



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

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August 24, 2020

Via email at [sage1@pacbell.net](mailto:sage1@pacbell.net)  
Roger W. Hurlbert, President  
Sage Information Services  
136 Riverwood Drive  
Jefferson City, MO 65109

RE: *File No. 20-R-124; Dawes County Assessor; Roger W. Hurlbert, Petitioner*

Dear Mr. Hurlbert:

This letter is in response to your petition dated August 4, 2020, in which you seek our assistance in obtaining certain public records from the Dawes County Assessor. On August 12, 2020, we contacted Lindy Coleman, Dawes County Assessor, who handled your request, and advised her of the opportunity to provide this office a response to the petition. We received Ms. Coleman's response on August 20, 2020. We have fully considered your petition and Ms. Coleman's response in accordance with the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2018, Supp. 2019) ("NPRS"). Our findings in this matter are set forth below.

### FACTS

Our understanding of the facts in this matter is based upon your petition, the documentation you provided this office, and the response and information we received from Ms. Coleman.

On June 2, 2020, you made a public records request to the Dawes County Assessor. Specifically, you sought the following records:

[A] copy, on CD or similar electronic media, of the current real property assessment record file for the entire county. Specifically, this is intended to include the parcel number, owner name and mailing address, site address if available, assessed valuation of land, assessed valuation of improvements, and legal description. If data describing building characteristics (room counts, construction materials, etc.) are available, those would be appreciated, too.

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A database format capable of being sorted and manipulated (fixed length file, spreadsheet, etc.) is requested, together with a file layout (if applicable) and related documentation containing definitions of data elements in the file (legends to any codes).

On June 5, 2020, Ms. Coleman sent you a letter stating that her office charges \$.50 per record for electronic copies, which does not include the software vendor's formatting fees. Ms. Coleman informed you there were 7,603 active parcels and, therefore, the copy fee would be \$3,801.50. Ms. Coleman requested you send her a check in the amount of \$3,801.50, at which point she would authorize the release of the requested documents to you. On June 30, 2020, you sent Ms. Coleman another letter stating you did not believe the public records laws required you to pay fees in the amount of \$3,801.50. You included a check in the amount of \$25.00, payable to "Dawes County, Nebraska," with your letter. On July 14, 2020, Ms. Coleman sent you another letter stating the required fee was \$3,801.50 for the requested records. Ms. Coleman returned your check for \$25.00 along with her letter. On August 4, 2020, you sent a letter to our office asking us to review the Dawes County Assessor's requirement that you pay \$3,801.50 in order to receive the requested records.

Ms. Coleman's response states there has been an office policy in effect since 2009 that addresses the fees associated with public records requests. Ms. Coleman describes the policy as follows:

All parcel records are available for free through our website at [dawes.gworks.com](http://dawes.gworks.com). Parcel data, pictures, sketches and other data can be downloaded or printed at the user's discretion. Our website is updated on a daily basis.

Requested paper copies of records are \$.25 per page with up to four (4) hours of labor included. After four (4) hours of labor an hourly rate would apply along with the \$.25 per copied page. The hourly rate would not apply if a requester made the copies themselves.

If electronic copies of records are requested, a flat rate of \$.50 per record is charged. That includes multiple pages of data, sketches and pictures. That flat rate does not include any formatting charges our software vendor may apply if the request includes the data be formatted or manipulated in a specific way other than our standard format.

## **DISCUSSION**

Under Neb. Rev. Stat. § 84-712.03(1)(b), this office is required to determine "whether the fees estimated or charged by the custodian are actual added costs or special service charges as provided under section 84-712." Section 84-712 sets out what fees may be charged by a custodian of public records:

(1) Except 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.

\* \* \*

**(3)(b) Except as otherwise provided by statute, the public body, public entity, or public official which is the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not exceed the actual added cost of making the copies available.** For purposes of this subdivision, (i) for photocopies, the actual added cost of making the copies available shall not exceed the amount of the reasonably calculated actual added cost of the photocopies, which may include a reasonably apportioned cost of the supplies, such as paper, toner, and equipment, used in preparing the copies, as well as any additional payment obligation of the custodian for time of contractors necessarily incurred to comply with the request for copies, (ii) for printouts of computerized data on paper, the actual added cost of making the copies available shall include the reasonably calculated actual added cost of computer run time and the cost of materials for making the copy, and (iii) **for electronic data, the actual added cost of making the copies available shall include the reasonably calculated actual added cost of the computer run time, any necessary analysis and programming by the public body, public entity, public official, or third-party information technology services company contracted to provide computer services to the public body, public entity, or public official, and the production of the report in the form furnished to the requester.**

(c) The actual added cost used as the basis for the calculation of a fee for records shall not include any charge for the existing salary or pay obligation to the public officers or employees with respect to the first four cumulative hours of searching, identifying, physically redacting, or copying. A special service charge reflecting the calculated labor cost may be included in the fee for time required in excess of four cumulative hours, since that large a request may cause some delay or disruption of the other responsibilities of the custodian's office, except that the fee for records shall not include any charge for the services of an attorney to review the requested public records seeking a legal basis to withhold the public records from the public.

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Neb. Rev. Stat. § 84-712 (2014) (emphasis added).

You have requested that the records be produced in an electronic format. Section 84-712(3)(b) expressly states that fees for copies of public records “shall not exceed the actual added cost of making the copies available.” With respect to electronic data, the fees are limited to “the actual added cost of the computer run time, any necessary analysis and programming by the public body, public entity, public official, or third-party information technology services company contracted to provide computer services to the public body, public entity, or public official, and the production of the report in the form furnished to the requester.” Neb. Rev. Stat. § 84-712(3)(b)(iii). Therefore, Ms. Coleman can only charge you what it actually costs to produce the records in the specific electronic format that you requested. Accordingly, we will direct Ms. Coleman to contact the software vendor and have them determine the actual costs associated with your public records request. Ms. Coleman may only charge you the amount of actual costs reported by the software vendor. Further, we would note that the Dawes County Assessor’s policy of charging a flat rate of \$.50 per page for all electronic copies does not comply with the provisions in § 84-712 cited above.

#### **CONCLUSION**

For the reasons stated above, we conclude that the fee policy regarding electronic copies of records charged to members of the public related to requests under § 84-712 does not comply with the NPRS. As such, we will direct the Dawes County Assessor to only charge you the actual added costs reported by the software vendor, and not the amount originally requested. We will provide the Dawes County Assessor an opportunity to comply with our findings set forth above and direct that her office cease charging impermissible fees. Since we anticipate that the Dawes County Assessor will undertake the remedial action described in this letter, no further action by this office is necessary, and we are closing our file.

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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

  
Laura A. Nigro  
Assistant Attorney General

c: Lindy Coleman  
Vance Haug, Dawes County Attorney

35-105-29