



STATE OF NEBRASKA
Office of the Attorney General

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March 27, 2026

Via email at [REDACTED]
Rae Tuff

RE: *Public Record Matter Involving the City of Fremont*
Our File No. 20261024

Dear Ms. Tuff:

This letter is in response to your public records petition received by this office on March 12, 2026. You asked us to review the City of Fremont's (City) response to your public records request, in which you sought veterinarian records and transfer communications concerning several animals euthanized by, or that passed away while in the care of, the City's privately operated animal control partner, FurEver Home, Inc. (FurEver). We have considered your petition, its attached documents, the City's contract with FurEver, and other information provided to us by Molly Miller, an attorney with the City Attorney's Office, in accordance with the Nebraska Public Record Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2024). We have completed our review, and our findings are detailed below.

RELEVANT FACTS

On March 3, 2026, you submitted a public records request to the City seeking veterinarian records maintained by the City or FurEver from October 2025. Specifically, you requested euthanasia logs, triage and treatment records, and rescue transfer communications for several animals identified in your request. On March 9, 2026, Ms. Miller replied that the City had no records responsive to your request. The next day, you sent a formal appeal to the City alleging that its denial was improper. You asserted that the City is "entitled to possess" the requested records in accordance with *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009) [*Evertson*]. Further, you stated that FurEver performs the traditional government function of animal control and received

payments from the City. You argued that under *Frederick v. City of Falls City*, 289 Neb. 864, 857 N.W.2d 569 (2015) [*Frederick*], FurEver is the functional equivalent of a government agency and is required to produce records.

In response, Ms. Miller explained that the City did not deny your request or withhold records; it simply does not possess responsive records. You responded that the City is entitled to possess the requested records under the audit rights in the City's contract with FurEver.

You subsequently submitted a petition to our office and presented arguments similar to those raised in your formal appeal to the City. You requested that we determine whether records "were properly withheld."

DISCUSSION

Public records are defined in the NRPS 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) (emphasis added).

As identified in your petition, this definition extends beyond records that a public body actually possesses. The Nebraska Supreme Court has ruled that the "of or belonging to" language ... includes any documents or records that a public body is entitled to possess—regardless of whether the public body takes possession. The public's right of access should not depend on where the requested records are physically located." *Evertson*, 278 Neb. at 9, 767 N.W.2d at 759. Accordingly, the NPRS do not permit "public bodies to conceal public records by delegating their duties to a private party." *Id.* at 12, 767 N.W.2d at 761. However, the Nebraska Supreme Court further recognized the NPRS "should not permit scrutiny of all a private party's records simply because it contracts with a government entity to provide services." *Id.* at 11, 767 N.W.2d at 761.

FurEver has an ongoing relationship with the City. It entered into a contract to shelter animals in 2023. The Nebraska Supreme Court has concluded that a "four-part functional equivalency approach is the appropriate analytical model for determining whether a private entity which has an ongoing relationship with a governmental entity can be considered an agency, branch, or department of such governmental entity [for

purposes of] Nebraska's public records laws.” *Frederick*, 289 Neb. at 874, 857 N.W.2d at 576–77. This approach considers “(1) whether the private entity performs a governmental function, (2) the level of government funding, (3) the extent of government involvement or regulation, and (4) whether the private entity was created by the government.” *Id.*, 289 Neb. at 874, 857 N.W.2d at 576. No single factor is dispositive. We consider each of these factors below.

i. Governmental Function

Under Neb. Rev. Stat. § 16-206 (2022), the City has the power to “regulate, license or prohibit the running at large of dogs and other animals and guard against injuries or annoyances therefrom and authorize the destruction of such dogs and other animals when running at large contrary to any ordinance.” With this authority, the City adopted ordinances prohibiting and regulating animal cruelty, animals running at large, animal noise, and dangerous animals. See Fremont Municipal Code (Code), Chapter 6–Police Regulations, Article 1–Dogs and Cats. City ordinances contemplate unrestrained animals being “impounded in the animal shelter and there confined in a humane manner.” Code at Sec. 6-105. In its contract with FurEver, the City recognized that state statutes and City ordinances provide laws governing the control and shelter of animals. Pursuant to the contract, FurEver is required to shelter animals on behalf of the City and to enforce City ordinances relating to the care and shelter of animals. Animal control and animal sheltering are governmental functions. When FurEver performs these services under its contract, it performs governmental functions on behalf of the City.

