



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

August 10, 2023

Via email at [REDACTED]
Jim Boucher

RE: *Public Record Matter Involving the City of Valley*
Our File No. 20231109

Dear Mr. Boucher:

This letter is in response to your correspondence emailed and received by this office on July 26, 2023, in which you sought our assistance in obtaining certain records from the City of Valley ("City"). We forwarded your correspondence to City staff on July 28, 2023, and subsequently discussed it with City Attorney Andrea Griffin and City officials on August 1. We construed your correspondence to be a petition under § 84-712.03(1)(b) of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022). Our findings in this matter are set forth below.

RELEVANT FACTS

On June 19, 2023, you submitted a public records request to the City. Your request stated as follows:

In Minutes of Aug 9 2022 Regular Council Meeting, Item 15 reported that People's Serv Mike Adair provided water usage charts for 2020, 2021 and 2022 and also charts projecting usage for 2023 & 2024. 1) Please provide one print copies each of Mr Adair's charts and one print copy of any other written technical narrative he provided.

August minutes also report that Water Engineer Jim Olmsted reported on funding loan & described a new three phase water plant expansion project. 2) Please provide copies of this Engineer's Report provided to the Council along with any written technical project descriptions and Engineer's cost estimates for each phase.

City Clerk Cheryl Eckerman timely responded to your request on June 23. She indicated that information about prior years' water usage was provided in a handout that was not included in the minutes and could not be located, but included data for 2021 and 2022 in her response. Ms. Eckerman further indicated that the 2023 and 2024 projections discussed at the meeting could not be located, but would be provided to you if found. In this respect, Ms. Eckerman stated that "Mr. Adair advises that the projections were merely a subjective increase of 20-30% over the previous year." Ms. Eckerman further advised that there were no written reports from either Mr. Adair or Mr. Olmsted submitted to the City Council at the August 9, 2022, meeting. Ms. Eckerman wrote that she was unclear what you were seeking "with respect to the water projects." She enclosed a copy of "preliminary Engineering Report, dated July 28, 2020, which gives a general overview of the project and . . . cost estimates." She informed you the August 9, 2022, meeting minutes would provide further detail about the projects. She further indicated that it would be helpful if you could be more specific when requesting information in the future.

You request in your petition that this office "determine that the City should now provide copies of the five water reports at the earliest to avoid the penalties in the law, and should always date and sign the transmittal cover memo for requested documents."

DISCUSSION

The undersigned viewed the portion of the meeting video¹ relating to Item 15. Mr. Adair began speaking at @15:50. Approximately three minutes into his presentation, Mr. Adair passed out a two-page handout to the City Council members containing charts of water usage and water usage projections. Mr. Olmsted began speaking at @24:50 and concluded his remarks at 26:20. Except for Mr. Adair's handout, no other written reports were distributed. We note further that Mr. Olmsted's brief presentation indicated that projects were still in the design phase.

Based on our review of the video, it appears that Mr. Adair's two-page handout would be responsive to your request for the "five water reports." It also seems to us that the City's inability to locate a record does not constitute a *denial* of public records nor subject staff to the penalties prescribed in § 84-712.09. The City cannot produce records it does not have. However, since Mr. Adair may have retained a copy of the handout, we will request that City staff contact him as soon as possible about obtaining a copy.

¹ Video of the Valley City Council meeting held on August 9, 2022, accessible at <https://www.facebook.com/cityofvalleyne/videos/1231566124272471/>.

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Finally, to the extent this office has any authority over local governmental subdivisions, e.g., cities, counties, school districts, it is through express statutory provisions requiring us to enforce the NPRS and Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2022). This office also has concurrent jurisdiction, along with the state's county attorneys, to prosecute criminal matters. However, we do not have general supervisory power over the City of Valley, the City Council, or other City officials. As a result, we must decline your request to direct the City Clerk to "always date and sign the transmittal cover memo for requested documents."

Since there is no basis for further review by this office, we are closing this file. If you disagree with the resolution reached above, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, are available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Andrea Griffin (via email only)

49-3300-30