



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
ATTORNEY GENERAL

RYAN D. BAKER
ASSISTANT ATTORNEY GENERAL

March 18, 2024

Via email: [REDACTED]
Brian McNeff

RE: *Public Record Matter Involving the Village of Brule*
Our File No. 20241041

Dear Mr. McNeff:

This letter is in response to your correspondence received by this office on February 26, 2024, in which you sought our assistance regarding your public records requests submitted to Vicki Malmkar, the village clerk for the Village of Brule ("Village"). Per your petition, you made two written requests for public records dated January 24 and 26, 2024.¹ On March 13, 2024, we wrote to you indicating that our disposition in this matter would be delayed pending receipt of further information from the Village's attorney, Joshua Wendell. We have now concluded our review. We considered your petition under § 84-712.03(1)(b) of the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2022).

Per your petition, you requested the following materials from the Village:

1. The original and unamended minutes drafted by Ms. Malmkar for the Village Board of Trustees meeting held on August 8, 2023, and any related notes taken;

¹ We note that your petition sets out the reasons you are seeking these particular records. For your information, "[t]he public records statutes apply 'equally to all persons without regard to the purpose for which the information is sought.' As a general rule, citizens are not required to explain why they seek public information." *BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, 943 N.W.2d 231, 247. Accordingly, this office does not consider the reason or purpose for a records request when making our determination under § 84-712.03(1)(b).

2. A copy of the electronic recording of the August 8, 2023, Village Board of Trustees via thumb drive;
3. The original and unamended minutes drafted by Ms. Malmkar for the Village Board of Trustees meeting held on October 10, 2023, and any related notes taken;
4. A copy of the electronic recording of the October 10, 2023, Village Board of Trustees meeting via thumb drive;
5. The original and unamended minutes drafted by Ms. Malmkar for Budget Hearing held on October 12, 2023, and any related notes taken; and
6. A copy of the electronic recording of the October 12, 2023, Budget Hearing via thumb drive.

You stated that these requests were made verbally, by email, and by registered mail directed to Ms. Malmkar as the Village Clerk. Your requests were also “served” by the Keith County Sheriff’s Office when the registered mail went unclaimed. You also indicated in your petition that as of February 23, 2024, you had not received the requested public records.

This office contacted Village counsel, Joshua Wendell, regarding your request. Mr. Wendell indicated that he discussed the matter with Ms. Malmkar and provided instructions for Ms. Malmkar to review and transmit the Village’s records applicable to your requests. Mr. Wendell further stated that he believed the requested records were mailed and had not received any inquiries from Ms. Malmkar regarding other records relevant to your requests. Per the information provided to us by Mr. Wendell, you have indicated that you received the existing requested records on or before March 11, 2024.

Notwithstanding your receipt of the requested records, we will take this opportunity to remind Village officials of their obligations under the NPRS. As pertinent to this matter, § 84-712(4) states:

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, 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

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expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

Public bodies such as the Village must comply with these obligations, as well as all other obligations on public bodies set forth in the NPRS. There is no option to ignore a proper written request, and the underlying purpose for the records request does not matter.

Finally, in the absence of evidence to the contrary, we presume that public officials acting on behalf of public bodies have acted in good faith in providing a response to a public records request. As described above, it is our understanding that the Village provided all records it was able to produce notwithstanding the untimeliness of that response. As such, no further action is warranted at this time, and we are closing this file.

Sincerely,

MIKE HILGERS
Attorney General

A handwritten signature in black ink that reads "Ryan Baker". The signature is written in a cursive, flowing style.

Ryan D. Baker
Assistant Attorney General

c: Joshua Wendell (via email)
55-021-30