



STATE OF NEBRASKA
Office of the Attorney General

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January 11, 2010

Tower Kountze
Husch Blackwell Sanders
1620 Dodge Street, Suite 2100
Omaha, NE 68102

RE: *File No. 10-R-101; City of Omaha and Douglas County; Tower Kountze*

Dear Mr. Kountze:

This letter is in response to your Public Records complaint received by us on January 5, 2010, in which you requested our review of a response, or lack thereof, by the City of Omaha ("City") and/or Douglas County ("County") to your request for records belonging to those public bodies. We have carefully reviewed your request and its enclosures under the Public Records Statutes, Neb. Rev. Stat. §§84-712 through 84-712.09 (2008, Supp. 2009). We also contacted Ms. Michelle Peters, Assistant City Attorney for the City of Omaha, regarding your complaint. Ms. Peters responded both as to the records you requested from the City and those requested from County employee Pat Burke. Our findings in this matter are set forth below.

FACTS

Our understanding of the facts in this case is based on your Public Records Request and its attachments. You sent three separate public records requests to the City and County on December 17 and 18, 2009. Your complaint with respect to these requests is that the public bodies did not respond within the four business days required by statute.

ANALYSIS

The Nebraska Public Records Statutes are found at Neb. Rev. Stat. §§84-712 through 84-712.09. Neb. Rev. Stat. §84-712 (2008) provides:

- (4) 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.

You are correct in your assertion that Neb. Rev. Stat. §84-712(4) requires the custodian of the records to reply within four business days of the actual receipt of the request. Your requests were made via e-mail on December 17, 2009 and December 18, 2009. However, Ms. Peters has represented that the two requests sent to Barb Oetter were not made to her correct e-mail address, and Ms. Oetter did not receive them on December 17, 2009 and December 18, 2009. Therefore, your requests were not received by the City until Monday, January 4, 2010 when they were sent by you to Ms. Peters in your follow-up e-mail. The City subsequently responded to that request on January 6, 2010, a copy of which response was provided to this office. Based upon the request being received January 4, 2010, the response of the City was timely under the Nebraska Public Records Statutes.

You also made a request to Pat Burke on December 18, 2009 for certain records. Ms. Peters did not give an explanation in her January 6, 2010 letter as to why a response was not provided to this request by December 24, 2009. However, it does appear that your records request to Mr. Burke was addressed in the January 6, 2010 letter. While this is beyond the four business days required by the Nebraska Public Records Statutes, we decline to take any action against the City or County for this delay in responding. However, through a copy of this letter to the City Attorney, we will remind the City and County that a response to a written public records request must be completed within four business days.

As it appears that the City and County have now responded to the three public records requests of December 17 and 18, 2009, referenced in your complaint, this office will take no further action relating to this matter and will close our file accordingly.

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CONCLUSION

For the reasons stated above, we do not believe that you have been denied access to public records. 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,

JON BRUNING
Attorney General

A handwritten signature in black ink, appearing to read "Natalee J. Hart". The signature is written in a cursive, flowing style.

Natalee J. Hart
Assistant Attorney General

cc: Michelle Peters
Assistant City Attorney, City of Omaha