



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

August 31, 2021

Via email at [REDACTED]
Deborah Moore

RE: File No. 21-R-124; City of Lincoln; Deborah Moore, Petitioner

Dear Ms. Moore:

This letter is in response to your email correspondence received by this office on August 16, 2021, in which you sought the assistance of the Attorney General with respect to your recent public records request submitted to the City of Lincoln ("City"). On August 20, the undersigned discussed this matter with Assistant City Attorney Rick Tast. We considered your petition along with the information we received from Mr. Tast in accordance with the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2020). Our findings and conclusion in this matter is set forth below.

RELEVANT FACTS

On August 9, 2021, you submitted a public records request to the City asking for scientific data relating to the recommendation by the Lincoln-Lancaster County Health Department ("LLCHD") requiring children ages 2 to 12, and unvaccinated individuals, to wear face coverings in all schools in Lancaster County. You also requested

data for the # of positive cases for age 5-11, # of hospitalizations for age 5-11, # of deaths for age 5-11 in Lancaster county. I would also like the same data SEPARATELY for age 12-18 # of positive cases, # of hospitalizations, # of deaths.

Also, I would like to know the # of individuals who have been vaccinated that tested positive after their vaccination, as well as the # of those vaccinated in the hospital, and the # of vaccinated that died after the vaccination for Lancaster County.

Mr. Tast timely responded to you on August 13. He indicated that responsive information was available on the City's website at lincoln.ne.gov | Lincoln-Lancaster

County Health Department. He also informed you that “. . . Neb. Rev. Stat. § 84-712 does not require a public agency to review documents and create abstracts or other lists, to answer questions or to create documents which do not otherwise exist.”

While you acknowledge the data on the LLCHD’s dashboard showing percentages for COVID-19 deaths, particularly zero deaths for individuals age 24 and under, you are challenging the City’s lack of “data on age range for cases or hospitalizations in Lancaster County.”

DISCUSSION

It is the longstanding position of this office that public bodies are not required to create records that do not otherwise exist in response to a request for public records. In Op. Att’y Gen. No. 87104 (October 27, 1987), the Attorney General considered whether the Department of Motor Vehicles could compile and provide lists of driving records to private individuals. The Attorney General noted that while driver’s license records clearly fit the definition of public records in § 84-712.01, no statute required the production of such data lists. *Id.* at 1. The Attorney General noted the distinction between a statute which required the production of driving record abstracts for specific individuals with the purpose of § 84-712, which requires that the public have access to government records. He stated that “[n]either of these statutes requires nor specifically grants authority to produce data lists based on departmental records.” However, the Attorney General noted that the statutes did not prohibit the department from providing access to its records through “statistical criteria.” *Id.* at 2.

In Op. Att’y Gen. No. 94035 (May 13, 1994), the Attorney General considered whether the State Department of Education was required under § 84-712 to disclose a list of unsuccessful applicants for employment within the agency. The Attorney General generally noted that

[t]he Public Records Statutes . . . give interested parties in Nebraska a broad general right to view public documents at the governmental offices in possession of those documents during normal business hours, and to make notes or memoranda therefrom. The Public Records Statutes, on the other hand, do not require public officials . . . to answer questions, or to create documents which do not otherwise exist. In particular, the Public Records Statutes do not require agencies to create abstracts or lists in response to a public records request. Op. Att’y Gen. No. 87104 (October 27, 1987).

The Attorney General concluded that the department was not “required to prepare or disclose lists of unsuccessful applicants for the contract or permanent employee positions that it fills *unless such lists already exist.*” *Id.* at 2 (emphasis added).¹

¹ See also our disposition letters to *Consolidated File No. 21-R-109; Lincoln-Lancaster County*

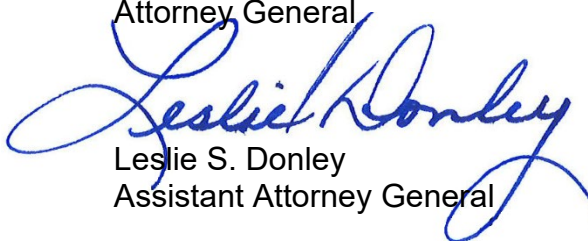
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In the present case, Mr. Tast has confirmed to the undersigned that no specific data exists relating to the age groups in your request. Consequently, since there is no responsive data, and no obligation to create or compile the data, the City's response to your records request was appropriate. Lastly, Mr. Tast represented that that he would be following up with you to ensure that you had access to all of the information relied on by the City and LLCHD pertaining to the mask recommendation for Lancaster County schools.

Since no further action by this office is necessary, we are closing our file. If you disagree with the conclusion reached above, you may wish to review the other remedies available to you under Neb. Rev. Stat. § 84-712.03.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Rick Tast (via email only)

49-2758-29

Health Department; Robert J. Borer, Petitioner, and City of Lincoln, Mayor Leirion Gaylor Baird; Robert J. Borer, Petitioner (The City was not required to compile a list of lab sites used by the LLCHD and/or Lancaster County test sites for COVID-19 screening.); File No. 19-R-117; Department of Health and Human Services; Alec Ferretti, Petitioner (June 20, 2019) (The department was under no obligation to engage in a "verification" process to supplement the death records currently existing in its database.); File No. 18-R-122; Nebraska State Patrol; Annita Lucchesi, Petitioner (July 25, 2018) (The Nebraska State Patrol was not required to compile data on criminal cases involving Alaska Native and American Indian women and girls since any information would have to be culled from individual physical files to create a new record.).