



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
ATTORNEY GENERAL

LESLIE S. DONLEY
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March 1, 2024

Via email at [REDACTED]
Scott J. Gray

RE: *Public Record Matter Involving Douglas County*
Our File No. 20241024

Dear Mr. Gray:

This letter is in response to your public records petition emailed to this office on February 5, 2024, which you supplemented on February 20. You have requested the Attorney General's review of Douglas County's handling of your January 22, 2024, records request, specifically relating to the time it took to fulfill it and the redacted minimum starting salary in a job application. On February 29, Deputy County Attorney William E. Rooney III provided us a copy of a letter emailed to you on February 28, 2024, which contained the remaining item in your request (i.e., Gonzalez resume) and the unredacted salary information. With the production/disclosure of these items, the only issue remaining is the propriety of the County's delay in fulfilling your request. We considered this matter under the provisions of the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2022).

RELEVANT FACTS

On January 22, 2024, you submitted the following request using the County's online records portal:

1. A list of finalists for the position of Deputy Director, Douglas County 911 Communications. This position was posted on 10/06/2023 and closed on 11/05/2023.
2. Identify the person who was offered the position of Deputy Director, Douglas County 911 Communications in January 2024, and list their starting salary.

3. For each of the finalists listed in #1, provide their application, resume, reference letters, or any materials attached to their online master application (Governmentjobs.com).

Mr. Rooney timely responded to your request on January 25, estimating an initial follow-up date of February 5. You prioritized the items in your request later on January 25, indicating that you had responded to numerous public records requests in your professional capacity, and acknowledging that requests “can take some time and [Mr. Rooney has] other duties as well.” On January 29, you emailed Mr. Rooney directly, requesting production of the prioritized items by the following day. Subsequent delays were communicated to you by Mr. Rooney, with a partial production occurring on February 16. We understand that other communications concerning your request, including telephone calls with Mr. Rooney et al., took place as well. As noted above, Mr. Rooney fulfilled your request on February 28.

DISCUSSION

As you know, Neb. Rev. Stat. § 84-712(4) sets out the process to obtain copies of public records. This provision states, in part:

(4) Upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, 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.

(Emphasis added.) When a delay is necessary “due to the significant difficulty or the extensiveness of the request,” the explanation of delay must include the earliest practicable date for fulfilling the records request. The statute does not require the records custodian to *produce* records no later than the four business days following receipt of a written request. It only requires the custodian to *respond* to the requester in some manner consistent with the statute.

You state in your petition that due to delays in fulfilling your request, you believe you were “purposely stalled.” We disagree. The legislative history of § 84-712(4),

enacted by the Nebraska Legislature in 2000,¹ indicates that public bodies must be given adequate time to respond to a request for public records, taking into account available facilities, equipment, and personnel.² Staff is not required to abandon their other public duties to respond to a request. In his January 25, 2024 letter, Mr. Rooney informed you that additional time was needed due to the “extensiveness of the records to be reviewed. . . .” We acknowledge that multiple response dates were made and extended. However, there is nothing in the statute that prohibits a public official from extending a date in those instances when initial (or subsequent) estimates do not allow adequate time to produce the requested records. Thus, in our view, Mr. Rooney fully complied with the requirements of the NPRS in handling your request.

Since we have identified no violations of the NPRS with respect to this matter, 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 additional remedies, if any, might be available to you under the Nebraska Public Records Statutes.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: William E. Rooney III (via email)

49-3487-30

¹ 2000 Neb. Laws LB 628, § 1.

² As stated by Senator Brashear, one of the co-sponsors of LB 628:

By contemplating that the public record will be the public record and it will always be available to the public, but by saying that the production of the public record or the copies of the public record has to be in a reasonable and orderly way, you get the time that you need in order to do it, as the custodian of the record is then constituted, meaning in terms of facilities, in terms of equipment, in terms of personnel, that they are not going to abandon all of their other public works in order to accommodate this request, and that the custodian, under the provisions of this bill, can have that adequate time to respond, we give the custodian of the public record leverage, as I call it.