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JON BRUNING
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

February 21, 2014

Bruce R. Friedman
1232 South 118th Street
Omaha, NE 68144

RE: *File No. 14-R-105; Nebraska Supreme Court; Bruce R. Friedman, Petitioner*

Dear Mr. Friedman:

We are writing in response to your various correspondence received by this office on February 6, 7, and 14, 2014, in which you call into question the actions of the Nebraska Supreme Court ("NSC") and Janice Walker, Supreme Court Administrator, in responding to your public records request dated January 29, 2014. Specifically, you have petitioned our "office to review, publish an opinion on, and issue an order requiring strict compliance with Neb. Rev. Stat. § 84-712." 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 correspondence to Ms. Walker. As requested, on February 14, 2014, NSC staff e-mailed the undersigned all of the records the NSC produced in response to your public records request, along with a copy of Ms. Walker's letter, dated February 13, 2014, which addresses the details of the record production. We also received a copy of your letter dated February 13, 2014, and Ms. Walker's letter in response, dated February 20, 2014. We considered your correspondence to be a petition under § 84-712.03 of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2012, Supp. 2013) ("NPRS"). Our findings in this matter are set forth below.

As a preliminary matter, opinions of the Attorney General are prepared in response to a specific legal question from a state agency or state official in instances where that agency or official has need of a legal opinion in the performance of their duties. This disposition letter has been written in response to a discrete set of facts and circumstances in the context of the Nebraska Public Records Statutes, and in no way constitutes an opinion of the Attorney General. We have no statutory authority to provide opinions to private individuals, and we do not do so.

RELEVANT DOCUMENTS

The relevant documents with respect to your petition include the following:

1. Your original request for public records, dated January 29, 2014, addressed to "Janice Walker[,] Administrative Office of the Courts";

2. A letter from Ms. Walker, written in response to your request, dated February 3, 2014;

3. Your letter in response to Ms. Walker's letter, dated February 4, 2014;

4. Your petition addressed to the Office of the Attorney General, dated February 6, 2014, with exhibits;

5. Your amended petition addressed to the Office of the Attorney General, dated February 7, 2014, with exhibits;

6. Five e-mails forwarded to the undersigned by Supreme Court staff. These e-mails were originally sent to you on February 13, 2014, at 3:30 p.m., and include Ms. Walker's letter to you dated February 13, 2014, and multiple attachments containing the records responsive to your public records request;

7. Your letter to Ms. Walker, in which you dispute aspects of the NSC's record production, dated February 13, 2014; and

8. A letter from Ms. Walker dated February 20, 2014, written in response to your February 13, 2014, letter.

We note that you have also provided us copies of two additional public records requests you have submitted to the NSC, along with Ms. Walker's response to each request and your follow-up response to her response. It is unclear to us why you submitted such documentation, particularly since these matters are still pending with the NSC. In any event, they have no bearing on the petition filed here, and we did not consider them.

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.

Under § 84-712.03, this office is required "to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections . . . ." In the present case, we have carefully considered the timing of events and the documentation generated in this matter. In that regard, it appears that Ms. Walker responded to your public records request two business days after its receipt by her office. In her letter dated February 3, 2014, Ms. Walker indicated that her office would not be able to fulfill your records request within the statutory time frame. She indicated that the delay was necessitated by the need to obtain legal advice on potentially confidential matters and to assist in the computation of costs associated with your request. Ms. Walker also wrote that "the earliest practicable date for fulfilling your request, or otherwise responding to such request, would be no later than the end of the business day on Friday, February 14, 2014." She reiterated that while she did not have, at that time, "an accurate estimate of the expected cost" to produce the requested records, one would be forthcoming.[1]

Ms. Walker followed up this letter with an e-mail to you on February 6, 2014, in which she states:

> Mr. Friedman,
>
> We have conducted a review of your recent Public Record request and it has been determined that much of the information and/or data which is the subject of your public record request **will be provided, without charge**, but due to necessary court staff absence from the office until Monday, it cannot be compiled in full and forwarded to you at this time.
>
> We anticipate providing this records request Tuesday of next week but no later than Friday, February 14, 2014.
>
> Each of your individual records requests will be addressed in a letter accompanying the electronic records and data you will receive next week.
>
> Sincerely,
> Janice K. Walker

(Emphasis in original.)

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[1] We agree with your assertion that Ms. Walker's February 3, 2014, letter did not provide you "an opportunity . . . to modify or prioritize the items within the request" as required in Neb. Rev. Stat. § 84-712(4)(c). However, that omission did not prevent you from modifying your request and, in any event, that omission did not impact your receipt of the records you requested.

On February 13, 2014, you received the following e-mail from NSC staff:

> **From:** Luhman, Marcie
> **Sent:** Thursday, February 13, 2014 3:30 PM
> **To:** bruce@shermanandgilner.com
> **Subject:** Public Records Response
>
> Mr. Friedman,
>
> Attached is a response to your public records request of January 29, 2014.
>
> Due to the size of the data released, you will be receiving 4 additional emails containing a total of 18 files.
>
> **Marcie Luhman** | Administrative Assistant for Court Services
> Administrative Office of the Courts | Nebraska Supreme Court | P O Box 98910 | Lincoln, NE 68509
> 402.471.2249 (phone) | 402.471.2854 (fax) | marcie.luhman@nebraska.gov | www.supremecourt.ne.gov

Finally, in response to your February 13, 2014, letter, in which you allege that Ms. Walker has, in various instances, fully, partially or failed to comply with your public records requests, Ms. Walker states, in pertinent part:

> Inasmuch as you state I failed to comply with your requests, please be advised Neb. Rev. Stat. § 84-712 does not require a public agency to review documents, to answer questions or to create documents which do not otherwise exist. See Op. Att'y Gen. No. 94092 (November 22, 1994); Op. Att'y Gen. No. 94035 (May 11, 1994); Op. Att'y Gen. No. 87104 (October 27, 1987). The records I released to you were responsive to your request to the extent that the records actually existed and were under my control or in my possession. If I had no records responsive to your request, I stated such.

February 20, 2014, Letter to B. Friedman, at 1.

To reiterate, on February 3, Ms. Walker timely advised you that there would be a delay in fulfilling your public records request. She further advised that the earliest practicable date for fulfilling your request would be February 14. On February 6, Ms. Walker advised that you would be receiving responsive records, free of charge, sometime during the following week. And on February 13, the NSC produced the records. In light of the foregoing, we are unable to conclude that you have been denied access to public records and/or the Nebraska Supreme Court has otherwise failed to comply with the Nebraska Public Records Statutes. Moreover, your assertion that Ms. Walker's February 3, 2014, letter "was a red herring, [and] a tactic to dismiss, frustrate,

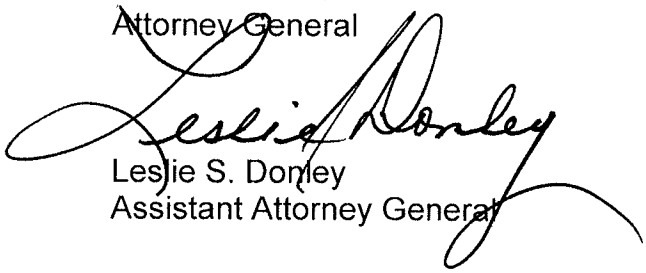
exacerbate, and burden requests and requestors from gaining rightful access to public records" is completely unsupported by the facts.

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 Ms. Walker has represented that she has provided you all of the records that exist of and belonging to the Nebraska Supreme Court, there is no reason to continue our investigation, and we are closing the 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,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Janice Walker
Terri Brown

49-1086-30