



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 OR (402) 471-4725

DOUGLAS J. PETERSON
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

September 27, 2021

Via email at [REDACTED]
Michael Elkins

RE: *File No. 21-R-132; Papillion LaVista Community Schools Board of Education; Michael Elkins, Petitioner*

Dear Mr. Elkins:

We are writing in response to your email correspondence received by this office on September 10, 2021, in which you requested the assistance of the Attorney General with respect to six public records requests submitted to members of the Papillion LaVista Community Schools Board of Education ("Board"). On September 14, 2021, the undersigned spoke to school district attorney Karen Haase, KSB School Law, about your correspondence and public records requests and, at our request, Ms. Haase provided the undersigned with documentation relating to this matter. We considered your correspondence to be a petition under Neb. Rev. Stat. § 84-712.03(1)(b) of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2020).

You state in your petition that you submitted a public records request to various Board members on September 2, 2021, but "have not received any response to that request to either my email, address of record, or phone number, all of which were provided in said records request." As a result, you allege that Board members (and/or records custodians) violated § 84-712(4) for failing to respond to your "request within the required four business days." Your petition also points out the sanctions in § 84-712.09 for public officials who fail to comply with provisions of the NPRS, and ask us not only to assist you with your records request, but also investigate and prosecute school district officials in light of "the clear violation of the Section 84-712(4)."

The statutory provision at issue, § 84-712(4), provides that

[u]pon 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 four business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. Business day does not include a Saturday, a Sunday, or a day during which the offices of the custodian of the public records are closed.

Neb. Rev. Stat. § 84-712(4) (2014) (emphasis added). It appears from your documentation that you emailed your request to each Board member on the evening of September 2, beginning at 7:57 p.m. and ending at 8:12 p.m. The actual receipt of your requests was subsequently made on the following business day—Friday, September 3. Due to the federal holiday on Monday, September 6, the first business day after September 3 was Tuesday, September 7. Thus, the school district had until Friday, September 10, in which to respond to your requests.

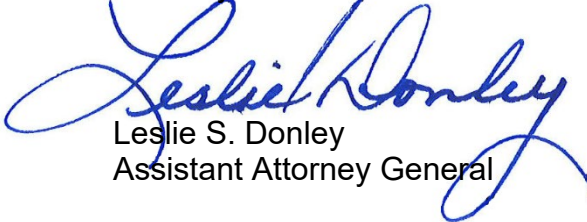
According to Ms. Haase, your six requests to the Board members were part of at least twenty identical requests made to the school district, including to the Board secretary, on September 2. Ms. Haase asserts that your petition is factually incorrect and, in this respect, provided us the response she emailed you on *September 9*, which addressed the items in your public records request. Consequently, since you did receive

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a response from the school district within the statutory time frame, there was no violation of § 84-712(4), and we are closing this file.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Karen Haase (via email only)

49-2786-29