



STATE OF NEBRASKA  
**Office of the Attorney General**

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January 23, 2025

Via email at [REDACTED]  
Theresa DeVries

RE: *Public Records Matter Involving the City of Tekamah*  
File No. 20251002

Dear Ms. DeVries:

This letter is in response to correspondence submitted to our office on December 20, 2024, in which you requested our review of certain public record matters involving the City of Tekamah (City). On December 30, we wrote to you requesting documentation, i.e., your public records request and any communications with the public body involved, to support your petition. In response, you emailed materials to us on January 4, 6, and 8, 2025. On January 8, we sent what we considered to be your petition to Tekamah City Attorney Matthew M. Munderloh and requested a response, which we received on January 17. We note that earlier this week both parties provided this office supplemental materials for our consideration. We reviewed your petition pursuant to the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2024). Our findings in this matter are set forth below.

Before we begin, we will point out that to the extent this office has any authority over local governmental subdivisions, e.g., cities, counties, school districts, it is through express statutory provisions requiring us to enforce the NPRS and the Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2024). We do not have general supervisory power over the City or City officials. As a result, the concerns raised in your petition relating to City operations or City officials' conduct will not be addressed. We will

also point out that we do not consider the reason or purpose for any records request when making our determination under § 84-712.03.<sup>1</sup>

## RELEVANT FACTS

Your petition involves three public records requests, submitted to the City on July 17, 2024, December 4, 2024,<sup>2</sup> and December 17, 2024. Each request, and the City's handling of the request, are summarized below:

### I. July 17, 2024, Request

This request, emailed to Mr. Munderloh and the City Clerk, sought "simple printouts of Budget and Actual detail departments expenditures" for the years 2018 through 2023/2024 to date. The City Clerk acknowledged the request on the day of receipt, asking questions to clarify the specific items requested. On July 22, 2024, the City Clerk informed you that "[d]ue to the nature of your public records request, periods covered and the pressing day to day city business your request cannot be fulfilled until August 16, 2024." You challenged the delay, stating in response:

These are printouts which should be readily available. There is no reason for such a delay in receiving my public access request. 4 days is the requirement to return my request.

In response, Mr. Munderloh reiterated that your request would be fulfilled by August 16, 2024, in accordance with Neb. Rev. Stat. § 84-712. You again challenged the delay, stating: "The city can't provide simple printouts that the council members should be using in their roles? That says alot[.]"

On July 26, you emailed an identical request to Mr. Munderloh and the City Clerk. In response to this request, on August 1 Mr. Munderloh requested that you "please refrain from making duplicate requests" and informed you that "duplicate requests will not be fulfilled any sooner than the initial request."

On August 14, the City Clerk provided you records which she considered to be responsive to your request in three separate emails. In the first email, the City Clerk explained that due to a software conversion, some requested items were not available. She included a general ledger since your request specifically sought "Actual detail departments expenditures." However, you claim this information was not requested,

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<sup>1</sup> See *BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, 943 N.W.2d 231, 247 (2020) ("The public records statutes apply 'equally to all persons without regard to the purpose for which the information is sought.'").

<sup>2</sup> In our letter to Mr. Munderloh, we erroneously referred to this request as having been received by the City on December 6. Mr. Munderloh clarified the correct receipt date in his response.

stating in one email to the City Clerk et al. that “I did NOT ask for the detailed line items.” On August 20, Mr. Munderloh informed you that the City did not have the records in the specific format you requested, and that the public records statutes do not require the City to create documents that do not otherwise exist.

On December 17, you submitted another request identical to the requests submitted on July 17 and 26. In response, on December 27, the City Clerk provided you additional records specially generated from the City’s new software program, i.e., spreadsheets comparing actual and budgeted expenses for fiscal years 2022/2023 and 2023/2024. The City Clerk informed you that these spreadsheets were not available for the earlier years listed in your request.

## II. December 4, 2024, Request

This request sought records pertaining “to the repayment of funds to cover the Library expansion project.”<sup>3</sup> On December 5, Mr. Munderloh acknowledged your request and indicated that the City would reply to your request on or before December 16. On December 11, this date was extended to December 30. On December 27, 2024, the City Clerk provided you what she believed to be responsive to your request, i.e., an excerpt of a letter written by Mr. Munderloh addressed to the Auditor of Public Accounts. You immediately responded that you were seeking “the source documents which repaid the funds taken from the water department. That has not been answered.” In response, the City Clerk informed you that “[t]he funds have not been repaid.”

