



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
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RYAN D. BAKER
ASSISTANT ATTORNEY GENERAL

January 21, 2025

Via email: [REDACTED]
James Boucher

RE: *Public Records Matter Involving the City of Valley*
Our File No. 20251001

Dear Mr. Boucher:

This letter is in response to your correspondence received by this office on January 3, 2025, in which you sought our review of a public records request submitted to the City of Valley ("City") for certain law enforcement records and the City's response. We considered your petition in accordance with the Nebraska Public Records Statutes as set forth in Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2024).

FACTS

Our understanding of the facts in this matter comes from your petition to this office and the information received from the City following the undersigned's communications with the city clerk, Christie Donnermeyer. We first note that your petition does not include your original public records request. According to the City, your request was received on December 12, 2024, and your petition indicates that the descriptions provided in the City's response, dated December 17, 2024, are consistent with your requests. Per the City's email, you requested the following:

1. List of names, rank, employment status & term duration of all Certified Law Enforcement Officers currently in employ of the City of Valley as of this date;

2. Spreadsheet or other form document showing Valley PD officer shift assignment schedule showing hourly/daily/weekly duty hours for VPD officers covering City for months October and November 2024;
3. List of all VPD duty hours logged for K9 Officer Sonic & partner officer from April 1 2024 to date;
4. List of Dates & general description of all VPD Incident Reports involving Sonic from January 1, 2023 to date.

In its response email, signed by “Records Custodian,” the City provided a list of names for all full- and part-time officers employed by the City. For all remaining items other than the list of names, the City advised, “Please refer to Attorney General decision dated June 18, 2024, and August 9, 2024.”¹ No other information was included in the City’s response.

You now seek review of the City’s responses to “Items 3 and 4” of your request. You allege that “the information . . . requested in Items 3 and 4 do not in any way conform to the statutory exceptions provided” in our previous dispositions.² The City, via Ms. Donnermeyer, informed the undersigned that there is neither a “list of [Valley Police Department] duty hours logged for K-9 Office[r] Sonic & partner officer” nor a “list of dates and general descriptions of all [Valley Police Department] incident reports involving Sonic”

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 residents 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,

¹ See, File No. 2024-1146, *City of Valley; James Boucher, Petitioner* (Aug. 9, 2024); and File No. 2024-1107, *City of Valley; James Boucher, Petitioner* (June 18, 2024).

² Your petition discusses your reasons for seeking the requested records. For your information, “[t]he public records statutes apply ‘equally to all persons without regard to the purpose for which the information is sought.’ As a general rule, citizens are not required to explain why they seek public information.” See *BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, 943 N.W.2d 231, 247 (2020). Accordingly, this office does not consider the reason or purpose for a records request when making our determinations under § 84-712.03(1)(b).

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.

§ 84-712.01(1). However, as our office has previously stated, the NPRS “do not require public officials . . . to create documents which do not otherwise exist.” See Op. Att’y Gen. No. 94092 at 6 (Nov. 22, 1994).

Ms. Donnermeyer has confirmed to this office that the requested lists do not exist. The fact that the City has no records responsive to your request does not equate to a denial of public records, and we see no indication that Ms. Donnermeyer or the City acted in bad faith in this matter.³ Consequently, we conclude that the City did not unlawfully withhold records when such records do not exist.

As a final matter, we note that the City did not state in its response whether the requested records exist. In the future, if the City determines that no public records responsive to a request exist, it must so advise. Conversely, if the City determines that the requested records exist and thereafter *denies* the requester access to the records, the City must comply with § 84-712.04(1) by providing the following information 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 84-712.01 relied on 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.

Neb. Rev. Stat. § 84-712.04(1). However, we would urge the City’s strict compliance with all requirements in the NPRS in the future.

³ Under Nebraska law, it is generally presumed that public bodies and officers carry out their duties in good faith. See *Wolf v. Grubbs*, 17 Neb. App. 292, 310, 759 N.W.2d 499, 518 (2009) (observing that, in a case involving the Open Meetings Act, “[i]n the absence of evidence to the contrary, it may be presumed that public officers faithfully performed their official duties”).

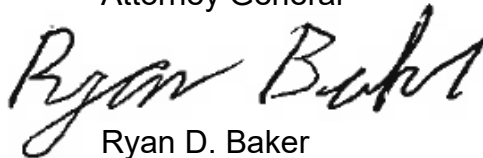
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CONCLUSION

For the reasons set forth above, we conclude that the City did not unlawfully deny you access to public records because records responsive to your request do not exist. We will accordingly close this records file. If you disagree with our conclusion, you may wish to discuss this matter with your private attorney to determine what, if any, additional remedies might be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General

A handwritten signature in black ink, appearing to read "Ryan Baker", written in a cursive style.

Ryan D. Baker
Assistant Attorney General

c: Christie Donnermeyer

55-066