



STATE OF NEBRASKA
Office of the Attorney General

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December 18, 2023

Via email at [REDACTED]
Charles Nocera

RE: *Public Record Matter Involving the Department of Administrative Services*
Our File No. 20231187

Dear Mr. Nocera:

This letter is in response to the petition you initially emailed to our office on September 13, 2023, and resubmitted on October 18 and November 29, in which you requested our review of the purported denial by the Department of Administrative Services (DAS) of your request for the "hire age" for every active Nebraska state employee. At our request, on December 1, 2023, you provided us the documentation necessary to process your petition. On December 14, the undersigned spoke to DAS General Counsel Adam Kauffman about the records requested. We have now completed our review of your petition in accordance with the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2022). Our findings in this matter are set forth below.

RELEVANT FACTS

On August 31, 2023, you emailed "DAS My Payroll" and "DAS Human Resources" stating:

I have requested and received the hire age (hire date minus birth date) for every active state employee from Colorado, Utah, Idaho and Washington; plus the resulting headcount graphs. Attached is from Colorado.

I would like the same from Nebraska.

Mr. Kauffman responded to your request on September 7, 2023. He provided you a link to the state's Personnel Almanacs indicating that they "contain statistical information on human capital metrics." He further informed you that "Neb. Rev. Stat. 84-712.05(7¹) allows exclusion of personal information in records regarding personnel of public bodies other than salaries and routine directory information."

You subsequently filed your petition with our office, indicating that you have received this information from other states. You also indicated that you had to petition the attorney general in other states to receive the information, and are "doing the same here." In your subsequent correspondence, you indicate that you have received the requested "hire age" information from more states and Canadian provinces, and attached responsive information from Manitoba.

DISCUSSION

In Nebraska, the basic rule for open public records is found at Neb. Rev. Stat. § 84-712 of the NPRS. That statute provides, in pertinent part, that

all citizens of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

"Public records" are defined as

all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

Neb. Rev. Stat. § 84-712.01(1) (2014). While the NPRS generally allow interested persons access to or copies of public records, they do not require public officials to answer questions, to interpret or explain records, or to create records which do not otherwise exist. See 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).

¹ Renumbered as subsection (8) due to the enactment of 2022 Neb. Laws LB 1246, § 5.

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Mr. Kauffman has confirmed to this office that DAS neither tracks nor compiles hire age information and, as a result, has no records responsive to your request. He clarified that his response should have indicated that DAS had no responsive records, rather than infer that responsive records were being withheld under § 84-712.05(8). Relying on the Attorney General opinions cited above, Mr. Kauffman is taking the position that DAS is not required to create a record that does not already exist. We believe that DAS' position is consistent with the opinions cited above, and is appropriate under the circumstances presented.

CONCLUSION

Since DAS is not required under a request made pursuant to § 84-712 to create a record that does not already exist, you have not been denied access to public records. As a result, no further action by this office is necessary and we are closing this file. If you disagree with our analysis, you may wish to discuss this matter with your private attorney to determine what, if any, additional remedies might be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General


Leslie S. Donley
Assistant Attorney General

c: Adam Kauffman (via email only)

49-3407-30