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Office of the Attorney General

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MIKE HILGERS
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

June 7, 2024

Via email at [REDACTED]
Robert J. Borer

RE: *Public Records Matter Involving Senators C. Armendariz and R. Sanders*
Our File No. 20241094

Dear Mr. Borer:

This letter is in response to two emails you sent to this office on May 23, 2024, using the AGO Info Help and AGO–Department of Justice email addresses.¹ Your emails sought our review of the denial of public records you received from Senator Christy Armendariz and Senator Rita Sanders. We construed your emails to be a petition under the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2022), amended 2024 Neb. Laws LB 43. Our findings in this matter are set forth below.

RELEVANT FACTS

On May 16, 2024, you emailed the senators involved requesting “a digital copy of the last email you received from a lobbyist.” Both senators timely responded to your request, denying you access to the email under the exception to disclosure in Neb. Rev. Stat. § 84-712.05(14) and Neb. Const. art. III, § 26.

¹ We will remind you again that the Attorney General has a Public Records Petition Form on our Open Government webpage for use by individuals seeking our review pursuant to Neb. Rev. Stat. § 84-712.03(1)(b). See <https://ago.nebraska.gov/open-government>. The form includes an email address to use when returning the completed form. Please use this form and the designated email address in the future.

You are challenging the senators' denials. Your petition contains no argument or authority to refute the propriety of withholding the requested email. In one of your emails to this office you state: "I'm not allowed to see what lobbyists are sending our representatives???"

DISCUSSION

This office has informed you on several previous occasions that access to public records is not absolute, and that § 84-712.05 sets out a number of categories of public records that may be kept confidential at the discretion of the lawful custodian involved. The exception relied on by the senators—§ 84-712.05(14)—pertains to

correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member

(Emphasis added.) In our view, an email to a senator is a record plainly contemplated by the statutory exception. Therefore, we believe that the senators' refusal to provide you their email did not violate the NPRS. Due to the applicability of § 84-712.05(14) to the records at issue, it is unnecessary to consider whether any other basis exists to withhold the requested email.

CONCLUSION

Based on the foregoing, we conclude that you have not been denied access to public records. Consequently, we plan no further action regarding this matter and we are closing this file. If you disagree with our conclusion, you may wish to discuss this matter

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with your private attorney to determine what additional remedies, if any, may be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Senator Christy Armendariz (via email only)
Senator Rita Sanders (via email only)

49-3557-31