## III. December 17, 2024, Request

You made two public records requests on December 17: A duplicate of the July 17 and 26 request (see above) and a request for records relating to the City’s pool addressed to City Councilman and “pool commissioner” Matt Cass. Mr. Munderloh informs us that he did not realize the City Clerk was not included on this particular request until he received our request for information. Upon noticing this oversight, responsive records were emailed to you on January 15, 2025.

## **DISCUSSION**

The basic rule for access to public records is set out in Neb. Rev. Stat. § 84-712(1). That provision states:

Except as otherwise expressly provided by statute, all residents of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such

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<sup>3</sup> We note that the request provided in your petition is not identical to the request provided to us by the City.

records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

“Public records” are defined as “all 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.” Neb. Rev. Stat. § 84-712.01(1). This office has concluded that § 84-712 does *not* require a public body to review documents and create abstracts or other lists, to answer questions or to create documents which do not otherwise exist. Op. Att’y Gen. No. 94092 (November 22, 1994); Op. Att’y Gen. No. 94035 (May 11, 1994); Op. Att’y Gen. No. 87104 (October 27, 1987).

The procedure to obtain public records is set out in Neb. Rev. Stat. § 84-712(4), which states, in 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. The requester shall have ten business days to review the estimated costs, including any special service charge, and request the custodian to fulfill the original request, negotiate with the custodian to narrow or simplify the request, or withdraw the request. If the requester does not respond to the custodian within ten business days, the custodian shall not proceed to fulfill the request.

When a delay is necessary “due to the significant difficulty or the extensiveness of the request,” the explanation of delay must include the earliest practicable date for fulfilling the records request. The statute does not require the records custodian to *produce* records no later than the four business days following receipt of a written request. It only requires the custodian to *respond* to the requester in some manner consistent with the statute.

With these provisions in mind, we considered the City's handling of your requests. As summarized above, it appears to us that you are now in receipt of all records responsive to those requests. The fact that some records may not exist or you may not be able to obtain certain records in a desired format does not constitute a denial of public records. Notwithstanding our longstanding position that § 84-712 does not require public bodies to create records to satisfy a records request, it seems to us that the City did just that when it generated and provided you additional spreadsheets on December 27.

With respect to the City's delays in fulfilling your requests, we note the several instances in the documentation where you "pushed back" on a delay, informing City officials that you submitted "simple" requests, that the additional time required by City officials to fulfill your requests was "nonsense" and "unnecessary," and that your requests could be fulfilled by "nothing more than pushing the print button." We disagree. The legislative history of § 84-712(4), enacted by the Nebraska Legislature in 2000,<sup>4</sup> indicates that public bodies must be given adequate time to respond to a request for public records, taking into account available facilities, equipment, and personnel.<sup>5</sup> Staff is not required to abandon their other public duties to respond to a request. City staff informed you that additional time was needed due to the nature of your request and pressing City business. In the case of your second request, where the delay date was extended to December 30, there is nothing in the statute that prohibits a public official from extending a date in those instances when initial (or subsequent) estimates do not allow adequate time to produce the requested records. Thus, in our view, the delays imposed by the City Clerk were appropriate under § 84-712(4).

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<sup>4</sup> 2000 Neb. Laws LB 628, § 1.

<sup>5</sup> As stated by Senator Brashear, one of the co-sponsors of LB 628:

By contemplating that the public record will be the public record and it will always be available to the public, but by saying that the production of the public record or the copies of the public record has to be in a reasonable and orderly way, you get the time that you need in order to do it, as the custodian of the record is then constituted, meaning in terms of facilities, in terms of equipment, in terms of personnel, that they are not going to abandon all of their other public works in order to accommodate this request, and that the custodian, under the provisions of this bill, can have that adequate time to respond, we give the custodian of the public record leverage, as I call it.

## CONCLUSION

Under § 84-712.03(1)(b), this office is authorized to review public record matters “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 such sections . . . .” Upon careful review of all material presented to this office, we have identified nothing to suggest that you were denied access to public records or that the City failed to comply with the NPRS. As noted above, the City has no obligation under the NPRS to create records which do not otherwise exist and delays which may be necessary to fulfill public records requests are authorized under § 84-712(4). Also, the fact that there are no responsive records available, as was the case for your December 4 request, does not constitute a denial of public records.

Since we have identified no violations of the NPRS with respect to this matter, no further action by this office is necessary and we are closing this file. If you disagree with our analysis, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, might be available to you under the NPRS.

Sincerely,

MIKE HILGERS  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: Matthew M. Munderloh (via email only)

49-3706-31