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Office of the Attorney General

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MIKE HILGERS
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LESLIE S. DONLEY
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March 20, 2025

Via email at [REDACTED]
Marlin Wendell

RE: *Public Record Matters Involving the City of Grant*
Our File No. 20251036

Dear Mr. Wendell:

This letter is in response to your public records petition submitted to our office on March 5, 2025, which you supplemented on March 11. You have requested the Attorney General's review of public record matters involving the City of Grant (City). We sent your petition and supplement to City Attorney Tawna Holmstedt on March 10 and 11, respectively, and requested a response, which we received on March 18. We considered your petition, supplement and the City's response in accordance with 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.

FACTS

On February 5, 2025, you submitted a public records request using the City's REQUEST FOR ACCESS TO RECORDS form seeking a "Subdivision Map that was at the CRA [Community Redevelopment Authority] Meeting on January 30, 2025." The City Clerk, Jessie Faber, timely responded to your request on February 11, 2025, stating in part that "[t]his Subdivision Map was not left with the City of Grant and the map will not be available until Dickinson Land Surveyors can recreate the Subdivision Map. This will at least take until February 28, 2025."

On February 14, you submitted another request form to Ms. Faber seeking:

Maps that were Present at the CRA "Community Redevelopment Authority Meeting" on January 30, 2025. Maps specifically presented by Ryan Dickinson. I am not asking for the recreated or revised maps, but the maps that were displayed at open meeting. It was clearly stated that Ryan Dickinson was going to mail Jessie copies of the maps and Jessie Faber would redistribute the email to the CRA Members.

In a letter dated February 18, you challenged Ms. Faber's response to your February 5 request on several grounds, including that maps already exist, and the surveyor indicated at the meeting he would email the maps to Ms. Faber for distribution to the CRA members. You considered the February 28 delay "unreasonable and may suggest an attempt to delay my request for documents that are readily available." You further stated:

As a final request, I am asking that copies of the maps be made available for review within 24 hours from receipt of this notice, as my original request was made on February 5, 2025. If this request is not met, I will forward this matter to the Nebraska Attorney General for review.

On February 19, Ms. Holmstedt telephoned you to let you know that she had the map requested on February 5. She attached correspondence informing you that your statements regarding the surveyor were inaccurate, i.e., had the private developer involved agreed to the project, the map you requested would have been provided to the City. Since no agreement was reached, the entire project changed, and the surveyor was directed to create a new map before the next CRA meeting excluding the private developer's property. Ms. Holmstedt states: "Ryan Dickinson had to recover the document from his system because of the extreme changes with the CRA project during the meeting. I have attached a copy of the working copy map pursuant to your request."

You continued to exchange correspondence with Ms. Holmstedt and Ms. Faber regarding your requests for the map. On March 6, you took issue with Ms. Holmstedt's March 4 request that you use the City's form to request public records, resulting in more correspondence and a March 10 records request, via the City's form, for "[a]ll Documentation confirming the existence of a Public Records Request Form Policy." Your March 10 letter, written in response to Ms. Holmstedt's March 6 request to provide her "details as to why your records requests for February 5th and February 14th were not satisfied," is summarized below:

1. You asserted the document provided to you was "incomplete" because it did not contain "Page 2 of 2."
2. The February 5 request was "unsatisfied" because it was incomplete, unreadable and produced after an unreasonable delay.
3. There was no response to the February 14 request as required by law until an email was sent to the City Clerk on February 27.

4. The City is stonewalling and that “[m]y public records request for access to unobstructed maps to include Page 1 of 2 and Page 2 of 2 of the Bishop Subdivision Map ‘A Final Plat of Bishop Subdivision’ that were present at the CRA Meeting on January 30, 2025, has been clear from the beginning.”

