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Office of the Attorney General

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May 12, 2026

Via email: [REDACTED]
Scott Preston

RE: *Public Records Matter Involving the City of Fremont*
Our File No. 20261036

Dear Mr. Preston:

This letter is in response to your petitions received by this office on April 27, 2026, in which you sought our review of your public records requests submitted to the City of Fremont (the "City") on April 20, 2026, seeking email correspondence relating to City job posting requirements. We have reviewed your petition in accordance with the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2024), and our conclusions are set forth below.

FACTS

Our understanding of the facts in this matter is based on your petitions to our office, the materials attached thereto, and the undersigned's communications with counsel for the City, Molly Miller. On April 20, 2026, you submitted two public records requests to the City seeking emails concerning alterations to City job posting requirements, which read as follows:

1. I'm requesting emails either to or from City Administrator Jody Sanders dated between April 13, 2026 and April 20, 2026 which include (in any way) the following topics:
 - Homeschooling
 - Any City Job Postings
 - The Fremont Fire Department

2. I'm requesting emails either to or from Human Resources Director Jennifer McDuffee dated between April 13, 2026 and April 20, 2026 which include (in any way) the following topics:

- Homeschooling
- Any City Job Postings
- The Fremont Fire Department

The City thereafter responded to your requests via letters signed by Ms. Miller and dated April 23 and April 24, 2026. Per these letters, Ms. Miller stated the City was producing emails responsive to your requests but withholding other responsive records on the basis they either contained confidential communications between City officials and counsel or included job application materials subject to withholding under § 84-712.05(18).

Following our office's receipt of your petitions, the undersigned contacted Ms. Miller on May 4, 2026, regarding your requests. Ms. Miller first advised that "the City has produced all responsive documents that it does not intend to withhold under any exception pursuant to Neb. Rev. Stat. § 84-712.05." With respect to those documents withheld by the City under § 84-712.05(4), Ms. Miller stated that

the records . . . can generally be described as communications between the City's Human Resources Director, Jenniffer McDuffee, City Administrator Jody Sanders, and legal counsel requesting legal advice and discussion regarding the same. Any response as alleged by Mr. Preston relating to any actions taken or directives provided and/or in response to the receipt of legal advice may have been verbal directives and advice rather than written, wherein no documents responsive would exist.

Ms. Miller further represented that "[t]here are no other responsive documents that are being withheld and those documents withheld in response to [your] request were pursuant to Neb. Rev. Stat. § 84-712.05(4) and (18) as stated in the attached responses."

DISCUSSION

The basic rule for access to public records in Nebraska is set out in § 84-712(1). This provision generally states that "[e]xcept as otherwise expressly provided by statute," all Nebraska residents and other interested persons have 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. "Public records" are defined as

[a]ll 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). Based on this broad definition, there is no question that the requested emails are public records contemplated by the NPRS.

However, while the NPRS broadly authorize public access to public records, they are not absolute. Section 84-712.05 lists several categories of public records that may be withheld at the discretion of the records custodian. The burden of showing that a statutory exception applies to disclosure of particular records rests upon the custodian of those records. See *Evertson v. City of Kimball*, 278 Neb. 1, 7-8, 767 N.W.2d 751, 758-59 (2009). Consequently, it is the burden of the City to show that an exception applies. As you do not appear to contest the City's withholding of job application materials pursuant to § 84-712.05(18), we will focus on the City's reliance on § 84-712.05(4) as a basis to withhold. This provision provides:

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

...

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503.

Based on the circumstances described above, it is apparent that this matter concerns communications which may be privileged pursuant to Neb. Rev. Stat. § 27-503 (2016). Section 27-503(1)(d) states that “[a] communication is confidential if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” Section 27-503(2) further provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (a) between himself or his representative and his lawyer or his lawyer's representative, or (b) between his lawyer and the lawyer's representative, or (c) by him or his lawyer to a lawyer representing another in a matter of common interest, or (d) between representatives of the client or between the client and a representative of the client, or (e) between lawyers representing the client.

While the statutory exceptions to the NPRS must be “narrowly construe[d],” see

Aksamit Resource Management LLC v. Neb. Pub. Power Dist., 299 Neb. 114, 122, 907 N.W.2d 301, 308 (2018), the information available to our office indicates that the City appropriately asserted the exception at § 84-712.05(4) in this matter. As described above, Ms. Miller advised that the emails withheld concerned the rendition of legal advice to Ms. Sanders and Ms. McDuffee regarding City job postings and job requirements. Based on the information provided to our office, we believe these emails between City officials and counsel fall under the umbrella of § 27-503 as communications made in the rendition of professional legal services and may therefore be withheld under the NPRS.

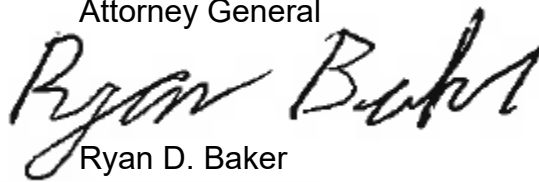
Further, although § 84-712.03(1)(b) creates enforcement responsibility for the Attorney General under the NPRS, there is no statutory mechanism or other authority under Nebraska law that would allow this office to conduct an independent review of documents claimed to be protected by attorney-client confidentiality. Pursuant to § 84-712.03(2), only the courts may conduct an *in camera* review of records requested under the NPRS to determine whether a requester's statutory rights were denied. We therefore will rely on Ms. Miller's representations that the emails withheld are privileged under § 27-503, and we conclude that they may be withheld under § 84-712.05(4).

CONCLUSION

For the reasons set forth above, we conclude that the City did not unlawfully deny you access to the requested emails. As a result, no further action by this office is warranted, and we are closing this file. If you disagree with our findings set out in this letter, you may wish to consult with an attorney to determine what, if any, additional remedies may be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Ryan D. Baker
Assistant Attorney General

c: Molly J. Miller (via email only)
Brooke Tilley (via email only)