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DOUGLAS J. PETERSON
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March 8, 2016

Via email at danakrass@yahoo.com
Dana Krass
308 N. 1st Street
Elmwood, NE 68349

RE: *File No. 16-R-108; Village of Elmwood; Dana Krass, Petitioner*

Dear Mr. Krass:

We are writing in response to your email correspondence received by this office on February 22, 2016, in which you requested our assistance in obtaining certain public records belonging to the Village of Elmwood ("Village"). When we receive petitions of this nature, our normal practice is to contact the entity involved and advise it of the opportunity to provide a response to this office. In the present case, we contacted Curt Wilhelm, chairperson for the Village of Elmwood, and advised him accordingly. We received Mr. Wilhelm's response on March 1, 2016. Our review of this matter was conducted under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014) ("NPRS"), and our findings 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 Village.

You indicate that you went to the Village office on February 12, 2016, and filled out a form to request public records. You left the form with the Village clerk, and did not receive a copy. You subsequently filed your complaint with our office on February 21, since you had not received any response from the Village. On February 22, 2016, you confirmed with our office that you still had "not received any response or information in any form as of yet."

According to Mr. Wilhem, you filled out the "Request for Open Public Records" on Friday, February 12. Upon returning to work on Tuesday, February 16, following the Presidents' Day holiday, the Village clerk noticed that you had not signed and dated the form, and that the form was missing information as which specific employees' timecards and timesheets you were seeking. The Village clerk attempted numerous times to contact

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you using the telephone number you provided on the form with no success. Finally, on February 24, 2016, the Village clerk emailed you about the form, and the estimated cost for the records. In this regard, the clerk stated: "To have the current records copied for that long of a period and for just one employee it would be approximately $69.00 at .25/copy in addition to 17.81/hr + 28% for employee time to copy and locate records, after the initial four hours."

You responded to this email later that evening. You indicated that you would sign/date the form at your earliest convenience and that, as previously agreed to at a Village meeting, your request would begin with the Village maintenance position. You further addressed the proposed costs and estimated time frame for completion.

Finally, in response to our inquiry as to the status of your request, on March 6, 2016, you indicated to the undersigned that you had received the requested records.

DISCUSSION

We understand that you contacted our office because you did not receive a timely written response to your request. However, it seems to us that a better course would have been to first contact the Village to inquire as to the status of your request. In that way, the time and effort spent by all parties could have been avoided. In any event, since you have received the records at issue, we see no reason to continue our investigation. Accordingly, we are closing the file.

We will, however, take this opportunity to point out some areas of concerns that we have identified in this matter. First, while the Village of Elmwood may use a form to process public records requests submitted to the Village, it cannot *require* any individual to use its form. In this regard, the Village *cannot* require individuals requesting public records to make the certifications set out in the form, as follows:

> I hereby declare that I do not intend to and will not:
>
> a. Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or
>
> b. Sell, give, or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person who resides at any address listed.

Neb. Rev. Stat. § 84-712[1] does not require any showing by a person requesting access to public records of the reason for his or her review of those records. *See State ex rel. Sileven v. Spire*, 243 Neb. 451, 500 N.W.2d 179 (1993).

The second issue identified is found in the Village clerk's calculation of costs to produce the records at issue. The longstanding enforcement policy of the Office of the Attorney General is not to question copying charges of up to 25 cents per page for copies of public records, in addition to the other allowable charges discussed in Op. Att'y Gen. No. 01029 and permitted under the provisions of § 84-712. However, we question the additional 28% tacked on to the hourly rate of $17.81. Neb. Rev. Stat. § 84-712(3)(c) provides, in pertinent part, that

> [t]he actual added cost used as the basis for the calculation of a fee for records shall not include any charge for the existing salary or pay obligation to the public officers or employees with respect to the first four cumulative hours of searching, identifying, physically redacting, or copying. *A special service charge reflecting the calculated labor cost may be included in the fee for time required in excess of four cumulative hours*, since that large a request may cause some delay or disruption of the other responsibilities of the custodian's office . . . .

(Emphasis added.) Any special service charge must be based solely on the calculated labor cost of the public officer involved in producing the requested records. This amount may not be embellished under the pertinent language in the statute.

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[1] Neb. Rev. Stat. § 84-712 provides, in pertinent part:

> (1) Except as otherwise expressly provided by statute, *all citizens of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records*, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business. (Emphasis added.)

We hope that the Village will take the necessary steps to rectify the deficiencies identified in this disposition letter. If there are any further questions by either party, please contact the undersigned.

Sincerely,

DOUGLAS J. PETERSON
Attorney General

Leslie S. Donley
Assistant Attorney General

c: Curt Wilhem (via email)

49-1539-29