



STATE OF NEBRASKA
Office of the Attorney General

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June 10, 2020

Michael Nolan
[REDACTED]

RE: *File No. 20-R-116; League Association of Risk Management;
Michael Nolan, Petitioner*

Dear Mr. Nolan:

This letter is in response to your correspondence dated May 21, 2020, and received by our office on May 26, 2020, in which you sought our assistance in obtaining certain records belonging to the League Association of Risk Management (“LARM”). We considered your correspondence to be a petition under Neb. Rev. Stat. § 84-712.03(1)(b) of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2018, Supp. 2019) (“NPRS”). Our findings in this matter are set forth below.

RELEVANT FACTS

LARM is an agency created under the Interlocal Cooperation Act,¹ which operates a risk management pool under Neb. Rev. Stat. § 44-4304 (2010). You indicate that on multiple occasions, you have requested public records from LARM’s administrator, Lynn Rex, but she has refused to provide them. You indicate that the records “include personal and work files containing numerous public records that during the course of work were extracted from my hard drive and stored by the LARM server” You further indicate that these files are necessary to prepare a pending complaint and, if necessary, court pleadings.

Your petition contains eleven exhibits. Exhibit Nos. 1 through 9 and 11 are emails, some with attachments, exchanged between you and various State of Nebraska officials. Exhibit No. 10 is a series of communications between your attorney, David A. Domina,² and attorney Andre Barry, who represents Ms. Rex, relating to the records at issue. In one particular exchange, Mr. Domina wrote:

¹ Neb. Rev. Stat. §§ 13-801 to 13-827 (2012, Cum. Supp. 2018).

² To be clear, Mr. Domina is not representing you in this particular matter.

This is an ongoing project. We'd like to narrow the search as appropriately as we can. As I said on the telephone, Mr. Nolan seeks his personal information at this point. His information's *[sic]* should not be construed as requests for documents under the Nebraska Public Records Act.

If Public Records Act requests are made at a future date, they will be specifically identified by reference to the Act.

(Email sent October 15, 2019, at 2:47 p.m.) In another exchange, Mr. Barry indicated: "In the past, you've been clear that Mr. Nolan is not making a public records request for his emails. Even if he did, that would trigger a different set of legal issues." (Email sent April 14, 2020, at 10:54 p.m.)

You argue that your personal and work files "are not excludable public records" and that "[Ms.] Rex has no authority to refuse." You further argue that "[n]one of the records . . . has any proprietary or trade secret quality that justifies her refusal." You state that the "records are of legal benefit to me in establishing accurate timelines and narrative on events that I believe will establish my case" ³

DISCUSSION

Section 84-712 of the NPRS provides the basic rule for access to public records in Nebraska. That provision states that

[e]xcept as otherwise expressly provided by statute, all citizens of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

³ We note that the bulk of your submission to this office relates to your pending legal matter. For this purpose, you have conveyed how important it is for you to obtain the records. However, "[t]he public records statutes apply 'equally to all persons without regard to the purpose for which the information is sought.' As a general rule, citizens are not required to explain why they seek public information." *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, ___ N.W.2d ___, 11 (2020). Accordingly, this office does not consider the reason or purpose for a records request when making our determination under § 84-712.03(1)(b).

Neb. Rev. Stat. § 84-712(1) (2014). Procedural provisions relating to requesting and responding to requests for public records are set out in § 84-712(4), which states, in pertinent part:

Upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, an estimate of the expected cost of the copies and either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request. The requester shall have ten business days to review the estimated costs, including any special service charge, and request the custodian to fulfill the original request, negotiate with the custodian to narrow or simplify the request, or withdraw the request. If the requester does not respond to the custodian within ten business days, the custodian shall not proceed to fulfill the request.

The Attorney General's enforcement authority over the NPRS is set out in Neb. Rev. Stat. § 84-712.03(1)(b). That section states, in pertinent part:

(1) Any person denied any rights granted by sections 84-712 to 84-712.03 may elect to:

* * *

(b) Petition the Attorney General to review the matter to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections, including whether the fees estimated or charged by the custodian are actual added costs or special service charges as provided under section 84-712. This determination shall be made within fifteen calendar days after the submission of the petition. . . .

We have carefully reviewed your petition and exhibits. We were unable to identify a single instance where you submitted a request for public records under § 84-712 and were denied access to the requested records. Moreover, the emails between Messrs. Domina and Barry confirm that you were not proceeding under the NPRS. Consequently, this office has no duty to act on this matter. In the event you submit a request for public

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records under § 84-712 to LARM, and are denied access to those records, you may then petition our office for assistance. Bear in mind that the NPRS would not apply to any personal information kept or stored in the records of a public body.

Since there is no basis for further review by this office, we are closing this file. If you disagree with the conclusion reached above, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, are available to you under the NPRS.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General