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JON BRUNING
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February 24, 2014

William H. Foster III
Better Airports, LLC
4504 North Versailles Avenue
Dallas, TX 75205

RE: *File No. 14-R-107; Wahoo Airport Authority; William H. Foster III,
Petitioner*

Dear Mr. Foster:

We are writing in response to your e-mail sent to the Attorney General/Department of Justice website on February 7, 2014, in which you requested our assistance in obtaining certain public records belonging to the City of Wahoo Airport Authority (the "Airport Authority"). 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 Airport Manager Melissa M. Harrell. On February 20, 2014, we received Ms. Harrell's response on behalf of the Airport Authority. 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, Supp. 2013). Our findings and future action in this matter are set forth below.

RELEVANT FACTS

Our understanding of the facts in this case is based on your e-mail and Ms. Harrell's response.

On January 27, 2014, you e-mailed Ms. Harrell a public records request, in which you stated, in pertinent part:

This is my Open Records Request for Copies of all the fully executed, and approved by the Airport Board, for the years 2012, 2013, 2014, for all the Wahoo Airport "Commercial Aeronautical Operator" Applications at the Whaoo [sic] Municipal Airport, Wahoo, Nebraska. This would include for all Commercial Aeronautical Operator activities applications, as defined in the Wahoo Airport Minimum Standards-yet not limited to, the following

(Emphasis in original.) You go on to list eleven categories of applications, e.g., "All Frontier Coop applications" and "All Wanahoo Aviation applications." Your request specifically excludes two applications which you had previously received from the Airport Authority.

On January 31, 2014, Ms. Harrell responded to your request. She indicated that "[t]hrough previous open records requests I have supplied you with any records that would be discovered through this request. There is nothing additional to provide you." You indicate that you responded to Ms. Harrell by e-mail the same day "about her lacking response, requesting help, and as of this date, she had not given me a reply."

You state that the purpose of your petition is to "challenge Ms. Harrell's decision not to send documents she implies she has sent me prior 'through previous open records requests'" You state that Ms. Harrell is required to provide you the public records requested, irrespective of the fact that certain records may have been provided in response to previous requests. You further state that your "position is Ms. Harrell is not entitled to decide as to what she has sent me in the past and thus exclude from my subsequent Public Records Request months, if not years, later."

In her response to us, Ms. Harrell refutes your assertion that she is withholding public records. According to Ms. Harrell:

Aside from the two specific items which Mr. Foster exempted from his request (2012 Storm Flying Services application for aerial application and 2012 Frontier Coop application for aerial service), the information Mr. Foster requested does not exist. There are no records of items he has requested, public or otherwise.

(Emphasis in original.)

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

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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.

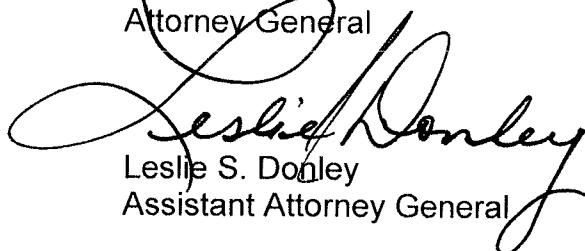
We believe you are correct in your assertion that custodians of public records cannot refuse to provide public records pursuant to a written public records request, even though those same records may have been provided pursuant to an earlier request. We also believe that Ms. Harrell's response to your public records request, on its face, was not as clear as it could have been. However, Ms. Harrell has represented to us that since May 2012, you have submitted *thirty-eight* public records request to her office. In that context, we construed Ms. Harrell's response to mean, simply, *there are no public records responsive to your request*. Ms. Harrell's response did not indicate that she had provided these particular records to you in the past, and would not provide them to you again. In any event, Ms. Harrell has now stated, unequivocally, that the Wahoo Airport Authority has no records responsive to your January 27, 2014, public records request. And, as indicated above, a public body is not required to create documents that do not otherwise exist.

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 there are no responsive records to your public records request, there is no reason to continue our investigation, and we are closing this 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: Melissa M. Harrell

49-1087-30