

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

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**DOUGLAS J. PETERSON**  
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December 5, 2019

Kevin Kissinger  
[REDACTED]

RE: *File No. 19-R-129; Little Blue NRD; Kevin Kissinger, Petitioner*

Dear Mr. Kissinger:

We are writing in response to correspondence received by this office in which you petitioned for our review of the response to your request for certain public records belonging to the Little Blue Natural Resources District ("LBNRD") under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2014, Cum. Supp. 2018, Supp. 2019) ("NPRS"). As is our normal practice with such complaints, we contacted the party against whom the complaint was made and we subsequently received a response from the LBNRD's legal counsel, Don Blankenau. We have now considered your petition under the NPRS and our findings in this matter are set forth below.

### **FACTS**

Our understanding of the facts in this case is based on your petition, which included your request for public records, the denial letter from the LBNRD, communication between you and the Nebraska Auditor of Public Accounts,<sup>1</sup> and the response from the LBNRD.

On or about October 8, 2019, you requested to view "all time cards and time logs for the staff and" the LBNRD Manager, Kyle Hauschild, in addition to "any mileage and request for mileage reimbursement by any and all staff." Your petition states that you are the Treasurer of the LBNRD and were previously privy to this information, but have recently been denied access to these records. On October 10, 2019, the LBNRD Chairman, Marlin Kimle responded to your request and stated that "the requested

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<sup>1</sup> We understand from your petition that you first contacted the Auditor of Public Accounts for assistance with your public records petition. However, the Auditor lacks the authority to investigate and dispose of public records matters; that authority has been vested by the Nebraska Legislature in this office. Neb. Rev. Stat. § 84-712.03 (1)(b). Accordingly, we will not discuss the Auditor's unauthorized response.

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documents are not public records and are protected pursuant to Neb. Rev. Stat. § 84-712.05(7).” The LBNRD stated that time cards and time sheets constitute “[p]ersonal information in records regarding personnel” and are not “salaries and routine directory information[.]” The denial letter does not specifically address your request for records of mileage and mileage reimbursement documents. You petition this office for a review of this denial, stating that as the Treasurer of the LBNRD, you believe you are entitled to view the requested records in order to prepare the LBNRD Treasurer’s report. The LBNRD disagrees and states that providing such records to you is not required under the NPRS, and “is not in accord with LBNRD Board policies nor best management practices.”

### DISCUSSION

The basic rule for access to public records is set out in Neb. Rev. Stat. § 84-712(1) (2014). That provision states that

[e]xcept as otherwise expressly provided by statute, all citizens of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

This statute is not absolute, however. Section 84-712 “provide[s] that exceptions may be created by express and special provisions.” *Orr v. Knowles*, 215 Neb. 49, 55, 337 N.W.2d 699, 703 (1983). As noted above, the LBNRD is relying on the exception to disclosure set out in Neb. Rev. Stat. § 84-712.05(7) (2019) as its basis to deny you access to the time cards, time logs, and mileage reimbursement requests for LBNRD staff. That provision states, in pertinent part:

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:

\* \* \*

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information . . . .

In Nebraska, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 907 N.W.2d 301 (2018); *Farmers Cooperative v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017). The plain language of § 84-712.05(7) provides that public bodies may lawfully withhold *personal* information regarding its personnel, except for salary and routine directory information. In this context, “personal” may be defined as “2. private; individual; affecting individuals; peculiar or proper to a certain person or to private actions or character . . . .” Webster’s New Universal Abridged Dictionary 1338 (2<sup>nd</sup> ed. 1983).

In *Steckelberg v. Nebraska State Patrol*, 294 Neb. 842, 885 N.W.2d 44 (2016), the Nebraska Supreme Court discussed the exception to disclosure in § 84-712.05(7). *Steckelberg* involved a State Patrol trooper who sought records relating to an interview and selection process for a position within the State Patrol, a position he interviewed for but did not get. The Court determined the State Patrol could rely on § 84-712.05(7) to withhold the requested records, stating that

[section] 84-712.05(7) exempts “[p]ersonal information in records regarding personnel.” The district court found that the information in the records sought did contain personal information. And the information was about employees, otherwise known as personnel, of the State Patrol. There is no requirement in § 84-712.05(7) that in order to be exempt, the records must be kept within an employee’s personnel record, as used as a term of art; *the records need only be personal information about personnel, defined as persons employed by an organization.*

*Steckelberg*, 294 Neb. at 849-850, 885 N.W.2d at 50 (internal citations omitted) (emphasis added).

You have requested to view time cards, time logs, and records related to mileage reimbursement requests for all staff of the LBNRD. We understand that you are seeking this information as the Treasurer of the LBNRD. However, whether you have access to such information as the Treasurer of the LBNRD is an internal governance matter for the LBNRD to resolve. Your ability to access these records under the NPRS is no different as a member of the LBNRD than as a member of the general public seeking the records.

The time cards and time logs you have requested do not constitute “salary information,” which we have consistently stated is an employee’s gross salary or hourly wage information. Nor do they constitute routine directory information, which we have generally construed to include an employee’s name, job title, work telephone number and

address and dates of hire and separation.<sup>2</sup> Consequently, while the employee time records you seek are public records under the NPRS, they may be withheld under Neb. Rev. Stat. § 84-712.05(7).

The LBNRD did not specifically address your request for mileage reimbursement records in its denial letter. Because of this, it is unclear to us whether records responsive to this request exist. To the extent that the LBNRD maintains records responsive to this request, we do not believe Neb. Rev. Stat. § 84-712.05(7), or any other subsection of this statute, allows the LBNRD to withhold the entirety of these documents. To the extent these records contain personal information, such as social security numbers, employee identification numbers, home addresses, home telephone numbers, or other such information, that information may be redacted from the mileage records under Neb. Rev. Stat. § 84-712.05(7). The remainder of these records should be disclosed to you. We trust the LBNRD to undertake this disclosure at its earliest possible convenience.

While the LBNRD may withhold some of the requested documents, we will note that the denial letter of the LBNRD was deficient in one respect. Neb. Rev. Stat. § 84-712.04 requires that:

(1) Any person denied any rights granted by sections 84-712 to 84-712.03 shall receive in written form from the public body which denied the request for records at least the following information:

- (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.

The LBNRD's denial letter did not comply with this provision. We will remind the LBNRD, through a copy of this letter to its legal counsel, that any denial under the NPRS must include this information.

## **CONCLUSION**

Based on the foregoing, we conclude that the LBNRD may continue to withhold the time cards and time logs under the exception in § 84-712.05(7). However, it must

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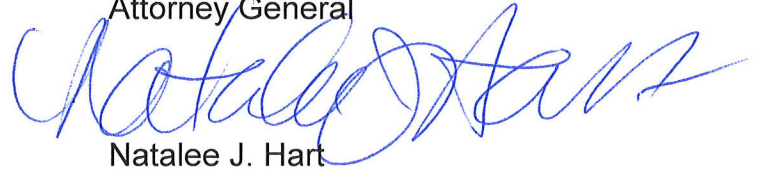
<sup>2</sup> See the Classified System Personnel Rules—Chapter 12 – Personnel Records, Title 273, *Nebraska Administrative Code*, Chapter 12, § 001.01 (October 30, 2006).

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disclose to you the mileage reimbursement documents you have requested. If you disagree with the conclusion reached in this disposition letter, you may wish to discuss these matters with your private attorney to determine what, if any, additional remedies might be available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Natalee J. Hart  
Assistant Attorney General

cc: Don Blankenau

02-758-29