However, Ms. Miller highlighted that your request seeks records beyond the scope of these governmental functions. There is no legal authority for the City to provide veterinary care or to coordinate with various animal rescues. These services are beyond recognized governmental functions. Further, the City has not tasked FurEver with providing veterinary services or coordinating private animal transfers on its behalf. Veterinarian care, animal transfers, and other nonprofit animal rescue services executed by FurEver are not delegated governmental duties.

ii. Level of Government Funding

The City funds a portion of FurEver’s operation. Under its contract, the City pays FurEver \$240,00 per year, 50% of the total costs of immediately required veterinary care for animals transported by the city, capped annually at \$50,000, 50% of the total sheltering costs of bite or emergency holds, capped annually at \$100,000, and a \$1.00 per license issuance. Separate from this funding, FurEver retains adoption fees, collects impound and shelter charges, and accepts donations as a nonprofit entity.

iii. Extent of Government Involvement or Regulation

The City has little involvement with or regulation of FurEver, and it lacks oversight over veterinary care and animal rescue coordination. According to Ms. Miller, the City has no involvement with or regulation of FurEver apart from its contract. Further, the contract provides for limited oversight of records, veterinary care, and communications with other animal rescues. Under the contract, FurEver is obligated to provide monthly reports on its animals, euthanasias, intakes, dispositions, deaths, microchipping, and total numbers. This report is publicly available on the City's website.¹ It is further required to maintain accounting and financial records along with citizen complaints relating to the shelter of animals in its care. However, the contract explicitly provides that FurEver has complete and sole discretion over veterinary treatments and over decisions to work with outside rescue groups. It states that once an animal is transferred to the shelter, it is considered in FurEver's custody for the purposes of treatment decisions. Further, the contract prohibits the City from directing FurEver's work with outside rescue groups. Thus, under the contract, the requested records are expressly outside of the City's supervision of FurEver.

iv. Created by the Government

The City explained that it did not create FurEver. FurEver is a nonprofit corporation that was incorporated by private individuals in 2016, none of whom were City employees or officials. It operated for several years before signing a contract with the City. It still operates independently.

Your request specifically sought veterinarian records, including euthanasia logs and triage and treatment records for several animals. You further requested transfer communications with other 501(c)(3) rescue organizations. While FurEver does perform governmental functions such as animal control and animal sheltering, its veterinarian services and communications with other shelters are not governmental functions. Further, by the explicit terms of FurEver's contract with the City, the City has no oversight over the veterinary treatment that FurEver provides nor its work with other agencies. The contract does not allow the City to access or review these records. FurEver was not created by the City and operated for years without funding from the City. Presently, while FurEver receives compensation from the City under the contract, it has other funding sources. Weighing these factors, we conclude that FurEver is not the functional equivalent of an agency, branch, or department of the City. The requested records are not records that the City is entitled to possess.

¹ [Animal Control | Fremont, NE - Official Website](#)

CONCLUSION

The requested records are not public records of or belonging to the City. FurEver is not the functional equivalent of a branch of City government. The City did not deny you access to records or otherwise violate the NPRS, as it does not have records responsive to your request. Accordingly, 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 a private attorney to determine what additional remedies, if any, are available to you under these statutes.

Sincerely,

MIKE HILGERS
Attorney General



Ben Kinnison
Assistant Attorney General

c: Molly Miller (via email only)

37-061