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September 7, 2010

James Edward Bensinger
112 2nd Street
Uehling, NE 68063

RE: *File No. 10-R-130; Village of Uehling; James Edward Bensinger, Petitioner*
File No. 10-R-133; City of Hooper; James Edward Bensinger, Petitioner

Dear Mr. Bensinger:

This letter is in response to your two letters, the first dated August 16, 2010, and received by us on August 20, 2010, and the second dated August 22, 2010, and received by us on August 26, 2010, in which you requested our assistance in obtaining certain records belonging to the Village of Uehling and the City of Hooper. We reviewed your letters seeking information from these entities under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008; Supp. 2009), and we considered your letters to be petitions under § 84-712.03. Our response to your petitions under the Nebraska Public Records Statutes ("NPRS") is set out below.

FACTS

On or about July 22, 2010, you mailed a letter to the clerk of each of the entities listed above and requested certain documents. With respect to the Village of Uehling, you requested the following documents:

> *[C]opies of the documents constituting the agreement for City of Hooper, Nebraska to provide police services to Village of Uehling, Nebraska.*
>
> *copies of the official bond and oath of office titling Matt Schott to possess the office of a Village of Uehling Police Officer.*
>
> *copies of the documents showing that the official bond titling Matt Schott to possess the office of a Village of Uehling Police Officer has been approved by the county board.*

> *copies of the documents showing the date that Matt Schott was appointed/elected to possess the office of a Village of Uehling Police Officer.*

It appears from the enclosed documentation that the Clerk of the Village Clerk of Uehling, Brenda Weitzenkamp, received your public records request on July 28, 2010.

Similarly, your letter to the City of Hooper requested the following documents:

> *[C]opies of the official bond and oath of office for Hooper Police Officer Matt Schott.*
>
> *copies of the documents showing that the official bond for Hooper Police Officer Matt Schott has been approved by the county board.*
>
> *copies of the documents showing the date that Hooper Police Officer Matt Schott was appointed/elected to his current term of office.*
>
> *copies of the documents constituting the agreement for City of Hooper, Nebraska to provide police services to Village of Uehling, Nebraska.*

It appears from the enclosed documentation that the City Clerk, Roxanne Meyer, received your public records request on July 27, 2010. You indicate in your petitions that, to date, you had received no response from either the Village of Uehling or the City of Hooper. During a September 7, 2010, telephone conversation with the undersigned, you represented that you still had not received any documents from either entity.

According to both of the clerks involved, documents responsive to your request were compiled in a timely fashion. However, those documents were given to Officer Schott for delivery to you. According to Officer Schott, before mailing the documents to you at the Dodge County Jail, he forwarded the documents to the Dodge County Attorney for review. In our conversations with Deputy County Attorney Tim Sopinski, he confirmed that his office had received the documents pertaining to your public records requests from Officer Schott. However, it was his understanding that Officer Schott had mailed the documents to you. In this regard, Officer Schott represents to us that the documents were mailed to you at the jail sometime on or around August 15, 2010.

Finally, we consulted with Douglas Campbell at the Dodge County Jail. Mr. Campbell told us that only legal mail is logged in; regular mail is not. His records indicate that you did receive legal mail from the Dodge County Attorney's Office on August 20, 2010. However, no other legal mail addressed to you was logged in during this time frame. Mr. Campbell further advised us that if Officer Schott used a plain envelope, in lieu of Hooper Police Department stationery, it would likely have been treated as regular mail. As such, the jail would have no record of it.

ANALYSIS

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 therefrom, and to obtain copies of public records in certain circumstances. However, while the Act provides for access to and copies of public records, it does not require public officials to answer questions, or to create records which do not otherwise exist.

In particular, Neb. Rev. Stat. § 84-712(4), provides:

> 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**, 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.

(Emphasis added.) In the present case, while it appears that the clerks of the respective towns timely compiled records that were responsive to your request, an unnecessary delay occurred when those documents were given to Officer Schott for delivery. More delays occurred when Officer Schott forwarded the documents to the Dodge County Attorney's Office. With respect to the mailing of the documents, Officer Schott represents to us that he mailed the records to the Dodge County Jail on or about August 15, where you were housed until August 24, 2010. The best we can surmise is that the records were processed as regular mail and were somehow misplaced.

In the end, however, the clerks of the two entities are the custodians of the records at issue here. Your petitions for public records were sent to their offices. As such, they are solely responsible to see that the legal requirements of the NPRS are fully complied with, not Officer Schott. As a result, we will advise Ms. Meyer and Ms. Weitzenkamp, by sending a copy of this letter to them (along with Officer Schott and Deputy County Attorney Sopinski) that in the future, *they* alone must respond to any written requests for public records. They cannot depend on other individuals to meet what are ultimately their statutory obligations.

We would also advise Officer Schott that his involvement in this process caused unnecessary delay in violation of the NPRS. Additionally, if he believed it necessary to involve the Dodge County Attorney's Office in this matter, he should have advised you of this delay in accordance with § 84-712(4). He failed to do so. Consequently, we will also advise Officer Schott that in the future, he too must fully comply with the requirements of the Nebraska Public Records Statutes.

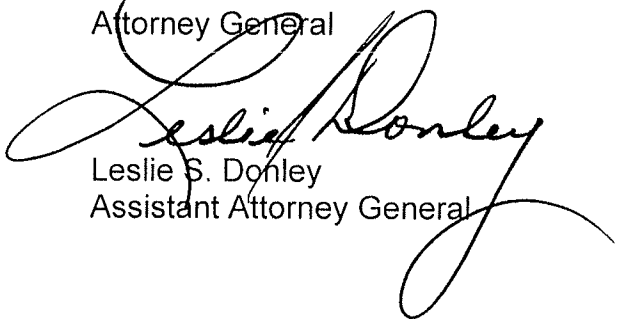
Finally, we have enclosed the documents found to be responsive to your requests, which we received from Mr. Sopinski. We are satisfied, after speaking with both clerks, that these documents represent all of the requested documents in their possession. If you find that certain documents have not been provided, it means that those documents simply do not exist.

CONCLUSION

We believe that the Clerk of the Village of Uehling and the Clerk of the City of Hooper compiled documents in a timely fashion in response to your public records requests. For whatever reason(s), those documents did not reach you while you were incarcerated at the Dodge County Jail nor were they forwarded to you upon your release. However, since we have now provided you with the requested records, we believe you have not been improperly denied access to public records. For those reasons, we are closing your file.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

Enclosures
cc: Tim Sopinski (w/o enc.)
Matt Schott (w/o enc.)
Roxanne Meyer
Brenda Weisenkamp

49-530-30