



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

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**MIKE HILGERS**  
ATTORNEY GENERAL

**LESLIE S. DONLEY**  
ASSISTANT ATTORNEY GENERAL

April 1, 2025

Via email at [REDACTED]  
Lacy Smith  
[REDACTED]

RE: *Public Records Matter Involving the Village of Malcolm*  
Our File No. 20251044

Dear Ms. Smith:

This letter is in response to your public records petition submitted to our office on March 17, 2025.<sup>1</sup> You have requested the Attorney General's review of a public record matter involving the Village of Malcolm (Village). We sent your petition to Village Attorney David C. Solheim on March 24, and requested a response, which we received later that day. We considered your petition and the Village'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 March 4, 2025, you emailed the Village Clerk, April Fabuion, seeking "Beach canceled checks and check deposits for permits, connection fees and inspection fees." You listed four specific checks, with dates, check numbers and amounts. You also referenced a check from "Bonafide." You further requested: "If you have a breakdown on how that \$981.36 was credited and then how the 1281.30 was credited that would be helpful too. If you have the permit math on the \$1281.30 & 981.36 that would be helpful."

On March 5, you wrote to Mr. Solheim seeking his assistance in obtaining the information requested on March 4. You also inquired why your husband could not review

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<sup>1</sup> As we informed you by letter dated March 13, 2025, we were unable to access the documents you emailed to this office on March 11, 2025, which required us to use a Google password, among other things.

the “build file” when he stopped by the Village office the previous week and was told to come back the following Monday or Tuesday to review the file. Mr. Solheim informed you that the clerk would “check the accounting system to determine if/when the permit fees were paid” and would contact you “as soon as we have that information.” With respect to your inquiry about your husband’s access to records, Mr. Solheim stated: “When reviewing public records in person, I strongly encourage you to make an appointment in advance to ensure there is staff available, and that they have time to accommodate your request. Obviously staff is very limited in a place like Malcolm.”

In his response to this office, Mr. Solheim informs us that the checks were written by general contractor(s) to pay for fees relating to your home construction project in Malcolm. The Village deposited the checks and, presumably, those checks were cleared and returned to the remitter’s bank. He states that “[t]he Village does not retain a copy of those checks and is not the custodian for those records.” Mr. Solheim indicates that the Village provided you the dates, check numbers and amounts as reflected in the Village’s accounting records. He further informed us that you could obtain the information through discovery in light of your pending litigation against one of the builders.

## **DISCUSSION**

Neb. Rev. Stat. § 84-712 generally allows Nebraska residents and other interested persons the right to examine public records in the possession of public agencies during normal agency business hours and to obtain copies of records in certain circumstances. The purpose of this statute is “to guarantee that public government records are public.” Introducer's Statement of Purpose for LB 505, 72<sup>nd</sup> Nebraska Legislature (1961). It is the longstanding position of this office that § 84-712 does not require a public agency 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).

“Public records” are defined in the NPRS as follows:

Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include 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. Data which is a public record in its original form shall remain a public record when maintained in computer files.

Neb. Rev. Stat. § 84-712.01(1) (2024).

Our enforcement authority under the NRPS requires us “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 [§§ 84-712 to 84-712.03] . . . .” However, we must first determine whether the record at issue is a public record and, if so, whether the public body involved is the lawful custodian of the record. In our view, neither is true here. A check presented to the Village for payment of certain fees is not a record “of or belonging to” the Village. The checks were written by builders, cashed by the Village, and deposited at a bank for processing. We understand generally that cancelled checks ultimately remain with the drawing bank for filing or are returned to the payor. The checks would not be returned to the Village and Mr. Solheim has confirmed that the Village did not retain a copy and is not the custodian of the checks. Therefore, we conclude that the cancelled checks you requested are not public records and the Village has no legal obligation to provide them to you.

We will also briefly address your question concerning your husband’s inability to review a “build file” upon stopping by the Village office. The process to access public records is set out in § 84-712(4) and provides that

[u]pon 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.

Based on the foregoing, public bodies have no legal obligation to provide access to public records until a written request is received. The public body then has four business days after receipt to respond to the request in some manner prescribed above. Requesters do not have a right to immediate access to public records and the Village did not violate the NPRS by asking your husband to return at a later time to review the file.

Lacy Smith  
April 1, 2025  
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## CONCLUSION

The cancelled checks you seek are not records of or belonging to the Village. Therefore, the remedies in § 84-712.03(1)(b) do not apply and we are closing this file. We would suggest you review the provisions of Neb. Rev. Stat. § 84-712 to clarify the legal obligations of the parties when requesting public records in the future. You may access the statute here: <https://nebraskalegislature.gov/laws/statutes.php?statute=84-712>

Sincerely,

MIKE HILGERS  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: David C. Solheim (via email only)

49-3768-31