



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
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March 4, 2022

Via email at [REDACTED]
Conan Thomas

RE: *File No. 22-R-109; Norris School District 160; Conan Thomas, Petitioner*

Dear Mr. Thomas:

This letter is in response to your petition received by this office on February 11, 2022, in which you requested that the Attorney General review the cost estimate provided by Norris School District 160 ("District"), in response to your January 23, 2022, public records request. In accordance with our normal practice, we forwarded a copy of your petition to the District superintendent, Dr. John Schwartz, and requested a response. On February 21, we received a response from Justin J. Knight, Perry Law Firm, who responded on behalf of the District. We subsequently wrote to you on February 28 indicating that we had conducted a preliminary investigation of your petition, and it appeared to us that the District had properly responded to your public records request. However, we indicated that our response would be delayed so that we could finalize our decision. We have now completed our review of your petition and the District's response in accordance with § 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, Supp. 2021). Our findings in this matter are set forth below.

BACKGROUND AND RELEVANT FACTS

This is the second time you have contacted our office for assistance in obtaining public records from the District. In our letter to you dated December 30, 2021, we considered the District's purported denial of your December 10, 2021, records request for "all communication between Norris School District 160 and any other organizations that mention my name 'Conan Lee Thomas' as well as the term 'Threat Assessment' and or 'Threat Assessment Team.'" Following a District-wide search for communications containing those terms, the District indicated to you that it had no responsive records. Upon review, we stated that it appeared to us that the District had conducted a search

exactly as you had requested,¹ and that absent any evidence of misconduct, the regularity of official acts is presumed. Consequently, we found no violations of the NPRS relating to your request. We also generally advised that public bodies could charge requesters to produce public records, noting the fee provisions in Neb. Rev. Stat. § 84-712(3)(b) and (c).

This petition involves your request to the District to provide you “all communication between Norris School District 160 and any other organizations that mention my name ‘Conan Thomas.’” On January 28, Dr. Schwartz timely responded to your request, indicating that “due to the broad nature of your request,” it could not be fulfilled within the four business days. Dr. Schwartz further stated, in part:

Assuming you would like all emails referring to you (which may include searches using different key words such as “Conan Thomas,” “Mr. Thomas,” “Conan,” and the like), the District’s Technology Director will need to undertake a search of all Norris School District employees’ emails accounts. . . . Once these searches have been completed, all documents will then need to be reviewed and any student or staff identifying information will need to be redacted. The Director or Technology’s hourly rate is \$59.31. The District estimates that it will take a total of 60 hours to fully complete your request. Since the first four hours of a response to a records request are not charged to you, you will be required to furnish a deposit equal to the expected cost of fulfilling this portion of your request in the amount of \$3,321.36. The earliest practicable date for fulfilling the request is four weeks after the receipt of your deposit. . . . [T]he response date will be delayed or ignored in the event your deposit is not timely received or the statutory time for the deposit expires. If you would like, you may contact me to further modify or prioritize the items within the request. If you wish to limit your records request to specific key words or search terms, please clarify your intentions so we can reassess these estimates. Otherwise, we will await your deposit before beginning our search for responsive documents.

It is our understanding you did not respond to Dr. Schwartz’s letter.

In your petition, you also indicate that this is your second attempt to obtain records from the District, and that this time the only search term is your name. You are challenging the amount of the estimate and time necessary to complete the search. You allege that there is information the District does not want you to see, and the cost estimate is its way to “make you go away.”

¹ According to Mr. Knight, the District did not charge you for the time spent in conducting these searches in excess of four hours.

Mr. Knight informs us that the search conducted for your December 10 records request provided the basis for the estimate at issue here. Since you requested all communications between the District and “any other organizations,” the search could not be limited to emails between staff. Your request also had no limitations as to scope or time. Mr. Knight states:

[T]he Director of Technology estimated that it would take approximately 10 to 12 minutes per email account to conduct a search for “Conan Thomas” (including both the text of emails and attachments), and, on average, 2 minutes per email account to review the results and redact any confidential information. . . . Thus, the Director of Technology estimated that it would take between 3,600 and 4,200 minutes for (1) him to work with the computer software to conduct an individual, “unlimited” search of all 300 email accounts (including emails and attachments) with no dates or time parameters; and (2) the subsequent review of the results and redaction of any confidential information.

