

STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
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LESLIE S. DONLEY
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April 12, 2021

Via email at [REDACTED]
Jim Boucher
120 E Hudspith Street
Box 467
Valley, NE 68064

RE: *File No. 21-R-106; City of Valley; Jim Boucher, Petitioner*

Dear Mr. Boucher:

This letter is in response to your correspondence emailed to our office on March 24, 2021, and your follow-up email which we received on March 26. You have requested our assistance in obtaining a "TIF cost benefit analysis" from the City of Valley ("City"). On April 1, 2021, we discussed this matter with the City Clerk, Joan Suhr, and at our request, Ms. Suhr provided us correspondence she had recently emailed to you containing information responsive to your request. We considered your correspondence to be a petition under Neb. Rev. Stat. § 84-712.03(1)(b) of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2020) ("NPRS"). Our findings in this matter are set forth below.

RELEVANT FACTS

You indicate that you are engaged in a study of the City's use of tax increment financing (TIF) for redevelopment and development projects.¹ On January 29, 2021, you emailed Ms. Suhr the following:

I want to make a formal request to look at the cost benefit analysis referred to in a number of documents as used by our City agencies to evaluate & approve going ahead with this project. It may be in form of a spread sheet or a narrative report, but unfortunately I don't know that form or its name to request a copy of it.

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). This office does not consider the reason or purpose for a records request when making our determination under § 84-712.03(1)(b).

For example, in Resolution 2006-03 it Says [sic]:

“3. The Agency has conducted a cost benefit analysis of the project, provided in “Redevelopment Plan” attached to the Redevelopment Contract, and finds no adverse impact on the City, employers, or taxing entities affected by the project.”
I have a copy of that Contract now, thanks, but I don’t find any attached cost benefit analysis. Can you direct me to where I might find that analysis to request a copy of?

(Emphasis added.) You state that while the “City has been forthcoming and very helpful covering most document requests,” it has not addressed in a timely fashion your requests for “this particular Cost Benefit Analysis, or even one for any of the other recent TIF projects”

According to Ms. Suhr, she provided you a copy of the redevelopment contract prior to your formal request for the cost benefit analysis on January 29, 2021 (or February 3, when you requested the information on the City’s Information Request form). Ms. Suhr further indicates that she informed you that the cost benefit analysis was part of the contract during a telephone conversation she had with you around this time. In addition, on March 30, 2021, Ms. Suhr sent you an email in which she states, in pertinent part:

Regarding the cost benefit analysis for Mallard Landing: . . .

We reached out to Mike Bacon who provided the following general information about cost benefit analysis and Mallard Landing as noted in the redevelopment (which was previously provided to you).

“Public cost/benefit analysis: This plan requires that the Developers acquire and construct a phased residential development. It is intended that no public funds, other than the tax increment financing benefit, will be used on the acquisition and development of the property.

The Developers will provide all financing for Project Costs of the Developer. The Developers will either find investors for the Series 2007 Bonds issued by the Agency, or purchase such bonds outright. Such bonds shall not be backed by the City or the Agency, and will only be repaid from the increased ad valorem tax stream created by the project rehabilitation, over a 15 year period, set from time to time as defined in the Redevelopment Contract, and commencing January 1, 2008, through January 1, 2015. All ad valorem taxes currently being paid by the facility will continue to be paid to the normal taxing authorities, including the school district, the City of Valley, and Douglas County, subject to current valuation adjustment. After the 15-year TIF period, the increased taxes will also be paid to the normal taxing authorities.

Tax benefit: Currently the real estate is unimproved. The real estate taxes from the land will continue to be paid to the taxing authorities.

The project will result in up to 149 new single family homes developed in the City. This development is estimated to take 8 years to fill with new homes. Many new residents will bring home paychecks to spend in City stores, thus expanding local sales tax base and property tax base."

(Emphasis added.)

DISCUSSION

Generally speaking, the NPRS provide Nebraska citizens and other interested persons access to public records and copies of those records in certain circumstances. However, this office has consistently taken the position over time, based upon the plain language of those statutes, that they do not require public officials in Nebraska to answer questions or to create records which do not otherwise exist. The sole focus of the NPRS is access to government records, which the City has provided to you. In fact, as demonstrated above, Ms. Suhr not only provided you a copy of the redevelopment contract, but as a courtesy to you she followed up with the attorney involved in the project, and pinpointed language in the contract pertaining to the cost benefit analysis. It seems to us that Ms. Suhr has gone above and beyond anything required under the NPRS to assist you in your research.

Under our enforcement authority set out in Neb. Rev. Stat. § 84-712.03(1)(b), the Attorney General is required "to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections" The City did not deny you access to public records. And to the extent you believe the City's response to you was untimely, it appears to us that you had all responsive records since January 2021. As indicated above, Ms. Suhr advised you that the cost benefit analysis was contained in the redevelopment contract.

CONCLUSION

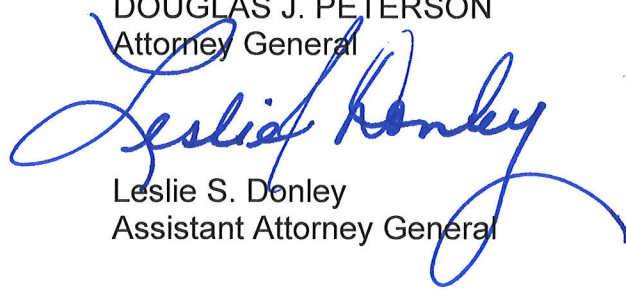
We conclude that the City of Valley has provided you all of the documents it has in its possession which are responsive to your public records request. The City and Ms. Suhr have no legal obligation under the NPRS to answer your questions relating to those documents. Since we have identified no violations of the NPRS with respect to this matter, no further action by this office is necessary and we are closing this file. If you disagree with our analysis, you may wish to discuss this matter with your private attorney

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to determine what, if any, additional remedies might be available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON
Attorney General

A handwritten signature in blue ink that reads "Leslie S. Donley". The signature is fluid and cursive, with a large loop at the end of the last name.

Leslie S. Donley
Assistant Attorney General

c: Joan Suhr (via email)
Jeff Farnham (via email)

49-2671-29