

STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
TIERONE FAX (402) 471-4725

JON BRUNING
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

August 24, 2010

Rodney J. Palmer, City Attorney
City of Long Pine
353 N. Main St.
P.O. Box 127
Ainsworth, NE 69210

RE: *File No. 10-R-129; City of Long Pine; Henry Thorne, Petitioner*

Dear Mr. Palmer:

We have concluded our review of the petition filed by Henry Thorne, in which he sought our assistance in obtaining a copy of the "Keno Revenue Bank Statement June 2010" belonging to the City of Long Pine (the "City"). Our review was conducted under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008; Supp. 2009) ("NPRS"). We note that on August 13, 2010, we sent you, by e-mail, a copy of Mr. Thorne's petition along with our letter requesting a response from you by close of business on August 20, 2010. You did not submit a response. Consequently, we have proceeded with our disposition of this matter absent your legal analysis as to why you believed the Keno bank statement was an investigatory record which could be lawfully withheld under applicable provisions of the NPRS. Our findings in this matter are set out below.

FACTUAL BACKGROUND

According to the documentation we received in this matter, on July 13, 2010, Mr. Thorne requested three sets of bank statements from the City of Long Pine. This request was made using the City's form.¹ On August 5, twenty-three days after

¹ Once again, we must inform you that § 84-712 of the Nebraska Public Records Statutes does not require an individual requesting access to public records to provide a reason for his or her review of those records. Further, the City *cannot* make the access to public records contingent upon citizens agreeing to certain conditions and restrictions with respect to those records, absent the authority to do so. Continued use of this form by the City is **improper**.

Rodney J. Palmer
August 24, 2010
Page 2

requesting the records, Mr. Thorne received two of the three statements. However, the requested "Keno Revenue Bank Statement" was withheld. According to Mr. Thorne:

The rejection wasn't signed, nor was a statute stated as the reason for the rejection of my request. The only information provided was, "... the KENO situation is under investigation," as a quote from Brenda Burnbeck, a councilman's wife, and as can be seen in the margin of my request which writing appears to be councilman Denise Crofutt's.

We note that the City's response did not cite to any statute as a basis to withhold the requested record, other than a reference that the bank statement was "under investigation." The City's response also did not list the name of the public official or employee responsible for the decision to deny the request and did not notify Mr. Thorne of his right to administrative or judicial review. As such, the response did not comply with the requirements of § 84-712.04.²

Consequently, Mr. Thorne filed his petition with our office.

DISCUSSION

As you already know from previous contacts with this office, the Nebraska Public Records Statutes give individuals the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those public records, and to obtain copies of public records in certain circumstances. However, the statutes are not absolute, and do allow public bodies to withhold public records through express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983). In particular, Section 84-712.05 is comprised of eighteen categories of documents which may be kept confidential from the public at the discretion of the agency involved. However, the burden of showing that an exception applies to particular records rests upon the custodian of the records. *State ex rel.*

² We have previously advised City officials that in the event access to particular records is denied, § 84-712.04 requires the custodian of the record to provide the following information in a denial letter:

- (a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial;
- (b) The name of the public official or employee responsible for the decision to deny the request; and
- (c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

Rodney J. Palmer
August 24, 2010
Page 3

Nebraska Health Care Association v. Dept. of Health and Human Services Finance and Support, 255 Neb. 784, 587 N.W.2d 100 (1998).

Here, we assume the City is relying on the exception set out in § 84-712.05(5) as a means to withhold the requested document. This subsection provides, in relevant part:

Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training

We have carefully considered whether the City may properly use this exception as its basis to withhold the Keno bank statement. The exception in subsection (5) applies to public bodies which are “law enforcement agencies and other public bodies charged with duties of investigation or examination” The State Patrol, the Brown County Sheriff’s Office, the Nebraska Equal Opportunity Commission, the Ainsworth Police Department and the Department of Revenue are examples of public bodies charged with duties of investigation and examination. However, the City of Long Pine does not have any clear investigatory functions under state law. As a result, we find that the exception to disclosure under Neb. Rev. Stat. § 84-712.05(5) does not clearly apply to the present case, and the City may not use this exception to withhold the bank statement.

We are also mindful that § 84-712.01(3) of the Nebraska Public Records Statutes requires that

([s]ections 84-712 to 84-712.03 shall be *liberally construed* whenever any state, county, or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt, or other record of receipt, cash, or expenditure involving public funds is involved in order that the citizens of this state shall have the full right to know of and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

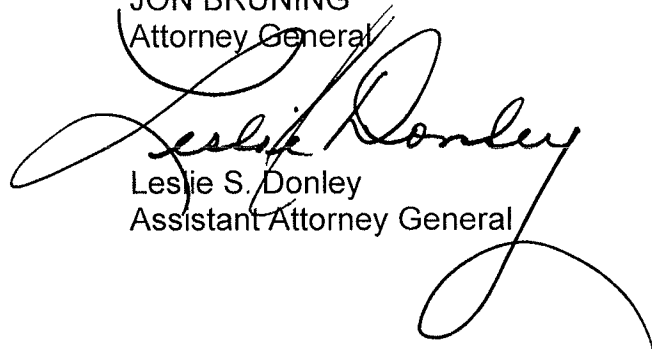
(Emphasis added.) Consequently, pursuant to Neb. Rev. Stat. § 84-712.03(2), we are ordering the City to make available to Mr. Thorne the June 2010 Keno Revenue Bank Statement which was part of his public records request filed with the City of Long Pine

Rodney J. Palmer
August 24, 2010
Page 4

on July 13, 2010. This record shall be provided to Mr. Thorne at your earliest possible convenience, but in no event later than close of business on Friday, August 27, 2010.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

cc: Henry Thorne

49-523-30