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DOUGLAS J. PETERSON
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October 13, 2015

Bob Tucker
17718 Jones St.
Omaha, NE 68118

RE: *File No. 15-R-143; City of Omaha; Petitioner Bob Tucker*

Dear Mr. Tucker:

We are writing in response to your email correspondence received by this office on September 28, 2015, in which you requested our assistance in obtaining certain public records belonging to the City of Omaha ("City"). As is our normal practice with such requests, we contacted the public body named in the petition. In this case, we contacted the City Law Department and requested a response. On October 7, 2015, we received a response from Deputy City Attorney Alan M. Thelen, who responded on behalf of the City. We have completed our analysis and have considered your petition for access to records under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014) ("NPRS"). Our findings in this matter are set forth below.

RELEVANT FACTS

Our understanding of the facts in this matter is based solely on your correspondence and the response we received from the City of Omaha.

According to your documentation, on July 27, 2015, you emailed the City Clerk Buster Brown, with a copy to the members of the Omaha City Council. Your email stated:

> Unfortunately I will not be able to attend today's Council meeting, thus please see attached re: the public hearing on annexation of SIDs.
>
> Please provide an explanation of the authority the City believes it has to ignore/override Nebraska Statute 31-675 re: the effective date of the merger of a SID with the City, and please provide the requested information on the last chart in the attached pdf to the following.

Printed wth soy ink on recycled paper

The attachment consisted of a seven-page document entitled "City of Omaha 2015 Annexation Plan, Flawed Annexation Ordinances *Again*." On the last page of the document, with the heading "With Regard to the 2014 Annexation Package," there were four bulleted paragraphs requesting information and copies of correspondence and notices. For example, the first paragraph stated:

- Provide the total amount of revenue received from the annexed areas by the City of Omaha from 3 Sep 2014 (the date the City contended the merger became effective per their Ordinance) to 3 Oct 2014 (the date the merger became effective per Nebraska Statute 31-765).
    - Break down the total revenue received into the various types; e.g., restaurant tax, etc., and the names of the entities that provided the revenue.

On August 20, 2015, you emailed Mr. Brown again, with a copy to the AGO Help web address. You indicated that "[a]s of today I've received no response to my e-mail request below. If you need a 'written request' on paper, let me know." Your email also included an excerpt from § 84-712 of the NPRS. On August 26, 2015, Mr. Brown emailed you a copy of a legal memorandum from the City Law Department written in response to your questions relating to annexation effective dates.

As noted above, on October 7, the undersigned received a response from Mr. Thelen relating to your petition for public records. The response was in the form of a letter to you, which addressed each of the bulleted paragraphs seeking information and records. The letter indicated that the requested information/records were being provided to you on a disc. On October 9, the undersigned received a copy of the disc referenced in Mr. Thelen's letter.

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. <u>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.</u>

Under Neb. Rev. Stat. § 84-712(4) (2014), requests for public records must be submitted in writing. The public body which is the custodian of the records then has four business days after actual receipt of the request to respond to the requester in some fashion as provided in the statute. Upon review, while we do not believe that the City's response to you was made in a timely fashion, we also do not believe that the manner in which you submitted your public records request was clear either. As we indicated above, you included your "request" at the end of what appeared to us a seven-page PowerPoint presentation. While there are no special words, forms or formats that citizens must use to request public records, there should be some indication that the correspondence is for the purpose of *obtaining public records*. And we must point that under the NPRS, the City of Omaha is under no obligation to answer any questions you may have had relating to the annexation issues. Despite this, we understand that the City Law Department provided you the July 29, 2015, legal memorandum which discussed these issues. In any event, since you have now received the records at issue, we see no reason to continue our investigation, and we are closing the file.

Sincerely,

DOUGLAS J. PETERSON
Attorney General

Leslie S. Donley
Assistant Attorney General

c: Alan M. Thelen

49-1407-29