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DOUGLAS J. PETERSON
ATTORNEY GENERAL

LESLIE S. DONLEY
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January 18, 2017

Via email and Regular U.S. Mail
Bob Tucker
17718 Jones St.
Omaha, NE 68118

RE: *File No. 17-R-101; City of Omaha; Petitioner Bob Tucker*

Dear Mr. Tucker:

We are writing in response to your email correspondence received by this office on January 3, 2017, in which you requested our assistance in obtaining certain public records belonging to the City of Omaha ("City"). As is our normal practice with such requests, we contacted the public body named in the petition. In this case, we contacted City Attorney Paul Kratz and requested a response. On January 13, 2017, we received a response from Assistant City Attorney Timothy G. Himes, Sr., who responded on behalf of the City. We have completed our analysis and have considered your petition for access to records under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2016) ("NPRS"). Our findings in this matter 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 City.

According to your documentation, on October 3, 2016, you emailed City Councilman Franklin Thompson to request "clarifications/explanations" with respect to a proposed contract between the City and the Nebraska Humane Society ["NHS"]. You indicate that Margaret Gibson, Council Staff Assistant, responded on his behalf on October 17. On October 24, at 5:09 a.m., you requested additional public records from Ms. Gibson, as follows:

- Copy of the Current Contract between the City and NHS, and with regard to that contract, please provide the following records:

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- Copy of the City prescribed accounting system for records and accounts (as stated in Para 1.e of the pending contract or similar para in the current contract).

- Copies of the annual activity reports as required by Para 2.a. of the pending contract or similar para in the current contract.

- Copy of the budget as required by para 16.d. of the pending contract or similar para in the current contract.

- Copies of the progress reports as required by Para 16.f. of the pending contract or similar para in the current contract.

- Copy of the Contract Completion Report as required by Para. 16.g. of the pending contract (or similar para in the current contract) and if the Report has yet to be submitted under the current contract, copies of the Contract Completion Report(s) as required by Para. 16.g. (or similar para in the prior Contract), and a copy of that Contract.

Later that morning, Ms. Gibson advised you that requests for documents are to be handled by the Omaha City Clerk, Buster Brown, and copied Mr. Brown on her email. Mr. Brown responded to your request at 3:40 p.m. that same day, indicating as follows:

> *Bob – Here are the documents I have so far from your request. A copy of the current contract and the monthly reports. Buster*

It appears that you sent follow-up emails to Mr. Brown on November 16 and December 6 inquiring about the other items in your records request. On December 7, Mr. Brown sent you an email, in which he inquired: "Bob—what else are you still requesting? Buster."[1] You responded as follows later that morning: "See email below which you should have received on 10/24." This email appears to be the last communication between you and Mr. Brown or any other City official with respect to this matter.

THE CITY'S RESPONSE

The City states that you were provided the requested "current contract" along with the quarterly reports. By way of background, the City informs us that, based on its investigation into this matter, the contract between the City of Omaha and the NHS dates back to 1919. Contract renewal routinely occurs every three years. According to the City, major points of the contract are actively reviewed—i.e., revenue allocation, contract price,

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1 For the record, the City provided us a copy of Mr. Brown's December 7 email to you, which you described in your petition as "suggesting he wasn't aware of what I was requesting." To the contrary, it appears to us that Mr. Brown was seeking to clarify what more he could provide to you that had not previously been produced.

and payment terms. However, the other documents in your request, i.e., "[c]opy of the City prescribed accounting system for records and accounts," the NHS budget, certain progress reports, the "Contract Completion Report," do not currently exist. The City asserts that certain language may "have evolved over the years into little more than boilerplate in the contracts." Moreover, the City questions whether your request for a copy of "an accounting system" is something that could even be produced under a records request. In conclusion, the City states that it "responded in timely fashion to Mr. Tucker's . . . records requests, and complied in good faith and in all respects with the NPRS."

DISCUSSION

As you know, the Nebraska Public Records Statutes generally 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 records, and to obtain copies of records in certain circumstances. Under those statutes, every record "of or belonging to" a public body is a public record which individuals may obtain a copy of unless the custodian of the record can point to a specific statute which allows the record to be kept confidential. There is no provision in the NPRS that requires a custodian of public records to review documents and create abstracts or other lists, to answer questions or to create documents which do not otherwise already exist.[2]

The City represents to this office that it timely provided you all of the documents it has in its possession which were responsive to your records request. The City further represents that the other documents you seek simply do not exist. There is also nothing in the record which would lead us to conclude that the documents at issue do exist, and that the City is unlawfully denying you access to them. We understand that it is your position certain documents referenced in the contract(s) should exist and be made available to you. However, the City is under no obligation to create those documents in response to a request under § 84-712. Moreover, this office has no general enforcement authority over the City of Omaha, and cannot compel the City to create these documents or any documents to fulfill a public records request.

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 Mr. Himes has represented to us that the City provided you all of the records responsive to your request of and belonging to the City of Omaha, there is no reason to continue our investigation, and we are closing the file.

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2 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).

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,

DOUGLAS J. PETERSON
Attorney General

Leslie S. Donley
Assistant Attorney General

c: Timothy G. Hines, Sr.
Assistant City Attorney

49-1711-29