

STATE OF NEBRASKA
Office of the Attorney General

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September 16, 2020

Via email at rodney.prince@footholdmarketing.com
Rodney Prince
4220 N. 146th Plaza, #305
Omaha, NE 68116

RE: *File No. 20-R-128; Metropolitan Utilities District; Rodney Prince, Petitioner*

Dear Mr. Prince:

This letter is in response to your petition received by this office on September 1, 2020, in which you requested that this office review the denial by the Metropolitan Utilities District ("District") of your public records requests emailed to the District on August 3 and 20, 2020. We have considered your petition in accordance with the provisions of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2018, Supp. 2019). Our findings in this matter are set out below.

FACTS

On August 3, 2020, you emailed a public records request to the District, which stated, in pertinent part:

. . . I am requesting an opportunity to inspect or obtain copies of public records of all residential property disconnections of gas and water services, in Douglas County, between February 1, 2020 and August 1, 2020. I only need the residential property addresses. I do not want any customer information or reason for disconnection of services. I authorize you to redact confidential information.

Mark Mendenhall, Senior Vice President/General Counsel, responded to your request on August 10. Mr. Mendenhall indicated that "[y]our request seeks a customer listing of water or gas users grouped by usage or account data" and "is a request for a customer list." The District denied you access to the requested information pursuant to the exception to disclosure in Neb. Rev. Stat. § 84-712.05(11) (Supp. 2019), pertaining to

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public utility “personally identified private citizen account payment and customer use information, credit information on others supplied in confidence, and customer lists.”

You responded to Mr. Mendenhall on August 20. You indicated that you were not seeking “a customer listing of water or gas users grouped by usage or account data.” Nor were you seeking any “personally identified private citizen account payment and use information, or credit information on others supplied in confidence.” You noted that your request specifically stated that you did “not want any customer information or reason for disconnection of services” and that you “only need[ed] residential property addresses.” You further stated that you would be submitting another request.

You submitted an amended request also on August 20. This request stated:

. . . I am requesting an opportunity to inspect or obtain copies of public records of all residential property addresses whose water was disconnected and never reconnected in Douglas County between January 1, 2020 and August 1, 2020. I am not requesting personally identified private citizen account payment and customer use information, credit information on others supplied in confidence or a customer list. I authorize you to redact confidential information that are grounds for denial of my request under 84-712.05.

On August 27, Mr. Mendenhall denied your request, finding that the “data requested is still a customer list grouped by usage and/or nonpayment data.”

You state in your petition that, “[f]or the record, the purpose for my request is to secure information that will either support or undermine a thesis that establishes residential utility disconnection as an indicator of neighborhood economic instability.”¹

DISCUSSION

The basic rule for access to public records in Nebraska 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

¹ For your information, “[t]he public records statutes apply ‘equally to all persons without regard to the purpose for which the information is sought.’ As a general rule, citizens are not required to explain why they seek public information.” *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, 943 N.W.2d 231, 247 (2020). Accordingly, this office does not consider the reason or purpose for a records request when making our determination under § 84-712.03(1)(b).

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.

(Emphasis added.) “Public records” in Nebraska “include all records and documents, regardless of physical form, of or belonging to” governmental entities in the state, “[e]xcept when any other statute expressly provides that particular information or records shall not be made public.” Neb. Rev. Stat. § 84-712.01(1) (2014). Thus, there is no absolute right to access public records in those instances where records are exempt from disclosure by statute. The burden of showing that a statutory exception applies to disclosure of particular records rests upon the custodian of those records. *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 788, 943 N.W.2d 231, 240 (2020); *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308.

Section 84-712.05 currently lists 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” In the present case, the District denied your records request on the basis of § 84-712.05(11), which pertains to the following records:

With respect to public utilities and except as provided in sections 43-512.06 and 70-101,² personally identified private citizen account payment and customer use information, credit information on others supplied in confidence, and customer lists

Neb. Rev. Stat. § 84-712.05(11) (Supp. 2019).

Your August 20 records request sought a list of Douglas County residential property addresses where the water has been disconnected and not reconnected for the time period January 1 to August 1, 2020. Your request also authorized the District to redact any confidential information that would be grounds for denial under § 84-712.05. The District considered your amended request to be another request for a customer list grouped by usage or nonpayment data.

² These two statutes require public utilities to furnish to county attorneys, authorized attorneys and the Department of Health and Human Services, upon request, the names, addresses, and social security numbers of individuals for the purposes of collecting unpaid child, spousal and medical support payments.

In Nebraska, “[s]tatutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.” *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018); *Farmers Cooperative v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017). “In construing a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.” *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 793, 943 N.W.2d 231, 243 (2020). The plain language of § 84-712.05(11) indicates that the exception applies not only to confidential account, usage, payment or credit information of public power district customers, it also pertains to “customer lists.” In this regard, a “customer” is defined as “one that purchases a commodity or service.”³ A list is “a simple series of words or numerals (such as the names of persons or objects).”⁴

In your August 20, 2020, correspondence to Mr. Mendenhall, you argue that your request sought none of the items listed in subsection (11), and that you only wanted the addresses. However, there is no question that what you have requested from the District is a customer list. Your request for only addresses or your “authorization” to the District to redact confidential information does not change this fact. Moreover, we disagree with your assertion that a list of customer addresses does not constitute “customer information.” Consequently, since customer lists are clearly excepted from disclosure under § 84-712.05(11), the District’s reliance on this provision was appropriate.

CONCLUSION

Based on the foregoing, we conclude that a list of residential property addresses where water was disconnected and never reconnected for the time period January 1 to August 1, 2020 constitutes a “customer list” which may be withheld under the exception to disclosure in Neb. Rev. Stat. § 84-712.05(11). Since we have concluded that the District did not unlawfully deny your records requests, no further action by this office is warranted. Accordingly, we are closing this file.

³ See <https://www.merriam-webster.com/dictionary/customer>.

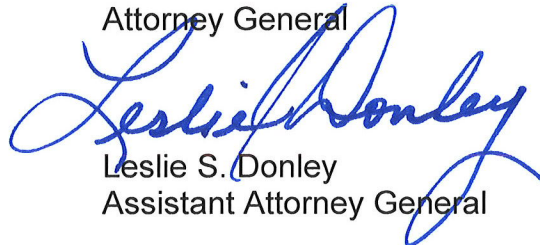
⁴ See <https://www.merriam-webster.com/dictionary/list>.

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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: Mark Mendenhall (via email only)

49-2562-29