



STATE OF NEBRASKA
Office of the Attorney General

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April 1, 2024

Steven M. Jacob [REDACTED]
[REDACTED]
[REDACTED]

RE: *Public Records Matter Involving the Clerk of the District Court, Lancaster County*
Our File No. 20241053

Dear Mr. Jacob:

This letter is in response to your public records petition dated March 11, 2024, which we received on March 15. You have asked for our assistance in obtaining certain records pertaining to your criminal cases from Simon G. Rezac, Clerk of the Lancaster County District Court. Upon receipt of your petition, we forwarded it to Mr. Rezac and requested a response. On March 25, 2024, we received a response from Deputy County Attorney Coehn W. Preble on behalf of Mr. Rezac. We considered your petition and Mr. Preble's response in accordance with the provisions of the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022), amended 2024 Neb. Laws LB 43. Our findings in this matter are set forth below.

RELEVANT FACTS

By letter dated February 23, 2024, you requested the following records from Mr. Rezac's office:

- (1) [A] copy of all tape recordings in the records of *State v. Jacob*, Docket 676 Page 298 in the District Court of Lancaster County.
- (2) [A] copy of the Clerk's list of names that were chosen for the entire jury pools for the two criminal trials; the first in 1990 and the second in 1994 or 1995.

Mr. Rezac timely responded to your request on March 5, 2024. He informed you that his office had twenty-three boxes relating to your request, and estimated that it would take approximately two hours to search each box for responsive records. Deducting the first four hours of labor, and using the hourly rate of the employee who would conduct the search, the estimate totaled \$924.00. In accordance with Neb. Rev. Stat. § 84-712(3)(f), he requested a deposit in this amount prior to fulfilling your request. Mr. Rezac further advised that this amount was only an estimate and could ultimately be higher or lower, but that you would be refunded any unused payment.

Your petition challenges Mr. Rezac's estimate. You "object to the Clerk's estimate of 2 hours to look into each box only to determine the number of tape recordings . . . contained therein." Further, you allege that the Clerk's jury records "should be on their computer"

In his response, Mr. Preble represents that in order to fulfill your request, a staff member would have to physically search all of the documents within the boxes to determine whether the requested records even exist. He indicated that since your cases date back to 1990 and 1994, none of the records are computerized. Mr. Preble states that the county believes the estimate is reasonable considering the volume of records that would have to be searched. He reiterated that the estimated cost could be more or less, but that any unused amount would be returned to you.

DISCUSSION

Neb. Rev. Stat. § 84-712(3)(b) provides that custodians of public records may charge a fee for providing copies of public records, "which fee shall not exceed the actual added cost of making the copies available." With respect to the labor costs that may be charged to produce copies of public records, Neb. Rev. Stat. § 84-712(3)(c) provides, in pertinent part:

The actual added cost used as the basis for the calculation of a fee for records shall not include any charge for the existing salary or pay obligation to the public officers or employees with respect to the first four cumulative hours of searching, identifying, physically redacting, or copying. A special service charge reflecting the calculated labor cost may be included in the fee for time required in excess of four cumulative hours, since that large a request may cause some delay or disruption of the other responsibilities of the custodian's office

In addition, § 84-712(3)(f) allows public bodies to request a deposit prior to fulfilling a request if copies are estimated to cost more than \$50.

Section 84-712.03(1)(b) requires the Attorney General to determine, among other things, "whether the fees estimated or charged by the custodian are actual added costs or special services charges as provided under section 84-712." Accordingly, we have

considered the propriety of Mr. Rezac's estimate based on the language in § 84-712(3)(c) and the information provided to us by Mr. Preble. The two cases referenced in your request are thirty-four and thirty years old. To identify the records in your request, a staff member will have to manually search through the contents of twenty-three boxes of records pertaining to your cases. The staff member's actual salary obligation was used in calculating the estimate. And, contrary to your assertion, the jury records are not computerized. Consequently, given the volume and age of the records at issue, and the specificity of your second request, which could be nothing more than a list of names on a sheet of paper, we find that the amount estimated by Mr. Rezac is an appropriate special service charge authorized under § 84-712(3)(c).

CONCLUSION

Based on the foregoing, you have not been denied access to public records on the basis of excessive costs. We also do not find that Mr. Rezac violated the NPRS or acted in bad faith in handling your public records request. As a result, no further review by this office is necessary and we are closing this file.

If you disagree with the conclusion reached above, you may wish to review the other remedies available to you under Neb. Rev. Stat. § 84-712.03.

Sincerely,

MIKE HILGERS
Attorney General


Leslie S. Donley
Assistant Attorney General

c: Coehn W. Preble