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Office of the Attorney General

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February 16, 2022

Via email at lylemcmann7167@gmail.com
Lyle D. McMann
1514 Central Ave.
Auburn, NE 68305

RE: *File No. 22-R-104; Richardson County Clerk; Lyle D. McMann, Petitioner*

Dear Mr. McMann:

We are writing in response to your petition received by this office on February 1, 2022, in which you requested our review of the denial by Mary Eickhoff, Richardson County Clerk, of your request for time sheets and pay stubs of certain county employees. On February 2, we forwarded your petition to the Richardson County Attorney, Douglas E. Merz, and requested a response to your petition as it related to withholding pay stubs. We received Mr. Merz's response on February 7. We considered your petition and the county's response under the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Supp. 2021). Our findings in this matter are set forth below.

RELEVANT FACTS

By letter dated January 21, 2022, addressed to Ms. Eickhoff, you requested "[t]imesheets and corresponding Pay stubs for [four] individuals, identified by their badge/employee number" After each individual's name, you set out the specific weeks for which records were sought. Ms. Eickhoff responded by letter dated January 27, indicating that the requested records contain information which is personal to the employee. In this respect, Ms. Eickhoff stated:

Therefore, your request for these records cannot be completed per Nebraska Revised State Statute 84-712.05(7) *Personal information in records regarding personnel of public bodies other than salaries and routine directory information.* Reference to a Nebraska Attorney General's Opinion dated September 29, 2021, File No. 21-R-133 which also references File No. 19-R-129 was also reviewed with making this determination. (Italics in original.)

Mr. Merz indicates that the pay stubs could not be provided because they contain personal information of the employee, including withholding status, federal and state tax withholdings, retirement contribution, health insurance deduction, other deductions for elected insurance coverages, as well as the employee's address. He states that "[s]ince the requested information involves employees who are involved in law enforcement, disclosure of their personal address is of additional concern for the County." Mr. Merz further indicates that the pay stubs also contain personal information relating to accumulated leave and leave used during a particular pay period. He indicated that the county annually publishes the wages or salaries of county employees and posts this information on its website. Since the pay stubs contain personal information of county personnel, the pay stubs were withheld pursuant to § 84-712.05(7).

You indicate in your petition that you have been trying to get records from Ms. Eickhoff for just over a year, and that the January 21 request was your fourth attempt. You disagree with Ms. Eickhoff's assertion that the time sheets and pay stubs contain personal information.

DISCUSSION

The basic rule for access to public records is set out in Neb. Rev. Stat. § 84-712(1) (2014). This provision generally states that "[e]xcept as otherwise expressly provided by statute," all Nebraska citizens and other interested persons have the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those records, and to obtain copies of records in certain circumstances. Neb. Rev. Stat. § 84-712(1) (2014) (emphasis added). "Public records" are defined as follows:

Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

Neb. Rev. Stat. § 84-712.01(1) (2014) (emphasis added). Thus, in those instances where the Legislature has provided that a particular record shall be confidential or may be withheld at the discretion of the records custodian under § 84-712.05, there is no right of access.

Section 84-712.05 currently contains 23 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” At issue here is whether the exception in § 84-712.05(7), pertaining to “[p]ersonal information in records regarding personnel of public bodies other than salaries and routine directory information,” provides a basis to withhold the time sheets and pay stubs of the four employees listed in your request.

Time Sheets

As referenced by Ms. Eickhoff in her denial letter, last year this office considered whether time sheets of an employee of the City of Plattsmouth could be withheld under the exception in § 84-712.05(7).¹ We concluded that a timesheet contained information that was personal to the employee, and did not constitute salary information or routine directory information—items which may not be withheld under the exception.² Our conclusion in File No. 21-R-133 was consistent with our disposition in File No. 19-R-129,³ where we considered whether a natural resources district could withhold the time cards and time logs of district staff under § 84-712.05(7). Relying on the plain language of the exception and the language broadly construing the exception in *Steckelberg v. Nebraska State Patrol*, 294 Neb. 842, 885 N.W.2d 44 (2016),⁴ we concluded that the time sheets and logs could be lawfully withheld under the exception. In the present case, you have presented nothing in your public records request to Ms. Eickhoff or petition to this office that would require us to depart from our previous dispositions on this issue. In addition, the fact that you may have received employee time sheets from a neighboring county does not preclude Richardson County from relying on the exception in § 84-712.05(7) to withhold the time sheets for the employees listed in your request.

