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Office of the Attorney General

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June 18, 2024

Via email: [REDACTED]
James Boucher

RE: *Public Records Matter Involving the City of Valley*
Our File No. 20241107

Dear Mr. Boucher:

This letter is in response to your correspondence received by this office on June 3, 2024, in which you sought our assistance regarding a public records request submitted to the Valley City Office ("City Office") on April 9, 2024, and subsequent email correspondence with Valley's Interim City Administrator, Dave Ptak. We considered your petition in accordance with the Nebraska Public Records Statutes (NPRS) as set forth in 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.

FACTS

Our understanding of the facts in this matter stems from your petition to this office and the materials attached thereto. On April 9, 2024, you submitted a public records request to the City Office seeking "one B&W print copy or pdf of: 1) The List of full time and part time Valley Police Officers employed by the City as of the current date and 2) The weekly Shift Duty Assignments starting from March 18, 2024, and ending for the three weeks on April 7, 2024." The City Office thereafter responded to your request on April 11, 2024, in which it provided a document listing full- and part-time Valley Police Officers and a series of charts identifying specific shifts worked by the "Chief" and the different "Full time" and "Part time" officers during the requested timeframe.

In a follow-up email to the City Office's response, you requested "the names of the officers on duty be [sic] instead of the generic officer status description (FT or PT)." You also indicated that the specific information was previously provided to you in connection with two prior public records requests to the City of Valley. Mr. Ptak thereafter sent a response email on April 14, 2024, with the same spreadsheet attached in the City Office's April 11 response and stating that the City Office complied with your request. Per your petition, the City Office did not provide its reasons for not including the "names of the officers on duty" in the shift schedules provided.

On May 15, 2024, you subsequently requested

- 1) One B&W Copy of Actual Shift Duty Assignments (time records) by name of Officer for three weeks beginning 3-18-24 and ending 4-14-24.
- 2) Please provide one B&W copy of the same actual Shift Duty Assignments (time records) by name of Officer for the week beginning 4-15-24 ending to date.
- 3) Please provide one B&W copy of the List of FT and PT officers employed by the City as of this date.

Thereafter on May 16, Mr. Ptak declined to provide the names of Valley police officers staffing the specific duty shifts outlined in the documents produced on April 11, 2024. Mr. Ptak produced (1) a document identifying the duty shifts for the period from April 15, 2024, to May 15, 2024, and the employment status of the Valley police officers assigned to those shifts and (2) a list of full-time and part-time Valley police officers as of May 15, 2024. Mr. Ptak cited to § 84-712.05(8) and (9) for the City Office's justification to withhold the names of the individual police officers assigned to particular shifts.

On May 17, 2024, you responded to Mr. Ptak's email outlining claimed deficiencies in the City Office's response. You subsequently petitioned our office to review this matter. We contacted the City Office and Mr. Ptak regarding your petition for additional information. Mr. Ptak indicated that Valley Police Chief Brett Smith did not want individual police officers to be identified in connection with their assigned duty shifts "for security reasons so his officers could not be targeted or when Valley might be most vulnerable."

You claim in your petition that the City Office "failed to respond" to your April 11 email or "give any reasons for its failure to produce the documents or reasons why it refused this request within the statutory 4 days." You also claim the City Office "provided no evidence as required by the statutes to show that release of the requested information . . . had any adverse impact on public safety or ongoing police work" notwithstanding the prior disclosure of similar information in your previous public records requests.

DISCUSSION

The basic rule for access to public records in Nebraska is set out in § 84-712(1). This provision generally states that "[e]xcept as otherwise expressly provided by statute," all Nebraska citizens and other interested persons have the right to examine public

records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those records, and to obtain copies of records in certain circumstances. “Public records” are defined as

[a]ll records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

Neb. Rev. Stat. § 84-712.01(1) (Cum. Supp. 2022).

Access to Requested Public Records

While the NPRS provide general access to public documents, this access is not absolute. Section 84-712.05 sets forth several categories of public records that may be withheld by public bodies at the discretion of the records custodian so long as those records have not been “publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties” At issue in this matter are the exceptions found at § 84-712.05(8) and (9). These subsections provide that the following records may be withheld:

(8) Personal information in records regarding personnel of public bodies other than salaries and routine directory information; [and]

(9) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or public utility infrastructure specifications or design drawings the public disclosure of which would create a substantial likelihood of endangering public safety or property, unless otherwise provided by state or federal law[.]

Under the plain language in subsection (8), personal information of public employees may be withheld. Only “salaries and routine directory information” must be disclosed. In our view, an individual police officer’s assigned duty shift is personal information of that employee, and does not constitute salary or routine directory information¹ required to be disclosed under the NPRS. Therefore, the request to have

¹ This office has construed “routine directory information” to include an employee’s name, job title, work telephone number and address and dates of hire and separation. *See, e.g., File No. 18-R-102; Nebraska Department of Revenue; Grace Willnerd, Petitioner* (January 18, 2018).

individual police officer names connected with their assigned duty shifts falls squarely within the parameters of subsection (8). The City Office is therefore not required to produce such information.

Because we have concluded that the requested information falls squarely within the parameters of subsection (8), we need not discuss the City Office's reliance on subsection (9). We also note that the City Office's prior production of similar documents with police officers' names associated with specific duty shifts has no bearing on this matter. The exceptions set forth in § 84-712.05 merely permit the public body to exercise discretion in choosing to produce or withhold information falling within each exception. The City Office's responses to previous requests do not bind it to provide identical responses to subsequent requests for different information if such information was not "disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties." See § 84-712.05.

Timeliness and Required Content of City Office's Response

As a final matter, we will briefly discuss the City Office's responses to your April 9, 2024, request and subsequent correspondence. Section 84-712(4) provides in pertinent part:

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.

Further, where a public body declines to produce the requested records, § 84-712.04(1) requires it to provide to the requester:

(a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.05 as authority for the denial;

(b) The name of the public official or employee responsible for the decision to deny the request; and

(c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

We note that your April 11, 2024, email to the City Office's initial response clarified the specific information you sought in your initial April 9 request. At that juncture, it was plainly obvious that the City Office was withholding the names of police officers in connection with the assigned duty shifts. Consequently, the City Office was required to provide a responsive denial to your request within four business days specifically complying with the requirements of § 84-712.04(1). The City Office did not do so until Mr. Ptak's email dated May 16, 2024. We will therefore take this opportunity to remind the City Office, through a copy of this letter emailed to Mr. Ptak, that it must comply with the above-described obligations, as well as all others set forth in the NPRS.

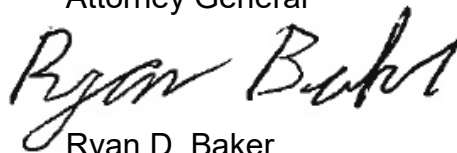
CONCLUSION

For the reasons set out above, we conclude that the City Office may withhold the information concerning the assignments of specific police officers by name to each duty shift under the exception in § 84-712.05(8). As a result, the City Office did not unlawfully deny you access to public records, and no further action by this office is warranted. We will therefore close this records file.

If you disagree with our legal analysis set forth herein, you may wish to consult with a private attorney to determine what, if any, additional remedies may be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Ryan D. Baker
Assistant Attorney General

c: Dave Ptak (via email only)