that the form that needed to be completed by Councilman Hestermann in this instance was Form C-3, not Form C-2a. He states that Form C-3 was completed and made available to you. With respect to Form C-2a, Mr. Rix indicates that there are no records responsive to this particular request.

In your petition to us, you indicate that "[t]he City of Waverly has provided some public documents as I requested. Not the specific documents, but at least they have responded." You supplemented your petition in your August 26, 2015, email to this office in which you stated, in part: "Mr. Doug Rix, Waverly City Administrator, has consistently disregarded many of my requests for copies of public documents."

DISCUSSION

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. There is no provision in the NPRS that requires a custodian of public records to review documents and create abstracts or other lists, to answer questions or to create documents which do not otherwise already exist.

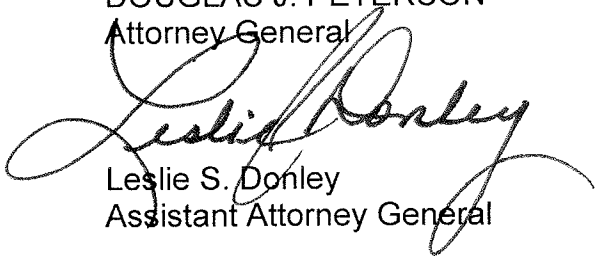
It appears to us that Mr. Rix has provided you all of the records of or belonging to the City which are responsive to your requests. We note for the record that you did not specifically indicate to us how you were denied access to public records, how Mr. Rix had "completely disregarded many of [your] requests," or in what manner his responses to you were "convoluted." To the contrary, our review of the email correspondence we received from the City indicates that Mr. Rix handled your requests for public records appropriately. In this regard, he provided you the requested meeting minutes, the TIF Redevelopment Plan, and the completed NADC form which state officials had recommended. Finally, any issue as to whether one form or another form should have been prepared and filed with the City is outside the scope of our review under the NPRS, and we will not consider that issue in this disposition.

Our ultimate focus under the Nebraska Public Records Statutes is to ensure that citizens have not been improperly denied public records. We investigate these petitions on a case-by-case basis. Since you have received all responsive records from the City of Waverly, there is no reason to continue our investigation, and we are closing this file.

If you disagree with our legal analysis set out herein, you may wish to consult with your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Doug Rix

49-1392-29