



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
ATTORNEY GENERAL

LAURA A. NIGRO
ASSISTANT ATTORNEY GENERAL

September 21, 2020

Via email at [REDACTED]
Patricia G. Conway

RE: *File No. 20-R-130; Papillion La Vista Community Schools; Patricia Conway, Petitioner*

Dear Ms. Conway:

This letter is in response to your petition dated September 4, 2020, in which you requested this office investigate an alleged violation by the Papillion La Vista Community Schools ("District") of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2018, Supp. 2019) ("NPRS"). On September 10, 2020, we contacted District Superintendent Andrew Rikli and advised him of the opportunity to provide this office a response to the petition. We received a response from attorney Karen Haase of KSB School Law, PC, LLO, on behalf of the District's Board of Education ("Board") on September 18, 2020. We have fully considered your petition and the Board's response in accordance with the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2018, Supp. 2019) ("NPRS"). Our findings in this matter are set forth below.

FACTS

Our understanding of the facts in this matter is based upon your petition, the documentation you provided this office, and the response and information we received from the District.

On June 30, 2020, you made a public records request to the District. Your request sought to obtain records regarding the Titan Performance Center, Papillion La Vista South High School PE classroom, Board Policy 1409, and the Papillion La Vista South High School fundraiser for the Titan Performance Center. On July 1, 2020 you sent an amendment to your original records request. In your amendment, you clarified you were not requesting correspondence sent or received by private citizens. On July 8, 2020, the District provided you an invoice for \$4,293.24 and an email stating that half of the invoice would need to be paid before records would be gathered. The District also informed you

that due to the size of your request, it was necessary to charge for the time it took staff to gather records. This invoice included the time for high school administrators, technology staff, and central office administrators. On July 9, 2020, you paid the District \$2,146.64. On August 10, 2020, you were informed the records were ready and provided a final invoice for an additional \$474.17, which you paid on August 14, 2020. The total amount charged to you was \$2,620.17 and not the original estimated amount of \$4,293.24. In your petition you state you believe you were charged inappropriately by the District. However, you do not specifically say how you were inappropriately charged.

Ms. Haase's response states that your request "sought voluminous documents and required the District to review the emails, texts, and other written communications of over 75 people." Further, her response states that the total amount due was "determined by calculating the hourly rates of the pertinent employees multiplied by those employee's time in responding." A final invoice was provided to you on August 13, 2020. The invoice did not charge for any copying or other electronic fees. The only fees listed were for staff time. A breakdown of the hours and amounts charged for staff time is below:

Dr. Andy Rikli – 7 hours @ \$114.00/hr
Doug Lewis – 2.45 hours @ \$91.25/hr
Shureen Seery – 1 hour @ \$80.52/hr
Dr. Katy Settles – 1 hour @ \$81.73/hr
Annette Eyman – 15 hours @ \$52.50/hr
 *19 hours total were logged, but the first four hours were provided by the
 District free of charge
Technology – Lucan Bingham – 10.083 hours @ \$54.37/hr

DISCUSSION

Under Neb. Rev. Stat. § 84-712.03(1)(b), this office is required to determine "whether the fees estimated or charged by the custodian are actual added costs or special service charges as provided under section 84-712." Neb. Rev. Stat. § 84-712(3)(b) provides:

Except as otherwise provided by statute, the public body, public entity, or public official which is the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not exceed the actual added cost of making the copies available. For purposes of this subdivision, (i) for photocopies, the actual added cost of making the copies available shall not exceed the amount of the reasonably calculated actual added cost of the photocopies, which may include a reasonably apportioned cost of the supplies, such as paper, toner, and equipment, used in preparing the copies, as well as any additional payment obligation of the custodian for time of contractors necessarily incurred to comply with the request for copies, (ii) for printouts of computerized data on paper, the actual added cost of making the

copies available shall include the reasonably calculated actual added cost of computer run time and the cost of materials for making the copy, and (iii) for electronic data, the actual added cost of making the copies available shall include the reasonably calculated actual added cost of the computer run time, any necessary analysis and programming by the public body, public entity, public official, or third-party information technology services company contracted to provide computer services to the public body, public entity, or public official, and the production of the report in the form furnished to the requester.

Neb. Rev. Stat. § 84-712(3)(c) further provides:

The actual added cost used as the basis for the calculation of a fee for records shall not include any charge for the existing salary or pay obligation to the public officers or employees with respect to the first four cumulative hours of searching, identifying, physically redacting, or copying. A special service charge reflecting the calculated labor cost may be included in the fee for time required in excess of four cumulative hours, since that large a request may cause some delay or disruption of the other responsibilities of the custodian's office, except that the fee for records shall not include any charge for the services of an attorney to review the requested public records seeking a legal basis to withhold the public records from the public. (emphasis added).

The NPRS allow for a "calculated labor cost," which our office has construed to mean the hourly rate of the employee or employees actually searching for, identifying, physically redacting, or copying records pursuant to a public records request. This "calculated labor cost" is allowed for any time in excess of four cumulative hours. Here, the final invoice indicates that you were not charged for the first four hours of staff time. Further, the final invoice also shows how many hours each staff member spent on your request as well as his or her hourly salary. As the time period covered by the request spanned five months and required review of emails, texts, and other written communications of over 75 people, it does not appear that the time spent was excessive. Nor is there any basis to question the hourly rates of the individuals conducting the search. You have provided no evidence to indicate the number of hours worked or hourly rates are not accurate. The District confirmed that the total amount due was arrived at by "calculating the hourly rates of the pertinent employees multiplied by those employees' time in responding," which is in accordance with § 84-712. Since the District is allowed to charge for staff time over four hours, it does not appear that you were inappropriately charged for records.

CONCLUSION

For the reasons stated above, we conclude that the fees charged by the District associated with your public records request were in accordance with Neb. Rev. Stat. § 84-712. Since we have concluded that the District has not violated the NPRS, no further

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action by this office is required. 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 NPRS.

Sincerely,

DOUGLAS J. PETERSON
Attorney General


Laura A. Nigro
Assistant Attorney General

c: Karen Haase
Dr. Andrew Rikli

35-113-29