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April 21, 2021

Via email at jjordan@newschannelnebraska.com
Joe Jordan
News Director & Investigative Journalist
News Channel Nebraska

RE: *File No. 21-R-108; Nebraska Legislature; Joe Jordan, News Channel
Nebraska, Petitioner*

Dear Mr. Jordan:

This letter is in response to your petition received by this office on April 6, 2021, in which you requested that we review the denial by the Nebraska Legislature of your recent request for public records. We considered your petition in accordance with the provisions of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2020). Our findings in this matter are set forth below.

FACTS

On March 31, 2021, you emailed Senator Dan Hughes, chairman of the Executive Board, and Pat O'Donnell, Clerk of the Legislature, the following request:

It is my understanding that for Senators who reside more than 50 miles from the State Capitol the Legislature provides reimbursement to the members of an amount equal to the federal per diem rate times the number of legislative days in a regular or special session and that a Senator receives mileage reimbursement for one round trip per week from the Senator's home to the Capitol.

Please verify that I have that correct.

Also, please provide me with a list of those lawmakers effected [sic] by the 50 mile provision along with each of those lawmakers home addresses used for this process.

(Emphasis added.)

Senator Hughes responded to your request on April 1. He provided you information regarding the expense and mileage reimbursement for state senators, including excerpts from the *Sessional Expense Reimbursement Policy* and Neb. Const. art. III, § 7. Senator Hughes also provided you “a list of senators who live more than 50 miles and those who live within 50 miles from the state capitol.” However, Senator Hughes denied your request for the home addresses used to implement the policy on the basis of the exception in Neb. Rev. Stat. § 84-712.05(7). He further informed you that some senators’ home addresses could be found on the Legislature’s web site.

DISCUSSION

The basic rule for access to public records is set out in Neb. Rev. Stat. § 84-712(1) (2014). 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.

“Public records” in Nebraska “include all records and documents, regardless of physical form, of or belonging to” governmental entities in the state, “[e]xcept when any other statute expressly provides that particular information or records shall not be made public.” Neb. Rev. Stat. § 84-712.01(1) (2014). Thus, there is no absolute right to access public records in those instances where records are exempt from disclosure by statute. The burden of showing that a statutory exception applies to disclosure of particular records rests upon the custodian of those records. *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 788, 943 N.W.2d 231, 240 (2020); *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018).

As noted above, the Legislature relied on the exception to disclosure in Neb. Rev. Stat. § 84-712.05(7) (Cum. Supp. 2020) as its basis to deny you access to state senators’ home addresses. That particular exception states, in pertinent part:

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

* * *

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information

“Statutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of words which are plain, direct, and unambiguous.” *Thomas v. Peterson*, 307 Neb. 89, 96, 948 N.W.2d 698, 704 (2020). “[I]n construing a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.” *J.S. v. Grand Island Public Schools*, 297 Neb. 347, 353, 899 N.W.2d 893, 898 (2017). The plain and ordinary reading of § 84-712.05(7) indicates that public bodies may lawfully withhold *personal* information in records of its personnel, except for *salary* and routine directory information.¹ In this context, “personal” may be defined as “2. private; individual; affecting individuals; peculiar or proper to a certain person or to private actions or character” Webster’s New Universal Abridged Dictionary 1338 (2nd ed. 1983). “Personnel” is defined as “persons employed in any work, enterprise, service, establishment, etc.” *Id.* at 1339.

There is little question that a state senator’s home address is information personal to that individual. And while state senators are not “employed” by the Legislature per se, these individuals comprise the legislative body’s *personnel*.² Moreover, “[i]n construing a statute, an appellate court will, if possible, try to avoid a construction which would lead to absurd, unconscionable, or unjust results.” *Dean v. State*, 288 Neb. 530, 542, 849 N.W.2d 138, 149 (2014). It seems to us that construing the exception in such a manner that would allow Mr. O’Donnell’s home address to be withheld from disclosure, but not Senator Hughes’, would lead to an absurd and unjust result. This office will avoid such a construction.

¹ This office has previously construed “routine directory information” to include an employee’s name, job title, work telephone number and address and dates of hire and separation. See the Classified System Personnel Rules—Chapter 12 – Personnel Records, Title 273, *Nebraska Administrative Code*, Chapter 12, § 001.01 (October 30, 2006).

² Compare *Steckelberg v. Nebraska State Patrol*, 294 Neb. 842, 850, 885 N.W.2d 44, 50 (2016) (Certain records relating to interview and selection process sought by state trooper who was not selected for the job fell within § 84-712.05(7) since the “information was about employees, otherwise known as personnel, of the State Patrol.”).

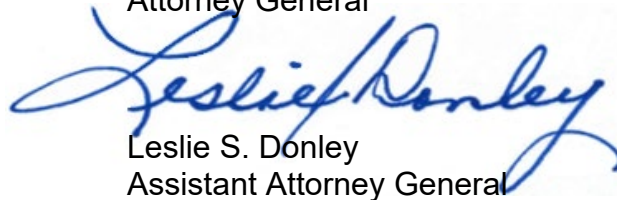
CONCLUSION

Based on the foregoing, we conclude that state senators' home addresses are personal information and do not constitute salary information or routine directory information. Consequently, the Legislature's withholding of the requested records under § 84-712.05(7) was appropriate.

If you disagree with the conclusion reached in this disposition letter, you may wish to discuss these matters with your private attorney to determine what, if any, additional remedies might be available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Sen. Dan Hughes (via email only)
Pat O'Donnell (via email only)