



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

March 26, 2025

Via email to [REDACTED]
Harold (Trip) Reynolds
[REDACTED]

RE: *Public Records Matter Involving the Department of Administrative Services*
Our File No. 20251041

Dear Mr. Reynolds:

This letter is in response to your public records petition emailed to this office on March 7, 2025, which we received on March 10. At our request, you supplemented your petition on March 11. On March 14, we forwarded your petition to Michael Donley, General Counsel for the Department of Administrative Services (DAS) and requested a response, which we received on March 21. We also discussed this matter with Mr. Donley on March 21. We considered your petition and Mr. Donley's response under the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2024). Our findings and conclusion are set forth below.

RELEVANTS FACTS

On February 19, 2025, you emailed Mr. Donley and other DAS officials¹ a records request seeking certain records pertaining to employees of the Nebraska Department of Transportation (NDOT), as follows:

... I am requesting the following data, formatted in compliance with the compilation of data for State of Nebraska's EEO-4 reporting and to provided [sic] as an Excel

¹ DAS State Personnel Director Sean Davis and DAS employee Jean Salisbury were copied on your email.

(.xlsx) file, for the period January 1, 2019 to December 31, 2024 specific to the Nebraska Department of Transportation:

1. List of all employees (names redacted), actual position title or classification (not working title); date of hire; NDOT division or location; annual compensation; race; sex (male or female); date of birth; date of termination; and
2. List of all candidates (names redacted); position applied for (actual job posting title); actual position title or classification; date of application submitted; NDOT division or location; compensation range; race; sex (male or female); and date the application/candidacy was rejected. (Your emphasis.)

Mr. Donley timely responded to your request on February 25, providing you six spreadsheets for the years 2019-2024, containing the name, agency, agency number, job title, annual salary and original hire date for all State of Nebraska employees. He denied you access to “[t]he remaining information” under “Neb. Rev. Stat. § 84-712.05(8) personal information in records regarding personnel of public bodies other than salaries and routine direction [sic] information” Mr. Donley informed you that DAS is not the custodian of the records requested in item no. 2, and suggested that NDOT Human Resources may have information responsive to your request.

You challenged Mr. Donley’s response in an email to DAS and NDOT officials on February 28, asserting that Mr. Donley “did not respond as requested.” You further asserted that Mr. Donley’s referral to the NDOT “appears contrary to the established hierarchy of DAS over ‘administrative’ issues.” You indicated you were submitting the request to the NDOT by including NDOT “senior leadership” on the email.

NDOT Records Manager Jeni Campana responded to your request on March 5, informing you that “[t]he earliest practicable date” to fulfill your request would be within thirty business days from the date of receipt. In response, you stated your request was directed to Mr. Donley et al. “who are all ‘**authorized agents**’ of the State of Nebraska, and therefore, proper and official notification was received by the State of Nebraska and such agents are required to ‘secure’ a response to my request within the timeline established by the [NPRS].” (Your emphasis.) You further claimed that the delay was unnecessary since the “data already exists” and the referral to the NDOT amounted to “administrative ‘musical chairs’” in violation of the [NPRS]. On March 6, DAS emailed you the same spreadsheets it provided you on February 25.

Your petition reiterates the concerns expressed to Ms. Campana, i.e., there was no need to delay fulfilling your request because the data already exists. You state that you received employee names when you expressly asked that names be redacted, and assert that disclosing such information violated Neb. Rev. Stat. § 84-712.05(8). You further state “the ‘Routine direction’ of all ‘positions,’ involves the ‘direction and assignment of staff for specific work locations, which are clearly defined by job

categories.” You reiterate that Mr. Donley’s referral to the NDOT “is fallacious, disingenuous, and a blatant violation of the [NPRS], and ignores the requirement of a response time of four business days.”

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 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).

Neb. Rev. Stat. § 84-712.05 of the NPRS is comprised of twenty-nine categories of records that may be kept confidential from the public at the discretion of the agency involved so long as those records have not been “publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties” In the present case, DAS relied on Neb. Rev. Stat. § 84-712.05(8) as its basis to withhold responsive information. This category pertains to “[p]ersonal information in records regarding personnel of public bodies other than salaries and routine directory information.”

The process to request public records is set out in Neb. Rev. Stat. § 84-712(4), which states in pertinent 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.

With those provisions in mind, we considered the allegations in your petition. You requested DAS to provide you certain information about NDOT employees for a six-year period, including “actual position title or classification (not working title); date of hire; NDOT division or location; annual compensation; race; sex (male or female); date of birth; date of termination” DAS provided you spreadsheets containing NDOT employees’ names, job titles, annual salaries and original hire dates, but withheld the other information you requested under § 84-712.05(8). “Statutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.” *Aksamit Resource Management LLC v. Neb. Pub. Power. Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018). The plain language in § 84-712.05(8) allows public bodies, at their discretion, to withhold personal information of public employees except for salaries and routine directory information. Since there is no question that the race, sex, and dates of birth of NDOT’s employees constitutes personal information, Mr. Donley’s denial of this information under § 84-712.05(8) was appropriate.

There is also no merit to your claim that DAS, as an authorized agent of the State, was solely responsible for fulfilling your request for NDOT records. Pursuant to § 84-712, “[t]he public records statutes are directed to ‘the custodian’ of a requested public record . . . and the duties imposed thereunder on a specific custodian relate only to the public records of which that specific office or person is the custodian.” *Huff v. Brown*, 305 Neb. 648, 666, 941 N.W.2d 515, 527 (2020). According to the Nebraska Supreme Court, it is the requester’s obligation to determine the proper custodian and direct the request to that person or office. *Id.* Records about candidates who have applied for jobs at the NDOT would not be records “of or belonging to” DAS nor would DAS be the legal custodian of

such records. The NDOT is the appropriate agency to obtain records about NDOT employees, and there was nothing “fallacious” or “disingenuous” about the referral.

With respect to delays in fulfilling a records request, § 84-712(4) requires record custodians to respond to written requests for public records no later than four business days following receipt of the request. The provision does *not* require the records custodian to produce records no later than four business days. We understand that your records request is currently pending with the NDOT, and NDOT has provided you an estimated date for fulfilling your request in compliance with § 84-712(4).

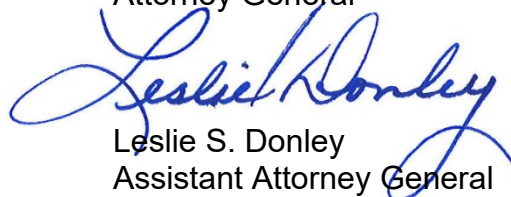
Finally, Mr. Donley represented to the undersigned that DAS did not have an NDOT-specific report to provide to you. As we understand it, EEO-4 information is inputted into a State of Nebraska computer system by state agencies. DAS aggregates the data for submission to the Equal Employment Opportunity Commission (EEOC). DAS must then retain the most recently filed EEO-4 for a period of three years and make it available to the EEOC upon request.² DAS does not have an EEO-4 report specific to the NDOT and there is no requirement under § 84-712 that DAS create such a report, to the extent it could, to satisfy your request.

CONCLUSION

Since we have concluded that you were not improperly denied access to public records, 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 other remedies may be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Michael Donley (via email only)

49-3763-31

² See 29 C.F.R. § 1602.32.