



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
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RYAN D. BAKER
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February 20, 2024

Via email: [REDACTED]
Shane Sailors

RE: *Public Record Matter Involving the Village of Brownville*
Our File No. 20241025

Dear Ms. Sailors:

This letter is in response to your correspondence received by this office on February 5, 2024, in which you sought our assistance regarding your public records request submitted on February 3, 2024, to Kristy Mertes, the village clerk for the Village of Brownville, NE ("Village"). We considered 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 out below.

RELEVANT FACTS

Your request sought "an opportunity to inspect or obtain copies of public records which show Mr. Stephen Mossman's bills¹ to the village of Brownville for the months of November and December 2023 and January 2024" as well as copies of "the time sheets turned in by Natisha Helmick Winkleman for this same time frame." The Village's response, authored by Mr. Mossman, indicated that the requested timesheets would be provided at a rate of \$.25 per page for copies. However, Mr. Mossman indicated that "the billing statements are attorney work product and confidential communications" and were being withheld under Neb. Rev. Stat. § 84-712.05(4).

¹ We understand that Mr. Mossman currently serves as the Village Attorney.

DISCUSSION

Mr. Mossman is relying on the exception set forth in Neb. Rev. Stat. § 84-712.05(4) as the basis to withhold the requested billing statements, which provides in pertinent part:

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of those records:

. . .

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503.

Our office has previously analyzed whether attorney fee statements may be withheld under § 84-712.05(4). In a 2008 disposition letter involving this issue and the Cass County Board of Commissioners, we wrote:

From our research concerning previous public records matters, it appears that there is case authority which generally supports the notion that itemized fee statements can constitute attorney work product and/or communications subject to the attorney/client privilege under certain circumstances. For example, with respect to attorney work product, some courts have indicated that itemized descriptions of the work which an attorney has performed for a client can offer insight into the attorney's thought processes or legal theories for a particular case. On the other hand, we do not believe that a simple designation of hours worked along with a general description of the time spent such as "review of discovery" or "preparation of trial brief" normally offers insights into an attorney's thought processes or implicates a privileged communication with the attorney's client.

Disposition Letter in *File No. 07-R-154; Engelkemier; Cass County Board; McCartney* (May 22, 2008) at 4-5. See also Disposition Letter in *File No. 20-R-122; City of Gretna; Andy Harpenau, Petitioner* (August 17, 2020); Disposition Letter in *File No. 18-R-121; Blair Housing Authority; Petitioner Mark Welsch, GASP* (July 17, 2018).

We must also consider that, pursuant to Neb. Rev. Stat. § 84-712.01(3), provisions of the NPRS must be "liberally construe[d] . . . in favor of disclosure in cases which concern the expenditure of public funds . . ." See *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 799, 943 N.W.2d 231, 246 (2020). See also *Aksamit Resource Management LLC v. Neb. Pub. Power District*, 299 Neb. 114, 122, 907 N.W.2d 301, 308

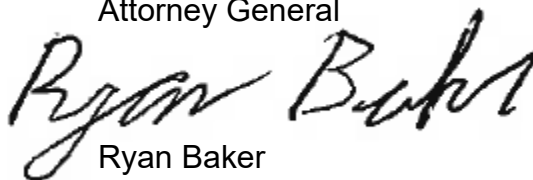
(2018) (“Because the Legislature has expressed a strong public policy for disclosure, an appellate court must narrowly construe statutory exemptions shielding public records from disclosure.”). We will therefore request, by sending a copy of this letter to Mr. Mossman, that he conduct a review of his billing statements submitted to the Village, redact all entries that would disclose privileged and confidential matters, and thereafter provide those requested billing statements to you. We would ask that Mr. Mossman make the redacted billing statements available to you no later than March 1.

CONCLUSION

Based on the foregoing, we conclude that Mr. Mossman’s billing statements to the Village were improperly withheld to the extent that the disclosure of those billing statements would not include attorney work product or confidential information. Consequently, in accordance with our conclusions in the previous disposition letters discussed above, the requested billing statements for Mr. Mossman’s legal services to the Village should be disclosed with appropriate redactions of information that would otherwise be confidential and/or privileged.

Sincerely,

MIKE HILGERS
Attorney General

A handwritten signature in black ink, appearing to read "Ryan Baker". The signature is written in a cursive, flowing style.

Ryan Baker
Assistant Attorney General

c: Stephen Mossman