



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
ATTORNEY GENERAL

NATALEE J. HART
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February 2, 2015

Ben Reker
Chelepis & Associates, Inc.
8300 College Blvd.
Suite 300
Overland Park, KS 66210

RE: *File No. 15-R-105; Metropolitan Utilities District; Petitioner Ben Reker*

Dear Mr. Reker:

This letter is in response to your e-mail received by us on January 16, 2015, in which you requested our assistance in obtaining certain public records belonging to the Metropolitan Utilities District ("MUD"). As is our normal practice with such requests, we forwarded a copy of your complaint to the party against whom the complaint was made, in this case MUD's Senior Vice President and General Counsel, Ron Bucher, and requested a response. On January 23, 2015, we received Mr. Bucher's response on behalf of MUD. We have now considered your e-mail, which we have construed to be a petition for access to records under Neb. Rev. Stat. § 84-712.03 (the "Petition"), as well as Mr. Bucher's response under the Nebraska Public Record Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008; Cum. Supp. 2014) (hereinafter sometimes referred to as "NPRS"). Our findings in this matter are set forth below.

FACTS

Our understanding of the facts here is based on your Petition and Mr. Bucher's response. We have also reviewed and considered the content of the e-mail string included in your petition of January 16, 2015.

On December 12, 2014, you contacted MUD with a request for:

[C]opies of water and sewer bills from the previous twelve (12) months for any consumers/companies that have an annual water/sewer bill in excess of \$100,000. Please provide only Commercial/Industrial users, no apartment complexes or other housing. Please send the information requested via e-mail in either Microsoft Word/Excel or PDF format. This information should include: Consumer Name, Service Address, Water Consumption, Water Amount Billed, Sewer Amount Billed and Sewer Consumption when available. Please include all meters/accounts for each location/company. Also, please include water and sewer rates or charts when available. Feel free to contact me and thank you for considering my request.

(emphasis in original e-mail). Later that same day, Mr. Bucher of MUD responded, denying your request under Neb. Rev. Stat. § 84-712.05 (10) of the NPRS. You and Mr. Bucher then traded e-mails on January 15, 2015 regarding the denial. Your petition to this office followed on January 16, 2015.

In his response to us, Mr. Bucher reiterates MUD's position that it may lawfully withhold the documents you seek under the exception set out in Neb. Rev. Stat. § 84-712.05 (10).

ANALYSIS

We will begin by discussing the basic parameters of the Nebraska Public Records Statutes. Generally speaking, these statutes allow interested persons the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those public records, and to obtain copies of public records in certain circumstances. However, while the Act provides for access to and copies of public records, it does not require public officials to answer questions, or to create records which do not otherwise exist. Additionally, even though the Nebraska Public Records Statutes do provide for access to public documents, they are not absolute, and they also provide for exceptions to disclosure by express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983).

Neb. Rev. Stat. § 84-712.05 is comprised of eighteen categories of documents which may be kept confidential from the public at the discretion of the agency involved. In particular, as relevant here, § 84-712.05 (10) provides, in relevant 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

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custodian of the records:

* * *

(10) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment information and customer use information, credit information on others supplied in confidence, and customer lists;

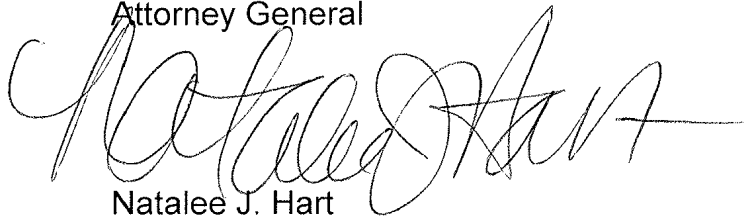
In other words, a public utility may lawfully withhold from public disclosure any records containing personal information and use information of private citizen account holders, confidential credit information, and customer lists. While we agree that the documents you seek are not those of "private citizen account holders," as the records are related to commercial properties, we nonetheless believe that MUD may lawfully withhold the documents you have requested under this subsection of the NPRS. The information you have requested includes the name, address and account information for all commercial users with an annual water and sewer usage exceeding \$100,000. We believe this to be a request for a customer list. Consequently, we believe these documents would fall within the parameters of subsection (10), and can be withheld at MUD's discretion.

CONCLUSION

We do not believe you have been improperly denied access to public records. If you disagree with our legal analysis set out herein, you may wish to consult with 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

A handwritten signature in black ink, appearing to read "Natalee J. Hart", written over the typed name and title.

Natalee J. Hart
Assistant Attorney General

cc: Ron Bucher

02-475-29