



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

December 22, 2025

Via email at [REDACTED]
Andy Harpenau
[REDACTED]

RE: *Public Record Matter Involving Cass County Zoning Office*
Our File No. 20251157

Dear Mr. Harpenau:

This letter is in response to your petition received by this office on December 8, 2025, in which you sought our assistance regarding a "records request" you hand delivered to the Cass County Zoning Office on November 24, 2025. You indicate that Zoning Administrator Jim Chappell received and signed the request. However, to date you have not received a response. You further state that "[a] Cass County public hearing was held on December 2, 2025 and our farm was an agenda item. We were not notified of this meeting." We considered this matter in accordance with the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2024).

According to the documentation provided, on or about November 22, 2025, you received a nuisance violation notice from Mr. Chappell pertaining to "Parcel 130102555." On November 24, 2025, you submitted the above-referenced response, in which you asked Mr. Chappell a series of questions pertaining to the allegations of the nuisance complaint, e.g., "[t]he specific dates, times, locations and copies of the 'numerous complaints' referenced" and "[t]he identity and credentials of any county representative who visited the property and the dates and times of those visits," plus other requests for "clarification" and "explanation." Only item no. 3 in your letter pertained to records. Your letter did not indicate you were seeking public records nor did you cite to the public records law.

DISCUSSION

The NPRS allow Nebraska residents and other interested persons 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. In connection with our enforcement authority under the NPRS, we have consistently taken the position for a number of years that those statutes do not require public agencies to answer questions or to create records which do not otherwise exist to fulfill a request.¹ Instead, those statutes focus on accessing and obtaining copies of specific records.

Your November 24, 2025, letter to Mr. Chappell requested information about the nuisance violation. The subject line states: “Re: Response to Violation Notice – Parcel 130102555.” Your letter discusses “Black Elk Farms LLC” and its operations and the Nebraska Right to Farm Act. You also “request[ed] that this alleged violation be withdrawn.” While there is no form or format required to be used to request public records, there should be at least some reference to “public records” in the request. Since it is not clear on the face of your letter that you were submitting a public records request to the Zoning Office, we find there was no legal obligation to respond. Consequently, we would suggest that you submit a valid request to Mr. Chappell indicating that you are seeking access to *public records*. Keep in mind that he is only obligated to provide public records, not answer your questions.

Finally, to the extent this office has any authority over local governmental subdivisions, it is through express provisions requiring us to enforce the NPRS and the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2024, Supp. 2025). We have no supervisory authority over county offices, and we do not enforce local zoning laws. You may choose to obtain the services of a private attorney to assist you with the concerns set out in your petition.

¹ See 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).

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If you disagree with the conclusion reached above, you may wish to consider the other remedies available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Jim Chappell

49-4046-31