



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

MIKE HILGERS
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

August 19, 2024

Via email at [REDACTED]
Hannah Epp

[REDACTED]
[REDACTED]

RE: *Public Record Matters Involving the Nebraska Department of
Transportation*
Our File No. 20241155

Dear Ms. Epp:

This letter is in response to the public record petition you emailed to this office on August 2, 2024, an addendum to that petition submitted on August 6, 2024, and a second public record petition emailed on August 12, and received by this office on August 13. You have requested the Attorney General's assistance in obtaining certain records pertaining to "Project Access York" from the Nebraska Department of Transportation (NDOT). We forwarded your submissions to the NDOT Legal Department upon receipt and requested information on the NDOT's handling of your requests. We have now completed our review of all documentation and information received under the Nebraska Public Records Statutes, 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.

Your first petition involves a July 24, 2024, public records request seeking the following records:

1. [C]omplete set of monthly updates (October 2022 - present) produced by Olsson, Inc. and submitted to NDOT in regards to Project Access York. Project No. DPS-93(15), Control No. 43010, Location: Project Access York.
2. [A]ll email communications between and among Olsson, Inc., NDOT, and/or City of York personnel referencing, including, or pertaining to monthly updates (described in #1 above).

Denise Matulka, NDOT Records Officer, responded to your request on August 5,¹ indicating that the NDOT had no responsive records and to “[p]lease contact Olsson Inc.” The addendum to your petition, which contained various records you had obtained from the City of York, asserted that the NDOT had records responsive to your request but failed to produce them.

Your second petition involves a public records request, submitted July 22, 2024, in which you sought the following:

[A] complete copy of Supplement No. 2, Professional Services Agreement, Preliminary Engineering Services (BK2301-002) including any and all pages of exhibits associated with Supplement No. 2 (Consultant Work Order and Scope of Services, Consultant’s Fee Proposal, etc.). This Supplemental Agreement is between the City of York, NE and Olsson, Inc., for Project Access York, Project No. DPS-93(15), Control No. 43010.

Ms. Matulka responded to this request on July 26, stating that “Supplement 2 is still being prepared. It will not be available until late September. Please submit a new ticket in early October.” You assert in your petition that the NDOT is withholding the supplement based on emails obtained from other public records requests. You state the “NDOT received the Supplement from Olsson, Inc. on 5/10/24, reviewed it with City of York officials on 5/22/24, and arranged with City officials to finalize the Supplement on 5/29/24 (communications attached).”

With respect to your first petition, Mr. Gaffey informs us that the NDOT was aware of the documents you provided with your addendum but did not consider them responsive to your request. Those documents “were prepared by NDOT personnel as a part of its role to disburse federal funds to the City of York upon completion of project milestones.” The sender is an NDOT employee. Mr. Gaffey states the “NDOT has not received any documents created or produced by Olsson, Inc. that are in the nature of a monthly update or monthly status update.”

As to your second petition, Mr. Gaffey confirms that the response provided to you on July 26, 2024, is accurate, and that “it is anticipated a Supplement 2 will be completed by late September or early October.” Mr. Gaffey states that “[w]hile there were numerous exchanges between the City of York and NDOT concerning the development of a Supplement 2, . . . no supplemental agreement has ever been executed.” It is his understanding that the ROW and the Final Design have also not been completed.

¹ We will remind Ms. Matulka, by providing a copy of this response to Mr. Gaffey, that, pursuant to Neb. Rev. Stat. § 84-712(4), responses to written public records requests must be made no later than four business days after actual receipt of the request.


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Based on the information we received from Mr. Gaffey, we conclude that the NDOT has not denied you access to public records. There are no “monthly updates . . . produced by Olsson, Inc. and submitted to NDOT” and, thus, no communications pertaining to such documents. Also, there is no Supplement 2.

Finally, Mr. Gaffey notes your petition seeks our assistance in obtaining the “Supplement whether already executed or in some stage of formation.” However, since your July 22, 2024 request, did not contain the “or in some stage or formation” language, the NDOT interpreted your request to be for an *executed* agreement. Mr. Gaffey did not attempt to determine whether any drafts of a Supplement 2 exist or advise the NDOT whether the drafts would be considered public records under the Attorney General’s guidance in Op. Att’y Gen. No. 91054 (June 14, 1991). In any event, since you did not request drafts in your original request to the NDOT, we must decline to consider your access to those records.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Matthew Gaffey (via email)

49-3612-31