



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

April 26, 2023

Via email at [REDACTED]
Robert J. Borer

[REDACTED]

RE: *Additional Public Record Matter Involving the Cherry County Clerk*
Our File No. 20231029

Dear Mr. Borer:

This letter is in response to your April 11, 2023, email in which you asked us to address your “original request” for public records emailed to the Cherry County Clerk, Brittny Longcor, on March 13, 2023. This particular request preceded your request for records which formed the basis of your petition emailed to this office on March 24, 2023. We note that prior to receipt of your April 11 email, there was nothing in your correspondence to suggest you were seeking our review of Ms. Longcor’s handling of your March 13 request. We have now considered the matter in accordance with the Nebraska Public Records Statutes (“NPRS”), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2022).

The records at issue include the “2022 General Election County Abstract”; “Certification of 2022 General Election Numbers”; “Certification of Write-In Votes for Governor”; and “Manual Audit Report.” Ms. Longcor responded to your request on March 21.¹ She cited language in Neb. Rev. Stat. § 32-1032, which restricts inspection of election materials to only “[t]he precinct sign-in register, the record of early voters, and the official summary of votes cast” The statute further provides that “[t]he election commissioner or county clerk shall not allow any other election materials to be inspected, including ballots and provisional ballot envelopes, except when an election is contested or the materials become necessary to be used in evidence in the courts.” Ms. Longcor advised that “Cherry County doesn’t have any records that are responsive to your

¹ We note that Ms. Longcor’s response was not timely under § 84-712(4), which requires a written response no later than four business days following actual receipt of a written request for public records.

Robert J. Borer
April 26, 2023
Page 2

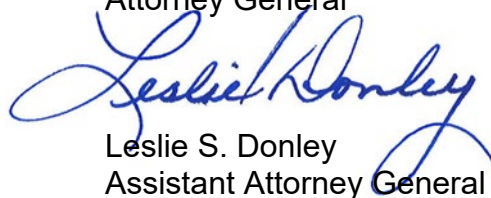
request.” Ms. Longcor has since clarified that her office had the records listed in your request, but was prohibited from disclosing them pursuant to § 32-1032.

As you know, this office has previously considered your petitions in which you sought access to certain elections materials not listed in § 32-1032.² This file is no different. Not only does the statute restrict inspection to the records specified, it also prohibits election commissioners and county clerks from disclosing any other election materials unless there is an election contest or the election materials are necessary as evidence in litigation. You have not alleged that either circumstance exists here. Consequently, Ms. Longcor’s response to you that she had no responsive records was appropriate in light of the restrictions in § 32-1032.

Since no further action by this office is necessary, we are closing this file. If you disagree with our conclusion, you may wish to consult with your private attorney to determine what legal remedies may be available to you under the NPRS or any other provision of law.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Brittny Longcor (via email only)

49-32__-30

² See, e.g., *File No. 23-R-105; Lancaster County Chief Deputy Election Commissioner; Robert J. Borer, Petitioner* (February 10, 2023), and *File No. 22-R-131; Lancaster County Election Commissioner; Robert J. Borer, Petitioner* (July 12, 2022).