



STATE OF NEBRASKA  
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September 19, 2024

Via email at [REDACTED]  
Hannah Epp

RE: *Public Record Matter Involving the Nebraska Department of Transportation*  
Our File No. 20241172

Dear Ms. Epp:

This letter is in response to the public records petition you emailed to this office on September 4, 2024. You have requested the Attorney General's assistance relating to a public records request you submitted to the Nebraska Department of Transportation (NDOT) on August 21, 2024. We forwarded your petition to Assistant Attorney General Matthew Gaffey upon receipt and requested information in response to your concerns. We received such information on September 17. We have completed our review of your petition 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 and LB 1204. Our findings in this matter are set forth below.

**RELEVANT FACTS**

Your August 21, 2024, public records request sought the following records pertaining to "Project Access York":

- 1) [A]ll MSU documents (Local Projects Monthly Status Update[s]) for CN 43010 – York Pedestrian Trail – Project Access York (August 1, 2022 – present). Some if not all MSUs have been emailed from Paul Kieper (NDOT) to the City of York.
- 2) [A]ll communications and exchanges related to the MSUs (Local Projects Monthly Status Update[s]) for CN 43010 – York Pedestrian Trail – Project Access York (August 1, 2022 – present).

NDOT Records Officer Denise Matulka responded to your request on August 23, providing you MSUs responsive to item one. You followed up with Ms. Matulka on August 26, inquiring whether the NDOT would be providing any further records in response to your request. In response, Ms. Matulka informed you that the NDOT provided you all existing MSUs relating to the project, and there was no MSU for March 2024.

### **DISCUSSION**

You are challenging the sufficiency of the NDOT's response on three grounds. First, you claim the NDOT did not address item two of your request. Second, you "question[ ] the absence of MSUs for March and June 2024" "[g]iven the active status of the project throughout 2024." Third, you allege that the May MSU has been altered when compared to the same MSU you previously obtained from the City of York.

Mr. Gaffey informs us that NDOT staff conducted a comprehensive review of its records and responses to your requests to determine whether a supplemental response was warranted. During this review, it was discovered that a *draft* May MSU was inadvertently provided to you. To resolve this matter, we understand that earlier today Ms. Matulka resent the MSUs to you, with the correct May MSU, and also provided all transmittal emails from Mr. Kieper relating to the MSUs. We have reviewed these materials and are satisfied with the NDOT's response.

As to your other two claims, the fact that you believe there should be other MSUs relating to this project does not equate to a denial of public records. Moreover, "absent contrary evidence, public officers are presumed to faithfully perform their official duties." *Thomas v. Peterson*, 307 Neb. 89, 98, 948 N.W.2d 698, 706 (2020). In this respect, you provided no evidence to support your claim that other MSUs existed but you were denied access to them. With respect to the "altered" MSU, pursuant to § 84-712.03(1)(b), this office is authorized "to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with" provisions of the NPRS. We do not review records for content and we do not determine whether certain records may have been altered.

### **CONCLUSION**


Based on the information we received from Mr. Gaffey, and your receipt of the requested records earlier today, we conclude that the NDOT has not denied you access to public records. NDOT has now produced everything responsive to the items in your request. Further, your receipt of the draft May MSU has been remedied.

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Since no further action by this office is necessary, we are closing our file. If you disagree with our handling of this matter, 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: Matthew Gaffey (via email)

49-3629-31