

STATE OF NEBRASKA  
**Office of the Attorney General**

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June 20, 2013

Clint Schukei  
Norfolk City Attorney  
202 North 7<sup>th</sup> Street  
Norfolk, NE 68701

RE: *File No. 13-R-115; Sanitary and Improvement District No. 1 of Stanton County; Norfolk City Clerk Beth Deck, Petitioner*

Dear Mr. Schukei:

We are writing in response to your correspondence received by this office on June 5, 2013, in which you requested our assistance in obtaining certain public records belonging to the Sanitary and Improvement District No. 1 of Stanton County (the "District"). 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 Darrold Lidgett, District chairman. On June 14, 2013, we received correspondence from Mark Fitzgerald, Fitzgerald, Vetter & Temple, who responded on behalf of the District. We considered your correspondence 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 your petition and the District's response.

By letter dated May 1, 2013, the Norfolk City Clerk, Beth Deck, requested from the District (1) copies of certain attachments referenced in the District's April 15, 2013, meeting minutes and (2) the monthly pumping reports from November 2012 to the present. She received no response. On May 15, 2013, Ms. Deck wrote the District

Clint Shukei  
June 20, 2013  
Page 2

again, renewing her request. The following day, Ms. Deck received some of the requested documents by fax. She contacted District staff that same day and learned that the requested acknowledgement which appears at the end of the minutes had not been signed by the District trustees. Ms. Deck asked again for the monthly pumping reports, to which District staff replied "okay." However, the reports were not produced.

Mr. Fitzgerald advises us that the District's Board of Trustees have discontinued including the "Acknowledgement of Receipt of Notice of Meeting" and the "Certificate," signed by the clerk, to its meeting minutes. Consequently, the statement in the minutes indicating that the acknowledgement was attached was erroneous. Mr. Fitzgerald further advises that there may have been some confusion with respect to including the District's pumping reports with the meeting minutes. He states that until recently, the District had been regularly providing the reports to the City. Mr. Fitzgerald indicates that, in the future, the District will forward the pumping reports to the City with the minutes, although not as an attachment. Finally, Mr. Fitzgerald's response to us indicates that he e-mailed you a copy of all requested records.

#### **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.

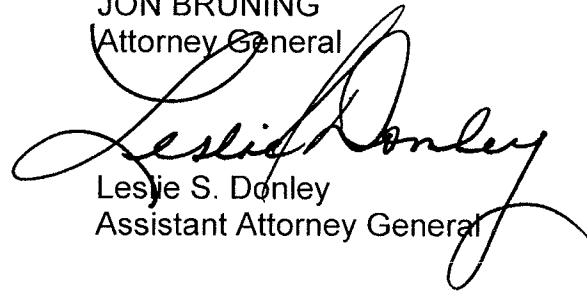
Since the District has now provided the records it has which are responsive to your public records request, we see no basis for further action by this office and we are closing this file. However, we will suggest to the District, by sending a copy of this letter

Clint Shukei  
June 20, 2013  
Page 3

to Mr. Fitzgerald that, in the future, a timely response must follow any request for public records.<sup>1</sup> Mr. Fitzgerald has assured us that there will no reoccurrence of actions which led to the filing of your petition, and we are confident that will be the case.

Sincerely,

JON BRUNING  
Attorney General



Leslie S. Donley  
Assistant Attorney General

cc: Mark Fitzgerald

49-998-30

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<sup>1</sup> Under § 84-712(4) of the Nebraska Public Records Statutes, requests for public records must be submitted in writing. The public body who is the custodian of the records then has four business days after actual receipt of the request to respond, as follows: (1) the custodian may provide the requester with access to the record or copies of the record, if copying equipment is reasonably available; (2) if there is a legal basis for denying access to or providing copies of the record, the custodian may provide the requester with a written denial of the records request together with the information specified in § 84-712.04; (3) the custodian may provide the requester with a written explanation of delay if the entire records request cannot, with reasonable good faith efforts, be fulfilled within four business days after actual receipt of the written request due to the significant difficulty or the extensiveness of the request; or (4) the custodian can simply indicate that it has no records responsive to the public records request.