

STATE OF NEBRASKA  
**Office of the Attorney General**

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

**DOUGLAS J. PETERSON**  
ATTORNEY GENERAL

**LESLIE S. DONLEY**  
ASSISTANT ATTORNEY GENERAL

February 20, 2018

Jack Hovick  


RE: *File No. 18-R-104; Village of Elmwood; Jack Hovick, Petitioner*

Dear Mr. Hovick:

This letter is in response to your email correspondence received by this office on January 31, 2018, in which you sought our assistance in obtaining certain public records from the Village of Elmwood (“Village”). On February 2, 2018, we wrote to you requesting a copy of your original public records request and any other underlying documentation associated with your request, which we received on February 5.<sup>1</sup> We subsequently contacted the Village clerk, Connie Carlton, about your petition, and advised her of the opportunity to respond. We received Ms. Carlton’s response on February 14. We have construed your correspondence to be a petition for review under Neb. Rev. Stat. § 84-712.03 of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2016) (“NPRS”). Our findings in this matter are set forth below.

#### RELEVANT FACTS

On October 27, 2017, you submitted a public records request to the Village seeking “[r]eceipt or receipts for bill for Marie Gregorie [*sic*] for \$560.12.” Ms. Carlton responded by email on November 1, 2017, indicating that the receipts at issue “contain personal credit card information which are not public record.” However, Ms. Carlton did provide you “[a] list of expenditures” with her response. On November 2, after you advised Ms. Carlton that any personal information on the receipts could be “blacked out,” she provided you the receipts currently in her possession. You indicate that on November 8, you received another email from Ms. Carlton, which included two more receipts responsive to your request. On January 3, 2018, you requested the remaining receipts upon learning

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<sup>1</sup> Our investigation of any petition submitted to this office under § 84-712.03 (2014) begins once we receive documentation sufficient to investigate the petition, i.e., the public records request, a copy of the response from the public body, if any; and any other documentation associated with the request, denial and/or noncompliance by the public body of the NPRS.

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that the Village board had authorized payment of the above referenced bill. On January 5, Ms. Carlton sent an email inquiring which receipts you were missing. On January 8, you asked Ms. Carlton to “provide [you] with the remaining receipts that equal the \$560.12 . . . paid to Marie.” You indicate that Ms. Carlton did not respond.

In her response to this office, Ms. Carlton states that she sent you an email on January 5 inquiring which receipts you were missing, but that you were unable to confirm which records or receipts were outstanding as of January 8, despite the fact that you had an itemized list of expenses. Ms. Carlton attached to her response “the receipts and emails that were previously sent to [you].” Notably, Ms. Carlton also indicated that she had discontinued use of the Village’s “Request for Open Public Records” form, which this office had previously pointed out, on two occasions, violated the NPRS.<sup>2</sup>

Finally, you state in your petition:

It is my opinion that the clerk has failed to provide a proper response to a legitimate public records request and/or has presented a bill for payment to the village board that does not have the required back-up documentation. Whichever it is, at this point I have no idea who I am suppose [sic] to turn to for assistance in getting to the bottom of this matter.

## DISCUSSION

This office has compared the receipts you received from Ms. Carlton on November 2 and 8, with the receipts and other information she provided this office on February 14. Upon review, it appears that there is one page which has not been previously provided to you, which purports to be a list of credit card transactions relating to the outstanding expenses. A copy of this particular record is enclosed with this letter.

Since it appears that you now have all of the records of or belonging to the village relating to your records request, no further action by this office is necessary. However, we will take this opportunity to point out to Ms. Carlton, by forwarding her a copy of this letter, that under Neb. Rev. Stat. § 84-712(4) (2014), the custodian of public records has four business days after receipt of a written request in which to respond to the requester. That response may take one of the following forms: (1) the custodian may provide the requester with access to the record or copies of the record, if copying equipment is reasonably available; (2) the custodian may deny access to or copies of the record if there is a legal basis to do so<sup>3</sup>; (3) the custodian may provide the requester with a written

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<sup>2</sup> See File No. 17-R- 146; Village of Elmwood; Genine Hovick, Petitioner (December 12, 2017) and File No. 16-R-108, Village of Elmwood; Dana Krass, Petitioner (March 8, 2016).

<sup>3</sup> This option invokes specific compliance with Neb. Rev. Stat. § 84-712.04.

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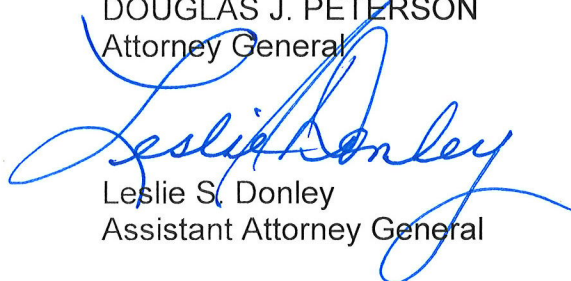
explanation of delay<sup>4</sup> if the entire records request cannot, with reasonable good faith efforts, be fulfilled within the four business days due to the significant difficulty or the extensiveness of the request; or (4) the custodian may notify the requester that he or she has no records responsive to the request. It seems to us that Ms. Carlton should have informed you that a delay was necessary to fulfill your records request or, alternatively, that she did not have records responsive to your request. As it were, this process has been ongoing since October 27, 2017, and did not get resolved without the intervention of this office. Consequently, we will remind Ms. Carlton of the need to comply with all aspects of the NPRS in the future.

### CONCLUSION

Since it appears that you have received all records responsive to your request, no further action by this office is warranted and we are closing our file. If you disagree with the analysis we have set out above, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Leslie S. Donley  
Assistant Attorney General

Enclosure  
c: Connie Carlton

49-1944-29

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<sup>4</sup> The explanation must include the earliest practicable date for fulfilling the records request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

Pending & Recent Transactions ⓘ

Print

DATE	DESCRIPTION	CATEGORY	CARD	AMOUNT
✓ <b>PENDING</b> Sep 30	ELMWOOD CONVENIENCE ST	Gas/Automotive	Thomas B. ...8102 ice	\$11.55
✓ <b>PENDING</b>	ELMWOOD CONVENIENCE ST	Gas/Automotive	Thomas B. ...8102 ice	\$6.60
✓ <b>PENDING</b>	ELMWOOD CONVENIENCE ST	Gas/Automotive	Thomas B. ...8102 ice	\$6.60
✓ <b>PENDING</b>	ELMWOOD CONVENIENCE ST	Gas/Automotive	Thomas B. ...8102 ice	\$6.60
✓ <b>SEP</b> 29				
✓ <b>SEP</b> 22	KIMMEL ORCHARD AND	Other	Thomas B. ...8102 apples	\$25.00



Costco Anywhere Visa® Card by Citi-7679

Transaction Details

Date	Description	Amount
Sep 29, 2017	Pending* SAMSCLUB #8146 OMAHA US Mayo packs, Mustard Packs, Lettuce, Candy	\$95.63

Date ▾	Description ▶	Amount ▶
Sep. 22, 2017	VILLAGE OF ELMWOOD NE WWW.ELMWOODNENE >	\$ 14.50
Date ▾	Description ▶	Amount ▶
Sep. 14, 2017	VILLAGE OF ELMWOOD NE WWW.ELMWOODNENE >	\$ 13.00