



STATE OF NEBRASKA
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February 7, 2023

Via email at rickertsencattle@hotmail.com
W. Alan Rickertsen
14405 Aquarius Street
Corpus Christi, TX 78418

RE: *Public Records Petition Involving Custer County Board of Supervisors*
Our File No. 20231002

Dear Mr. Rickertsen:

This letter is in response to your correspondence received by this office on January 23, 2023, in which you requested "a Judicial Review as to whether [you are] entitled to the payroll records of the county supervisors." We have construed your correspondence to be a petition for administrative review under § 84-712.03(1)(b) of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2022). On January 31, 2023, the undersigned discussed your petition and the documentation¹ provided with the Custer County Clerk, Constance Gracey. Our findings in this matter are set forth below.

Your January 2, 2023, public records request sought, in part, "[t]he payroll records and any and all other records relating to payments from Custer County to each of the Custer County Supervisors, for any reason, for the calendar year 2022." Ms. Gracey responded by letter dated January 9, 2023. She provided you, among other records, a copy of the salary resolution which listed the salaries for all elected officials, including the county supervisors. However, she informed you that under Neb. Rev. Stat. § 84-

¹ You indicate in your petition that you submitted "the enclosed PIR to the Custer County (Nebraska) Clerk three times" and that her three responses were enclosed. However, we received only two letters authored by Ms. Gracey, dated December 1, 2022, and January 9, 2023. You also provided a copy of a letter to Ms. Gracey with the subject line "RE: FOIA Request - #1 (second request)," dated December 6, 2022, and a public records request dated January 2, 2023. Consequently, this letter will focus only on your January 2, 2023, request and Ms. Gracey's January 9 response.

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712.05(8), records pertaining to “[p]ersonal information in records regarding personnel of public bodies other than salaries and routine directory information” could be withheld by the records custodian.

You subsequently filed your petition challenging Ms. Gracey’s decision. You state that you are

not asking for any “personal” info. I would like to know if [the supervisors] receive any type of insurance, if they receive any matching contributions as related to a 401 or similar retirement plans, are they qualified for any cafeteria type plans, plus any other compensation(s) such as milage [sic] or per diems. In other words, benefits.

DISCUSSION

Neb. Rev. Stat. § 84-712.01(3) requires public bodies to liberally construe §§ 84-712 to 84-712.03 of the NPRS

whenever any state, county, or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, *payroll*, check, receipt, or other record of receipt, cash, or expenditure involving public funds is involved in order that the citizens of this state shall have the full right to know of and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

(Emphasis added.) Accordingly, we informed Ms. Gracey that payroll records are public records subject to disclosure under the NPRS, and she has agreed to make the supervisors’ payroll records available to you. We understand that you have agreed to receive other records from the county by fiscal year (July 1-June 30), so Ms. Gracey will provide the same in this instance.

However, while the NPRS provide access to public documents, those statutes are not absolute. They also provide for exceptions to disclosure by express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983). Section 84-712.05 sets out several categories of records that may be withheld from the public at the discretion of the agency involved. As noted above, Ms. Gracey is relying on the exception in § 84-712.05(8), which allows her to withhold “[p]ersonal information in records regarding personnel of public bodies other than salaries and routine directory information.” While § 84-712.01(3) (and the exception in § 84-712.05(8)) gives you access to the salary information in a payroll record, we believe that subsection (8) also allows Ms. Gracey to redact personal information contained in a payroll record that does not constitute salary or routine directory information, e.g., insurance and retirement information.

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In addition to the payroll records, Ms. Gracey must produce any other fiscal records involving payments to county supervisors, e.g., mileage reimbursement. However, as with the payroll records, any personal information contained in any documents may be redacted in accordance with § 84-712.05(8).

CONCLUSION

Since Ms. Gracey has agreed to provide you the requested records, and redaction of personal information in those records is appropriate under § 84-712.05(8), no further action by this office is warranted and we are closing our file. If you disagree with our conclusion, you may wish to consult with your private attorney to see what additional remedies may be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Constance Gracey

49-3155-30