



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
ATTORNEY GENERAL

JASON M. BERGEVIN
ASSISTANT ATTORNEY GENERAL

February 24, 2020

Via email at downeyct@lopers.unk.edu
Chris Downey

RE: *File No. 20-R-106; University of Nebraska; Chris Downey, Petitioner*

Dear Mr. Downey:

On February 11, 2020, this office received your petition 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. 2018, Supp. 2019), challenging the University of Nebraska's ("University") response to your public records request for "[t]he expense reports of each NU Board of Regents w/ receipts (one regent at a time)." Neb. Rev. Stat. § 84-712.03(1)(b) requires this office to make a determination within fifteen calendar days of receipt of a petition. We have reviewed your request and determined that the University is authorized to aggregate your requests and charge accordingly.

The email correspondence between you and Erin Busch, Director of University Records/Associate General Counsel, reveals the following: on January 26, 2020, you requested that the University provide expenses for all the current Regents for the NU Board, from the beginning of their respective term to the end of 2019. On January 29, 2020, Ms. Busch indicated that the University could provide a detailed listing of the Regents' expenses fairly quickly, but it would take significant time to pull and redact the underlying receipts for those expenses. She explained that the University is permitted to charge for staff time to respond to a records request (in excess of four hours). Ms. Busch further explained that if you were seeking the receipt records you would be required to provide payment before the records would be provided. On January 29, 2020, you suggested that you would be requesting receipt records for one Regent at a time in an effort to circumvent the charge. Finally, on January 31, 2020, Ms. Busch informed you that the University would not handle your requests separately and the cost to search for and provide copies of the requested records would be \$1,101.72.

The Nebraska Public Records Statutes does not specifically address the issue of aggregating requests; however, the Nebraska Supreme Court has previously analogized decisions under the federal Freedom of Information Act (FOIA) to construe Nebraska's public records statutes. *Evertson v. City of Kimball*, 278 Neb. 1, 9, 767 N.W.2d 751, 760

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(2009). FOIA authorizes federal agencies to adopt their own policies. 5 U.S.C. § 552(a)(1)(D). The National Mediation Board (NMB) has adopted a policy about when FOIA records requests can be aggregated: [w]hen the NMB reasonably believes that a requester... is attempting to divide a single request into a series of requests for the purpose of avoiding fees, it may aggregate those requests and charge accordingly. 29 CFR 1208.6(h). Your email to Ms. Busch on January 29, 2020, gives the University reason to believe that you are dividing a single request into multiple requests in an attempt to avoid the associated fees. As a result, the University can aggregate your requests and charge you accordingly.

This office has reviewed the proposed cost to collect, copy, review and redact the records in question and concludes that the proposed cost is accurate based on the time estimated and hourly rate provided:

$\$58.76/\text{hr} \times 16\text{hrs} (20 - \text{first } 4 \text{ free}) \text{ to search, collect and copy} = \940.16

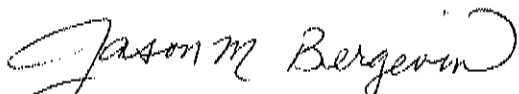
$\$23.08/\text{hr} \times 7\text{hrs to review and redact} = \161.56

Total = \$1,101.72

Please contact Ms. Busch if you desire to proceed with your records request.

Sincerely,

DOUGLAS J. PETERSON
Attorney General


Jason M. Bergevin
Assistant Attorney General

cc: Erin Busch