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Office of the Attorney General

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MIKE HILGERS
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

December 30, 2025

Via email at [REDACTED]
Candice Lantis

RE: *Public Record Matter Involving the Kearney County Clerk/Election Commissioner*
Our File No. 20251161

Dear Ms. Lantis:

This letter is in response to your correspondence emailed to and received by this office on December 15, 2025. You have requested that we investigate, among other things, “potential violations of Nebraska’s Public Records Act . . . by the Kearney County Clerk/Election Commissioner related to the November 4, 2025 special election.” We contacted the Kearney County Clerk, Jenni Lupkes, upon receipt of your correspondence and requested that she confirm the status of your public records requests. Ms. Lupkes provided us that information on December 19. We construed your correspondence to be a petition under § 84-712.03(1)(b) of the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2024). Our findings are set forth below.

Before we begin, we note you have also requested that we evaluate Kearney County’s compliance with “required statutory procedures during the election” and “[i]nvestigate the circumstances surrounding the ‘Updated November 2025’ election plan.” According to the “Exhibit Packet (Exhibits A-F)” you submitted with your petition,¹ you have already taken your concerns relating to the special election to State Auditor Mike Foley and Andrew Buller, Assistant Deputy of Elections at the Secretary of State’s Office. Mr. Buller expressly advised you to discuss your concerns with the county clerk or, alternatively, private legal counsel. Mr. Buller further informed you that “Nebraska law

¹ This packet contained a series of emails between you and Ms. Lupkes, Deputy County Clerk Markus Ramsey, Minden Public Schools Superintendent James Widdifield, Kearney County Assessor Jennifer Pittner, State Auditor Mike Foley, and Mr. Andrew Buller. The emails to Mr. Widdifield and Ms. Pittner involved record requests. There were several duplicates and incomplete emails. Notably, no emails were marked as “exhibits” to support your allegations that the Kearney County Clerk violated the NPRS.

provides a process for contesting an election, which is handled through the courts.” The Nebraska Department of Justice has no general authority to investigate Kearney County’s compliance with the Nebraska Election Act, Neb. Rev. Stat. §§ 32-101 to 32-1552 (2016, Cum. Supp. 2024, Supp. 2025). Enforcement of violations of the Election Act is vested in the county attorney of the county where the violation allegedly occurred. See Neb. Rev. Stat. § 32-1548 (2016) (“[T]he county attorney of any county in this state shall prosecute all complaints which may be made of violations of the Election Act to final judgment.”).

FACTS

According to information in the “Exhibit Packet,” it appears you emailed a records request to Ms. Lupkes on November 6, 2025, seeking “scanned copies of all returned early/absentee ballot return envelopes from the November 4 Special Election (Minden Public Schools special bond/levy election).” Ms. Lupkes responded to you that day, advising that under Neb. Rev. Stat. § 32-1032, she was prohibited from providing the requested information.² You followed up on November 7, posing a series of questions regarding the election (e.g., “[t]he total number of ballot return envelopes issued”) and “[a] copy (or sample) of the ballot return envelope style(s) that were mailed out to voters for this election.” Mr. Ramsey emailed you responsive information on November 10. You submitted another request for various election records on November 10, which Ms. Lupkes timely responded to on November 17. Her response included an excel spreadsheet and a copy of a sample return envelope from Adams County. She also informed you that certain requested records did not exist. On November 17, you submitted another request for purportedly “outstanding” records, as follows:

1. Ballot Envelope Verification/Signature Verification Logs
2. Ballot Cure/Defect Notification Logs
3. Documentation of Any Alternative Verification Methods Used (including verification done via phone instead of the return envelope)
4. Copies of All Ballot Return Envelope Templates Used
5. Any written procedures used for verifying ballots in this [text omitted].

Ms. Lupkes timely responded on November 21, advising that information responsive to items 1-4 had already been provided. As to no. 5, Ms. Lupkes attached a portion of the county’s election plan for the special election.

In her response to this office, Ms. Lupkes confirmed that all responsive records have been provided to you and no records were withheld. She states that certain requested records did not exist. As to any allegations regarding the timeliness of

² In this respect, the statute provides: “The election commissioner or county clerk shall not allow any other election materials to be inspected, including ballots, the names of voters who filled out a provisional voter identification verification envelope pursuant to section 32-915.03, and provisional ballot envelopes, except when an election is contested or the materials become necessary to be used in evidence in the courts.”

responses, Ms. Lupkes informs us that you had record request(s) pending with another county office, i.e., Kearney County Assessor Jennifer Pittner, which may have caused some confusion as to the required response dates.

DISCUSSION

Section 84-712.03(1)(b) requires this office to review petitions “to determine whether a record may be withheld from public inspection” or whether a public body has complied with the NPRS. Based on our review of your documentation and representations from Ms. Lupkes,³ full compliance with the NPRS has been met. You have received all public records responsive to your requests. No records were withheld. The fact that certain records do not exist does not equate to a violation of the NPRS. We also conclude the responses you received from Ms. Lupkes and staff were timely.

Finally, we note that on November 10, you received information from Ms. Lupkes’ office that she had no legal obligation to provide under a request for public records.⁴ While § 84-712 gives Nebraska residents and other interested persons the right to access public records, it does not require public bodies to respond to questions or explain why certain records do not exist. Since the Kearney County Clerk/Election Commissioner did not violate the NPRS with respect to your multiple record requests submitted on November 6, 7, 10, and 17, no further review by this office is necessary and we are closing this file.

³ See *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (Neb. Ct. App. 2009) (“In the absence of evidence to the contrary, it may be presumed that public officers faithfully performed their official duties and that absent evidence showing misconduct or disregard of law, the regularity of official acts is presumed.”). Here, we presume that Ms. Lupkes acted in good faith in responding to your requests.

⁴ Section 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).

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If you disagree with our conclusion, 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: Jenni Lupkes (via email only)

49-4050-31