



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

May 31, 2017

Ronda Rabe Hasenauer
[REDACTED]

RE: *File No. 17-R-128; Nebraska Oil and Gas Conservation Commission;
Ronda Rabe Hasenauer, Petitioner*

Dear Ms. Rabe Hasenauer:

This letter is in response to your email correspondence received by this office on May 16, 2017,¹ in which you sought our assistance in obtaining certain records from the Nebraska Oil and Gas Conservation Commission ("Commission"). When we receive correspondence 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 the Commission director, William H. Sydow, and advised him accordingly. We received Mr. Sydow's response on May 17, 2017. We considered your correspondence to be a petition for review under Neb. Rev. Stat. § 84-712.03 of 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.

FACTS

According to your petition, in 2014 you requested from the Commission "all letters, emails and reports between the NOGCC and T-Rex Oil." You indicate that Mr. Sydow provided you "a few months [sic] worth which showed regular and frequent communication between himself and T-Rex officers." However, in response to your request for records that were purportedly missing for a six-month period, Mr. Sydow advised that "there had been NO communication for that period of time." (Your emphasis.) You believe this is incomprehensible, and seek our help in retrieving this information.

¹ Your initial correspondence to this office was a forwarded email which you originally sent to Governor Pete Ricketts on May 2, 2017. You sent us a redacted email, with the same public records complaint, on May 17, 2017.

According to Mr. Sydow, your communication with the Commission began in 2014 when you and your husband inquired as to the Commission's recent rulemaking effort. However, Mr. Sydow indicates that you did not submit a public records request to the Commission in 2014. Rather, you made your first public records request on March 17, 2015. Your specific request sought "all letters and correspondence with Terex or T-Rex Corporation to and from the [Commission] and all memos, emails and records of phone calls to and from Terex or T-Rex Corporation during the last 15 months." Mr. Sydow indicates that the Commission filled that request on March 23, 2015, providing you 103 pages of records. On April 22, 2015, you hand delivered a second request to the Commission, in which you requested, among other things,

all documents from Terex or T-Rex Oil from January 2014 until June 2014 and again documents from June 17 to Oct 15, 2014. . . . Also, please include documents from March 10 to April 22, 2015.

According to the Commission's response, dated April 30, 2015, you were provided eight pages from Mr. Sydow's telephone log and certain email which were deemed responsive to your request. Mr. Sydow further stated:

We have had little contact with the company over your time period. No other members of our Commission staff have corresponded with Terex Energy Corporation personnel in any other electronic or written form over the period from March 10 through April 22. To our knowledge, the enclosure contains all records which pertain to Terex Energy Corporation over that time period.²

DISCUSSION

The Nebraska Public Records Statutes generally allow citizens and other interested persons 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.³

² Copies of your public records requests and the responses from the Commission (without the produced records) are attached to this letter.

³ 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).

Ronda Rabe Hasenauer
May 31, 2017
Page 3

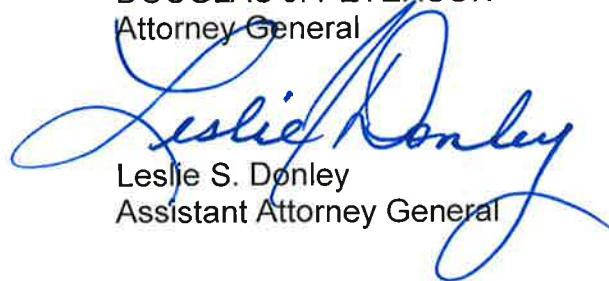
Mr. Sydow has represented to this office that you submitted no public records requests to the Commission in 2014, but did submit requests in March and April 2015. He further advises that the Commission produced all of the records which were responsive to those requests. We understand that you find it incomprehensible that no records exist for a particular time frame. However, in the absence of any evidence from you to the contrary, it may be presumed that Mr. Sydow has faithfully performed his official duties, and has provided you all responsive records. *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (Neb. Ct. App. 2009).

When we receive petitions under Neb. Rev. Stat. § 84-712.03 of the NPRS, our focus is to ensure that citizens have not been improperly denied public records. Based on the information we received from you and Mr. Sydow, we are unable to conclude that you have been denied access to public records in any way. Consequently, since no further action by this office is warranted, we are closing this file.

If you disagree with the analysis we have set out above, you may wish to contact 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

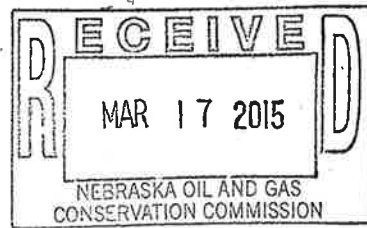


Leslie S. Donley
Assistant Attorney General

c: William H. Sydow

Attachment

49-1796-29



March 12, 2015

Nebraska Oil and Gas Conservation Commission

P. O. Box 399

Sidney, NE 69162

Dear Sir,

Under the Freedom of Information Act, I am requesting all letters and correspondence with Terex or T-Rex Corporation to and from the Nebraska Oil and Gas Conservation Commission and all memos, emails and records of phone calls to and from Terex or T-Rex Corporation during the last 15 months. I am requesting that this information be sent to me immediately and by overnight express to either P.O. Box 235, Harrison, Ne 69346 or 395 Sowbelly Road, Harrison, Ne 69346 before 03/20/15.