Your petition to this office alleges two violations: (1) “[F]ailure to produce public records as requested and proved valid with Nebraska Revised Statute 84-712.01” and (2) “failure to respond to ‘Access to Public Records Request’ within the time frame set forth in the Nebraska Revised Statute 84-712.” You indicate you attempted to resolve this matter prior to contacting this office and assert that “[t]his appears to be a game with the City of Grant Attorney.” You state you have texted the members of the city council and the mayor and received only two responses. You also spoke about “transparency” at two city council meetings. You further state you “have made several attempts to resolve the issue and to date have not satisfied my requests.”

You requested this office to “investigate this matter and take appropriate action to compel the City of Grant Records Custodian to comply with the Nebraska Public Records Act and release the requested public records.” You also “strongly urge the imposition of the maximum penalty allowed under law for violation of the public record requests,” noting “[t]his is not the first time I have encountered problems gaining access to public records with the City of Grant.”

In her response to this office, Ms. Holmstedt informs us she provided you a copy of the map on February 19, the same day it was received from Mr. Dickinson. She represents that her February 19 letter to you accurately described the circumstances concerning the map. Ms. Holmstedt further represents that the “surveyor did not leave his work product with the City and took the work product back to his office with him and shredded that work product because we had completely changed the course of the project.” She states the map was on page one of the document, and page 2 was the legal description of the project. She further states you were not provided page 2 because you did not request the legal description.

As to the use of the form, Ms. Holmstedt represents that the form is part of the City’s “standard operating procedure . . . so that we can make sure all records requests are attended to and taken care of” and has been in use for over ten years. Ms. Holmstedt states you have used the form at least twenty-five times in the past year, including one submitted on March 14 requesting billing statements for her legal services to the City for the period December 1, 2024 to February 28, 2025.

DISCUSSION

Your petition alleges the City failed to produced records as requested. We disagree. City officials represented to you that the map was not provided to the City before the meeting nor left with the City at its conclusion. Ms. Holmstedt informed you that Mr.

Dickinson would have emailed the maps to the City had the project been approved at the January 30 meeting. It was not. Moreover, there would be no need to provide maps to the City for a project that was no longer viable. Upon receipt of your February 5 request, Ms. Faber contacted Mr. Dickinson to obtain a copy of the map. Mr. Dickinson provided the map to Ms. Faber on February 19, and Ms. Holmstedt provided it to you later that day.

Your petition further alleges the City failed to respond to your February 14 request, and that City officials only responded when you contacted Ms. Faber on February 27. However, we view the February 14 request as identical to the request submitted on February 5, which the City responded to on February 11, and fulfilled on February 19.

We also find the City's delay in responding to your request appropriate. As provided in Neb. Rev. Stat. § 84-712(4):

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. As discussed at length above, the City did not have the map to provide to you on February 5. It had to be recreated by Mr. Dickinson, and Ms. Faber estimated that it would take at least until February 28 to produce it. Ms. Holmstedt provided you the map the same day Mr. Dickinson provided it to the City—nine days prior to the estimated due date.

As to your allegation that the request was "incomplete" because it was missing "Page 2 of 2," Ms. Holmstedt explained to you in a March 6 email that you only requested

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“maps,” and that page 2 did not contain any maps. Therefore, she considered your records request fulfilled. We agree. If you wish to obtain a copy of “Page 2 of 2,” please submit a records request for this specific document and the City will accommodate your request.

Finally, you are correct there is no provision in the NPRS that requires the use of a specific form to submit a public records request to a governmental entity. Neb. Rev. Stat. § 84-712(4) only requires a “written request.” That being said, while there is no requirement to use the City’s form, we find that such a form facilitates requests and ensures they are handled in an appropriate manner.


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 materials 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. The City provided you a copy of the requested map. It had no legal obligation to provide you a record you did not request. There was no need to respond to an identical request already fulfilled and delays which may be necessary to fulfill public records requests are authorized under § 84-712(4). Further, while the City cannot require you to use its records request form, we would suggest you consider doing so to facilitate the City’s responses to any future requests.

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: Tawna Holmstedt (via email only)

49-3760-31