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

December 10, 2015

Mike Kobliska
michaelkobliska@gmail.com

RE: *File No. 15-R-150; Clay County Sheriff; Mike Kobliska, Petitioner*

Dear Mr. Kobliska:

We are writing in response to your e-mail sent to the Attorney General on November 25, 2015, in which you requested our assistance in obtaining certain public records belonging to the Clay County Sheriff's Department (the "Sheriff"). We consider your e-mail to be a petition for access to records under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014). As is our normal practice with such requests, we contacted the party against whom the complaint was made. In this case, we spoke to Clay County Sheriff Jeff Franklin on December 3, 2015. Our findings are set forth below.

RELEVANT FACTS

Our understanding of the facts in this matter is based on your public records request, your letter to the Clay County Attorney, your petition, and our phone conversation with Sheriff Franklin. On November 12, 2015 you e-mailed Sheriff Franklin a public records request for certain records relating to a traffic stop on November 6, 2015 in which you were the driver of the vehicle stopped. You then e-mailed the County Attorney on November 23, 2015, as you had not received a response from the Sheriff by that date. The Clay County Attorney had not provided you a response by November 25, 2015, the date on which you filed your petition with this office.

We contacted Sheriff Franklin on December 3, 2015 via phone with respect to your petition. The Sheriff informed us that your initial public records request of November 12, 2015 was sent to his individual office e-mail to which no other person in his office has access. Sheriff Franklin was out of the office as of November 12 with service-related injuries. When he returned to the office on November 30 following the Thanksgiving holiday, he was contacted by the Clay County Attorney with respect to your request. The Sheriff has represented to us, and we have no reason to dispute, that your initial request was filtered by his e-mail spam filter and had been deleted as of November 30 and was never seen by him. The Sheriff only learned of your request for records on November 30 and immediately began to fulfill your request for records. He has informed us that all records requested by you were mailed to you on December 2, 2015. The Sheriff did not withhold any records responsive to

your public records request.

DISCUSSION

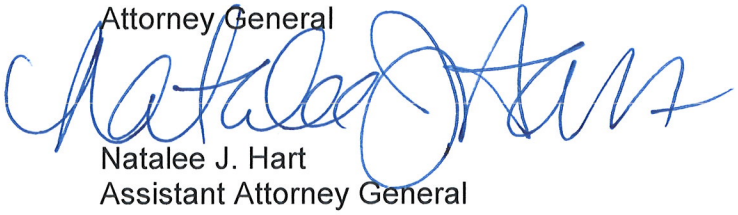
Generally speaking, the Nebraska Public Records Statutes allow interested persons in Nebraska the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those public records, and to obtain copies of public records in certain circumstances.

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 Sheriff has now 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. However, we will suggest to the Sheriff, by sending him a copy of this letter that, in the future, he may want to review the e-mails contained in his spam folder to ensure that a public records request has not been inadvertently marked as spam. He may also want to consider providing a more central e-mail address on the Clay County Sheriff's webpage to which requests such as these may be sent so they are received daily. The Public Records statutes require a timely response for any request for public records, i.e., not more than four business days after actual receipt of the request. However, as we believe the Sheriff did not actually receive your request until November 30, we do not believe him to be in noncompliance with the Nebraska Public Records Statutes in this respect.

If you disagree with our analysis under the Public Records Statutes set out above, you may wish to determine what additional remedies, if any, are available to you under those statutes.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Natalee J. Hart
Assistant Attorney General

cc: Clay County Sheriff Jeff Franklin
Ted Griess, Clay County Attorney

02-590-29