

STATE OF NEBRASKA
Office of the Attorney General

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October 15, 2019

Sam Murante
Murante Real Estate
Property Ventures LLC
2411 O Street, Suite 1-W
Omaha, NE 68107

RE: *File No. 19-R-125; City of Omaha Planning Department; Sam Murante, Petitioner*

Dear Mr. Murante:

This letter is in response to the petition you submitted to our office on September 30, 2019, in which you requested that we review the denial of your request for public records by the City of Omaha Planning Department ("Department"). We considered your petition under the provisions of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2018) ("NPRS"). Our findings in this matter are set forth below.

RELEVANT FACTS

Our understanding of the facts in this matter is based solely on your petition, which included your public records request to the Department, and the response you received from Deputy City Attorney Bernard J. in den Bosch on behalf of the Department.

On September 21, 2019, you sent an email to Anna Bespoyasny, Assistant Planning Director, and requested "the name and contact information of that individual complainant who reported the property at 2920, 2922, 2924 Ames [A]ve. Omaha Nebraska 68111 to the City of Omaha Planning Department as being in non-compliance with an Omaha building code requirement." By letter dated September 26, 2019, Mr. in den Bosch denied your request under the exception to disclosure in Neb. Rev. Stat. § 84-712.05(5). He indicated that the Department "is charged with duties of investigating planning and zoning complaints," and the record at issue was received by the Department as part of its investigation.

DISCUSSION

The basic rule for access to public records is set out in Neb. Rev. Stat. § 84-712(1) (2014). That provision states that

[e]xcept 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.

Your right to public records is not absolute, however. Section 84-712 “provide[s] that exceptions may be created by express and special provisions.” *Orr v. Knowles*, 215 Neb. 49, 55, 337 N.W.2d 699, 703 (1983).

Neb. Rev. Stat. § 84-712.05 contains twenty-three categories of public records that may be withheld at the discretion of the records custodian, “unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties.” Subsection (5), relied on by the Department to withhold the complainant’s name, pertains in part to

[r]ecords developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, [and] informant identification¹

Mr. in den Bosch represents that the Department is a public body charged with duties of investigation, and the name of the complainant involving the properties on Ames Avenue is considered part of its investigation. In addition, we have reviewed the City’s ordinances relating to the Department’s duties of investigation provided to us by Mr. in den Bosch, and are satisfied that the Department may lawfully withhold the complainant’s name under the exception discussed above.

¹ There are two exceptions to the exception, i.e., (1) records relating to the presence of drugs or alcohol in any body fluid of any person; and (2) records relating to the cause of death arising from employment once an investigation is concluded when requested by a family member of the deceased.

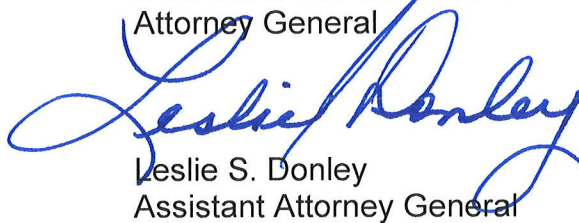
Sam Murante
October 15, 2019
Page 3

CONCLUSION

For the reasons discussed above, the City of Omaha Planning Department may continue to withhold the name of the complainant under the exception to disclosure in Neb. Rev. Stat. § 84-712.05(5). Since no further action by this office is warranted, we are closing our file. If you disagree with our analysis under the NPRS, you may wish to review the judicial remedies available to you under Neb. Rev. Stat. § 84-712.03.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Bernard J. in den Bosch

49-2283-29