Mr. Knight indicates that Dr. Schwartz reviewed the director’s plan and time estimate, and “determined that 3,600 minutes (60 hours) was a reasonable, good faith estimate, based off the amount of time the District spent on Mr. Thomas’ prior request.” Accordingly, Dr. Schwartz informed you in his January 28 response that you would be required to provide a deposit of \$3,321.36 (i.e., 60 hours – 4 hours free x \$59.31 (Director of Technology’s hourly rate)). Mr. Knight further states:

In sum, the District acted in good faith in responding to Mr. Thomas’ records request. The District completed Mr. Thomas’ December 10th records request in good faith and at no cost to him. It should also be noted that, per Dr. Schwartz’s response to Mr. Thomas’ January 26th request, Dr. Schwartz sought clarification from Mr. Thomas without any response from Mr. Thomas. Nonetheless, if Mr. Thomas would like to clarify, narrow, or otherwise prioritize his records request, the District maintains that it would be happy to work with him on securing any responsive records that exist.

DISCUSSION

The NPRS govern access to and obtaining copies of public records in Nebraska. Generally, those statutes allow interested persons the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those records, and to obtain copies of records in certain circumstances. Under § 84-712(4), interested persons seeking access to or copies of a particular public record initiate that process by providing a written request to the custodian of that record. Once received, the custodian must provide the requester a written response no later than four business days after receipt. The response may take several forms, described in the statute as follows:

The custodian of such record shall provide to the requester . . . 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.

Neb. Rev. Stat. § 84-712(4) (2014). With respect to the labor costs that may be charged to produce copies of public records, Neb. Rev. Stat. § 84-712(3)(c) provides, in pertinent part:

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

In addition, § 84-712(3)(f) allows public bodies to request a deposit prior to fulfilling a request if copies are estimated to cost more than \$50.

Section 84-712.03(1)(b) requires the Attorney General to determine, among other things, “whether the fees estimated or charged by the custodian are actual added costs or special services charges as provided under section 84-712.” Accordingly, we have considered the propriety of the District’s estimate based on § 84-712(3)(c) and the information provided to us by the District. While we agree that \$3,321.36 is a significant amount of money, it does not appear excessive considering the scope of your request. Your request is very broad and is not limited to District staff. It seeks *all communications* between the District and any other organization that mentions your name. You provided no parameters as to time and scope. The Director of Technology indicates that in order to adequately respond to your request, the District’s three hundred email accounts will have to be searched. It is also important to note that the District conducted a District-wide search using your name as a search term in response to your December 10 request,

Conan Thomas
March 4, 2022
Page 5

so it is well aware of the amount of time and effort necessary to conduct the present search.

Finally, as provided in § 84-712(4), and as indicated in Dr. Schwartz's letter, you have the option to negotiate with the District to modify or prioritize the items in your request. Mr. Knight represents to this office that the District is willing to work with you to provide you responsive records. We would urge you to take this opportunity to refine your request so you could receive District records without incurring significant costs or delays.

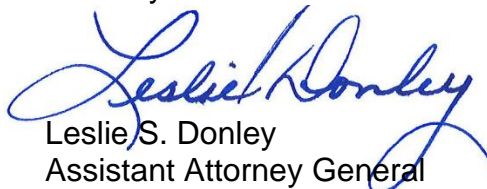
CONCLUSION

Based on the foregoing, you have not been denied access to public records on the basis of excessive costs. We also do not find that District violated the NPRS or acted in bad faith in handling your public records request. As a result, no further review by this office is necessary and we are closing this file.

If you disagree with the conclusion reached above, you may wish to review the other remedies available to you under Neb. Rev. Stat. § 84-712.03.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Justin J. Knight (via email only)

49-2893-30