



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

MIKE HILGERS
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

April 12, 2023

Via email to [REDACTED]
Elizabeth McAuliffe

RE: *File No. 23-R-113; Sarpy County District Court; Elizabeth McAuliffe, Petitioner*

Dear Ms. McAuliffe:

This letter is in response to your public records petition received by this office on March 28, 2023, in which you requested the assistance of the Attorney General relating to your requests for hearing transcripts from the Sarpy County District Court. We considered your petition in accordance with the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022). Our findings with respect to this matter are set out below.

RELEVANT FACTS

On February 21, 2023, you requested the transcript for a hearing held on May 27, 2020, in the Sarpy County District Court, case number CR20 65. The following day, you requested the transcript for a hearing purportedly held on June 22, 2020, in the same case. You received an email from the court reporter handling these cases, Stefanie Allison, on February 22. Ms. Allison informed you that no hearing was held on June 22, 2020, and the matter was continued to July 22, 2020. She asked you whether you wished to receive the transcript for this hearing instead and provided a cost estimate to produce the transcript. You indicate that Ms. Allison did not address your request for the May 27, 2020, hearing.

It appears from your correspondence that you and Ms. Allison exchanged emails about the pending requests, culminating with an email from Ms. Allison informing you that the judge had scheduled a hearing relating to your request for the May 27, 2020,

transcript. According to the March 14, 2023, journal entry, Judge Thompson scheduled the hearing “[d]ue to the nature of the charges and the potential confidential subject matter involved in the hearing” The hearing was held on March 20, 2023, during which Judge Thompson asked you questions about the request. The court subsequently denied your request for the May 27, 2020, hearing transcript by order dated March 22, 2023.

In support of your petition, you assert that the requested transcript is a public record according to Neb. Rev. Stat. § 84-712. You cite to Op. Att’y Gen. No. 04030 (December 27, 2004), in which the Attorney General concluded that judicial department records, including briefs and legal memoranda, are public records under the NPRS. You also point to language in Neb. Rev. Stat. § 84-712.05 which provides that any information disclosed in open court is a public record and may not withheld from the public. It is your position that the court’s refusal to provide you with the transcript in question is “unlawful” and have asked us to review the court’s decision.¹

DISCUSSION

Neb. Rev. Stat. § 84-712(1) sets out the basic rule for access to public records in Nebraska. That statute provides, in pertinent part:

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) . . . 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.

Neb. Rev. Stat. § 84-712(1) (2014) (emphasis added). Section 84-712.01(1) defines public records as follows:

Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

¹ You have also asked us to determine whether a hearing was held on June 22, 2020. This request is outside the scope of our review authorized in Neb. Rev. Stat. § 84-712.03(1)(b) and will not be considered.

Neb. Rev. Stat. § 84-712.01(1) (2014) (emphasis added). The NPRS are not absolute, however. As indicated by the emphasized language above, the NPRS also provide for exceptions to disclosure by express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983).

In the present case, Neb. Rev. Stat. § 24-1003 (Cum. Supp. 2020) provides an exception to the basic access rule set out in § 84-712. This statute provides that

[t]he Supreme Court shall provide by rule for the recording and preservation of evidence in all cases in the district and separate juvenile courts and for the preparation of transcripts and bills of exceptions. Court reporters and other persons employed to perform the duties required by such rules shall be appointed by the judge under whose direction they work. The Supreme Court shall prescribe uniform salary schedules for such employees, based on their experience and training and the methods used by them in recording and preserving evidence and preparing transcripts and bills of exceptions. Salaries and expenses of such employees shall be paid by the State of Nebraska from funds appropriated to the Supreme Court. Such employees shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

In accordance with the power vested in the Supreme Court to prescribe rules of practice and procedure,² and with the authority provided in § 24-1003, the Supreme Court adopted and promulgated Neb. Ct. R. § 1-203—*Duties of court reporting personnel*. Section C of the rule states:

Upon request of any person not a party to a suit, if so approved by the trial judge, [court reporting personnel shall] furnish to such person or have prepared for such person, as expeditiously as possible, a transcription of any trial or proceedings, or any portion thereof. The time spent at such transcription shall not interfere with any other duties of the court reporting personnel. The compensation and payment therefor shall be as prescribed in § 1-203(B).

(Emphasis added.) Accordingly, the process described in Neb. Ct. R. § 1-203 governs your access to the transcript of the May 27, 2020, hearing, not a request made under § 84-712 of the NPRS. Since the NPRS are inapplicable to obtaining a copy of the transcript, there is no basis for our review under those statutes. In addition, this office has no authority, under the NPRS or otherwise, to review the court's decision denying you access to the transcript.

² See Neb. Const. art. V, § 25, which provides, in pertinent part: "For the effectual administration of justice and the prompt disposition of judicial proceedings, the supreme court may promulgate rules of practice and procedure for all courts, uniform as to each class of courts, and not in conflict with laws governing such matters."

Elizabeth McAuliffe
April 12, 2023
Page 4

CONCLUSION

Express provisions in § 24-1003 and Neb. Ct. R. § 1-203 dictate individuals' access to transcripts of district court proceedings. Since the NPRS do not provide a means to access the transcript, no further review by this office is necessary and we are closing this file. If you disagree with the conclusion reached above, you may wish to discuss this matter with your private attorney to determine what other legal remedies may be available to you.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Judge George A. Thompson (via email)
Stefanie Allison (via email)

49-3203-30