Sincerely,

Ronda Rabe Hasenauer

Ronda Rabe Hasenauer

STATE OF NEBRASKA

OIL AND GAS CONSERVATION COMMISSION

PO BOX 399
SIDNEY, NEBRASKA 69162-0399
(308) 254-6919
Fax (308) 254-6922
www.nogcc.ne.gov

JOHN A. RUNDEL
COMMISSIONER

ROBERT P. GOODWIN
COMMISSIONER

THOMAS D. OLIVER
COMMISSIONER

WILLIAM H. SYDOW
DIRECTOR

March 23, 2015

Ms. Ronda Rabe Hasenauer
P.O. Box 235
Harrison, Nebraska 69346

Requested Letters and Correspondence

Dear Ms. Hasenauer:

As we discussed on March 19, the Commission received your information request on March 17, a copy of which we are also enclosing. While our Commission's office is not subject to the federal Freedom of Information Act (FOIA), we are subject to our state public record law and are processing your request pursuant to our statutes.

We have proceeded to work expeditiously toward the collection of the information from members of our staff who have had written and verbal communication with personnel from Terex Energy Corporation. One hundred three pages of printed copy are enclosed. The materials include all letters, emails, field notes, and my written telephone record. To our knowledge, the enclosure contains all records which pertain to Terex Energy Corporation.

We enclose our invoice, to cover the costs of photocopying and postage, and ask for your immediate payment. This cost includes \$25.75 to cover the cost of reproduction of the documents at 25 cents/page and the USPS mailing costs.

Sincerely,

NEBRASKA OIL AND GAS CONSERVATION COMMISSION

William H. Sydow
Director

Enclosure

EC: Mr. John Jelkin, Attorney General

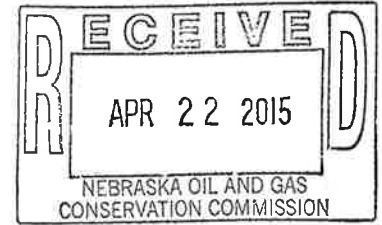
whs00715 Hasenauer Request.doc

Ronda Rabe Hasenauer

Canyon Ranch, LLP

395 Sowbelly Road
P.O. Box 235
Harrison, NE 69346

Phone: 308 668-9433
E-mail:
2horses395@gmail.com



April 22, 2015

Nebraska Oil and Gas Conservation Commission

P.O. Box 399

Sidney, NE 69162

Dear Sir,

I am making my appeal under the Freedom of Information Act for all documents from Terex or T-Rex Oil from January 2014 until June 2014 and again documents from June 17 to Oct 15, 2014. I would also like to have a copy of the organization report from Terex and T-Rex Oil ; 002 form 1. Also, please include documents from March 10 to April 22, 2015.

Thank you.

Sincerely,

Ronda Rabe Hasenauer

Ronda Rabe Hasenauer

STATE OF NEBRASKA

OIL AND GAS CONSERVATION COMMISSION

PO BOX 399
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April 30, 2015

JOHN A. RUNDEL
COMMISSIONER

ROBERT P. GOODWIN
COMMISSIONER

THOMAS D. OLIVER
COMMISSIONER

WILLIAM H. SYDOW
DIRECTOR

Ms. Ronda Rabe Hasenauer
P.O. Box 235
Harrison, Nebraska 69346

Requested Letters and Correspondence

Dear Ms. Hasenauer:

This letter is in response to your hand-delivered letter of April 22, 2015, a copy of which is enclosed. While our Commission's office is not subject to the federal Freedom of Information Act (FOIA), we are subject to our state public record law and are processing your request pursuant to our statutes.

We previously provided you with correspondence, emails, and telephone records through March 17, 2015. This letter transmits copies of eight pages from my hand-written telephone log beginning on March 16, 2005 through April 23, 2015. You will see that I have spoken to Mr. Allen Heim and Mr. Don Walford on several occasions. Also, several emails where Mr. Heim corresponded with me are included.

We have had little contact with the company over your time period. No other members of our Commission staff have corresponded with Terex Energy Corporation personnel in any other electronic or written form over the period from March 10 through April 22. To our knowledge, the enclosure contains all records which pertain to Terex Energy Corporation over that time period.

We provide this information at no cost since copies were minimal.

Sincerely,

NEBRASKA OIL AND GAS CONSERVATION COMMISSION

William H. Sydow
Director

Enclosure

EC: Mr. John Jelkin, Attorney General
whs01215 Hasenauer Request 4-22-15.doc