STATE OF NEBRASKA
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**JON BRUNING**
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**LESLIE S. DONLEY**
**ASSISTANT ATTORNEY GENERAL**

May 28, 2013

Mark Welsch
5611 Howard Street
Omaha, NE 68106-1257

RE: *File No. 13-R-109; City of Omaha Parks, Recreation & Public Property Department; Mark Welsch, Petitioner*

Dear Mr. Welsch:

We are writing in response to the e-mail you sent to Assistant Attorney General Dale Comer on May 10, 2013, in which you requested our assistance in obtaining certain public records belonging to the City of Omaha Parks, Recreation & Public Property Department (the "Department"). As is our normal practice with such requests, we contacted the party against whom the complaint was made and requested a response. In this case, we directed your e-mail to Brook Bench, acting director of the Department. On May 21, 2013, we received correspondence from Assistant City Attorney Michelle A. Peters, who responded on behalf of the Department. We considered 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 (2008, Cum. Supp. 2012). Our findings in this matter are set forth below.

## RELEVANT FACTS

Our understanding of the facts in this case is based on the e-mail you sent to Mr. Comer on May 10, 2013, and the Department's response.

On April 30, 2013, you e-mailed Mr. Bench, along with several City of Omaha elected officials and staff. In your e-mail, you stated, in pertinent part:

> Please send the following documents to me, by email attachment is [sic] possible. If one or more documents do not exist, I believe the Nebraska Open Records Act requires you to tell me that fact immediately.
>
> 1. The test results of the silt that came from the Elmwood Park golf course pond – that you told me about in January 2013,
> 2. The contract(s) to move the silt from Elmwood Park,
> 3. The letter you sent to the Corp of Engineers about the dredging of the pond,
> 4. The reply you received from the Corp of Engineers, and
> 5. The most recent document (email, status report, etc.) that explains why the dirt is being dumped in NP Dodge park instead of in Elmwood Park's golf course.

In your e-mail to Mr. Comer, you indicate that you have been trying to get information from the director of the Department since January 2013, and that you received no reply, either formal or informal, to your public records request.

According to Ms. Peters, there was a misunderstanding in the Department as to who was to respond to your inquiries. Ms. Peters responded to each of the five items enumerated above, and specifically provided us with two documents responsive to item numbers 3 and 4. A complete copy of the Department's response is attached to this letter.

## DISCUSSION

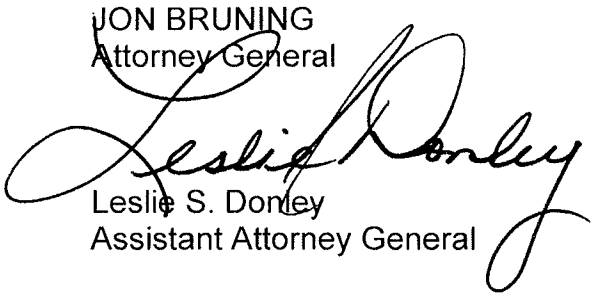
Generally speaking, the Nebraska Public Records Statutes allow interested persons in Nebraska the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those public records, and to obtain copies of public records in certain circumstances. A public body is not required, however, to create documents that do not otherwise exist, or to answer questions made to the public body under the guise of a public records request.

Since the Department has now provided the records it has 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 Department, by sending a copy of this letter to Ms. Peters that, in the future, a timely response must follow any request for public records. Further, the Department's response must fully comport with the requirements set out in Neb. Rev. Stat. § 84-712(4). And, in the event access to

particular records is denied, that the Department include all of the components set out in Neb. Rev. Stat. § 84-712.04 in its denial letter.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

Attachment

cc: Michelle A. Peters

49-986-30