¹ See *File No. 21-R-133; City of Plattsmouth; Matthew Sutter, Petitioner*, dated September 29, 2021. All Attorney General disposition letters from 2010 are accessible at <https://ago.nebraska.gov/disposition-letters>.

² This office has historically construed routine directory information to include an employee’s name, job title, work telephone number and address and dates of hire and separation.

³ See *File No. 19-R-129; Little Blue Natural Resources District; Kevin Kissinger, Petitioner* (December 5, 2019).

⁴ The Nebraska Supreme Court determined that the State Patrol could rely on § 84-712.05(7) to withhold certain records relating to interview score sheets, notes and comments, holding that

[section] 84–712.05(7) exempts “[p]ersonal information in records regarding personnel.” The district court found that the information in the records sought did contain personal information. And the information was about employees, otherwise known as personnel, of the State Patrol. There is no requirement in § 84–712.05(7) that in order to be exempt, the records must be kept within an employee's personnel record, as used as a term of art; *the records need only be personal information about personnel, defined as persons employed by an organization.*

Steckelberg, 294 Neb. at 849-850, 885 N.W.2d at 50 (internal citations omitted) (emphasis added).

Pay Stubs

Neb. Rev. Stat. § 84-712.01(3) (2014) provides that

[s]ections 84-712 to 84-712.03 shall be liberally construed 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.

“The Legislature intended that courts liberally construe §§ 84-712 to 84-712.03 for disclosure ‘whenever any . . . political subdivision . . . record of receipt . . . or expenditure involving public funds is involved.’ And it does so ‘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 public bodies and entities created to serve them.’ Because the Legislature has expressed a strong public policy for disclosure, an appellate court must narrowly construe statutory exemptions shielding public records from disclosure.” *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 122, 907 N.W.2d 301, 307-308 (2018).

In Op. Att’y Gen. No. 90015 (February 27, 1990), the Attorney General addressed whether a state agency had a duty to disclose information that would show whether a particular employee received a performance bonus, and the amount of the bonus, from information contained in the employee’s personnel file. The Attorney General concluded that a limited duty to disclose such records did exist, stating:

Subsection (7) of § 84-712.05 lists “personal information in records regarding personnel of public bodies other than salaries and routine directory information” as a category of information which may be kept confidential. We believe that subsection (7) would clearly allow a public agency to keep employee evaluations and bonus information in an employee’s personnel file confidential. In addition, we believe that other materials or records reflecting such personal information may also generally be kept confidential. For example, a list prepared by the agency of those employees who received bonuses and the amount of each bonus could be kept confidential under subsection (7).

On the other hand, it is clear that the public is entitled to review salary records under subsection (7). Moreover, Neb. Rev. Stat. § 84-712.01[3] provides that the public records statutes shall be liberally construed whenever warrants, payrolls, vouchers or other fiscal records are involved. Therefore, we believe that fiscal records reflecting salary information for

public employees may not be withheld from the public simply because they might indicate who received a bonus. On this basis, members of the public have an absolute right to review payroll warrants and other payment documents of state agencies.

Consequently, we believe that a state agency is required to release fiscal records which reveal salary payments to individual employees

Id. at 2 (emphasis added).

Based on the foregoing,⁵ we believe the county must disclose the requested pay stubs in response to your request. Therefore, we will direct Ms. Eickhoff, by sending a copy of our response to Mr. Merz, to provide you with the requested records at her earliest possible convenience, but in no event later than the close of business on February 25, 2022. Any other information contained in the pay stubs that does not reflect salary information or routine directory information may be redacted pursuant to § 84-712.05(7).

CONCLUSION

For the reasons explained above, we conclude that the requested time sheets contain information which is personal to the employees involved and, on that basis, may be withheld under the exception in § 84-712.05(7). However, the pay stubs must be provided to you as outlined above. Therefore, on the assumption that Ms. Eickhoff will provide you those records, we believe that this petition has been resolved, and there is no need for further review by this office. On that basis, we are closing this file.

If you disagree with our analysis set out above, you may wish to review the judicial remedies available to you under § 84-712.03.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Douglas E. Merz
49-2875-30

⁵ See also *File No. 15-R-123; Hitchcock County Assessor; Amy Frederick, Hitchcock County News, Petitioner*, dated June 2, 2015 (directing the assessor to produce pay stubs for the designated employee, “redacting all but the ‘routine directory information’ and . . . gross pay.” *Id.* at 6).