



STATE OF NEBRASKA  
**Office of the Attorney General**

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**MIKE HILGERS**  
ATTORNEY GENERAL

**LESLIE S. DONLEY**  
ASSISTANT ATTORNEY GENERAL

July 28, 2023

Via email to [REDACTED]  
Jeff Forward  
News Reporter  
The Fremont Tribune

RE: *File No. 23-R-125; Dodge County Attorney; Jeff Forward, The Fremont Tribune, Petitioner*

Dear Mr. Forward:

This letter is in response to your “appeal” emailed to the Attorney General’s Communications Director, Suzanne Gage, on July 13, 2023. You have requested our review of your “rejected public records request made to the Dodge County Attorney.” On July 27, 2023, the undersigned discussed this matter with the Dodge County Attorney, Pamela Hopkins. We considered your appeal to be a petition under the provisions of the Nebraska Public Records Statutes (“NPRS”), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022). Our findings are set forth below.

### **RELEVANT FACTS**

On July 10, 2023, you submitted a public records request to Ms. Hopkins’ office, which included the following items:

- The names of the Dodge County deputy county attorneys who have submitted letters of resignation to the county/Pam Hopkins or Dodge County human resources between Jan. 5, 2023, and July 10, 2023.
- The last days of work for any formerly employed Dodge County deputy county attorneys or other law-licensed lawyers in the office from between Jan. 1, 2023, and July 10, 2023.

- The letters of resignation from any Dodge County deputy county attorneys who have submitted letters of resignation to the county/Pam Hopkins or Dodge County human resources between Jan. 1, 2023, and July 10, 2023.

These are public records and will be used for journalistic news reporting purposes.<sup>1</sup>

Ms. Hopkins responded to your request by letter dated July 13. She provided you information responsive to the second item in your request, and withheld letters of resignation requested under the third item pursuant to the exception to disclosure in Neb. Rev. Stat. § 84-712.05(8) (“[p]ersonal information in records regarding personnel of public bodies other than salaries and routine directory information”). Item one was not specifically addressed.

### **YOUR PETITION**

Your petition seeks our review of only “the rejection of the list of names who submitted [resignation] letters” and “the other list of the final dates of employment of any staff described in the aforementioned time period.” In support of your petition, you state the following:

We believe the names of the deputy county attorneys in the Dodge County Attorney Office that have submitted a letter of resignation to both the county attorney as well as the county human resources manager ARE public record, and we request that the State AG find that we can be provided those names for the time period listed in our PRR [public records request].

We believe that the last dates of employment of government employees – i.e. in this instance Dodge County Attorney Office lawyers staff – ARE a public record and should be provided to the newspaper per our PRR.

(Emphasis in original.) You further state that you are a Nebraska resident, made a lawful request under applicable Nebraska law, “and have been wrongfully denied access to these public records as proven in [Ms. Hopkins’ response].

### **DISCUSSION**

The purpose of § 84-712 “is to guarantee that public government records are public.” Introducer’s Statement of Purpose for LB 505, 72<sup>nd</sup> Nebraska Legislature (1961). Under this statute, it was intended that all public records of the state, its counties, and its other political subdivisions should be open to inspection, except where the Legislature

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<sup>1</sup> As we previously informed you, the purpose for which an interested person seeks a particular record or its use by that person is immaterial.

has otherwise provided that the record shall be confidential. Judiciary Committee Statement on LB 505, 72<sup>nd</sup> Nebraska Legislature (1961). Accordingly, there is no question that records of or belonging to the Dodge County Attorney's Office are public records unless otherwise provided by law. We note that Ms. Hopkins made no claim that the requested items were not public records.

With respect to item one, we see the issue as whether you requested public records in the first place. Your request sought the *names* of the deputy county attorneys who had submitted letters of resignation between January 5 and July 10, 2023. We view this item as a request for information and not a request for specific records. This office has taken the position that § 84-712 does not require a public body to review documents and create abstracts or other lists, to answer questions or to create documents which do not otherwise exist. Op. Att'y Gen. No. 94092 (November 22, 1994); Op. Att'y Gen. No. 94035 (May 11, 1994); Op. Att'y Gen. No. 87104 (October 27, 1987). Assuming that your request was valid, Ms. Hopkins informed us that there is no list of names responsive to this particular item. Since there is no legal requirement to create a list, Ms. Hopkins has neither denied nor rejected your request.

The second item in your request sought “[t]he last days of work for any formerly employed . . . deputy county attorneys . . . between Jan. 1, 2023, and July 10, 2023.” Construing your request as a request for routine directory information, see § 84-712.05(8) above, Ms. Hopkins provided you the name of one individual and his last day of work. Ms. Hopkins represented to the undersigned that this attorney was the only one who left during the time frame designated in your request. “[A]bsent contrary evidence, public officers are presumed to faithfully perform their official duties.” *Thomas v. Peterson*, 307 Neb. 89, 98, 948 N.W.2d 698, 706 (2020). We presume that Ms. Hopkins' response to this item was made in good faith and fully complied with the NPRS.

## CONCLUSION

Based on our review of this matter, there has been no denial or rejection of your public records request. There was no list of names to produce, and no legal obligation to create one. Ms. Hopkins provided you information responsive to the second item in your request and indicates that no other individuals are involved. Since you have not been unlawfully denied access to public records, no further action by this office is necessary and we are closing our file.

Jeff Forward  
July 28, 2023  
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If you disagree with our conclusion, you may wish to discuss this matter with your attorney to determine what additional remedies may be available to you under the NPRS.

Sincerely,

MIKE HILGERS  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: Pamela Hopkins (via email only)

49-3286-30