



STATE OF NEBRASKA
Office of the Attorney General

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November 1, 2023

Michael McLemore, #53027
P.O. Box 900
Tecumseh, NE 68450

RE: *File No. 23-R-131; Douglas County Attorney's Office; Michael McLemore, Petitioner*

Dear Mr. McLemore:

This letter is in response to your petition received by this office on October 5, 2023, in which you challenged the denial by the Douglas County Attorney's Office (DCAO) of your request for public records submitted on or about October 19, 2021. In accordance with our normal practice, we forwarded a copy of your petition to the DCAO upon receipt. On October 19, we received a response to your petition from Deputy County Attorney William E. Rooney III. On October 20, we wrote to you indicating that we had conducted a preliminary investigation of your petition but needed additional time to finalize our response. We have now completed our review of your petition and the county's response in accordance with the provisions of the Nebraska Public Records Statutes (NPRS), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2022). Our findings in this matter are set forth below.

RELEVANTS FACTS

On or about October 19, 2021, you requested the following records from the DCAO:¹

1. All documents, records, logs, receipts, ect. to include travel expenses, motel/hotel, dinning, phone or gas, cash, check, payments, pertaining to any assistance the Douglas County Attorney's Office furnished to Willie Martin to come from Texas to Omaha NE. in the years of 1997 to 2001.

¹ Since you did not include a copy of your original records request with your petition, we copied the items in your request as they appear in Mr. Rooney's October 19, 2023, response to this office.

2. All documents, records, logs, receipts, ect. offered to Willie Martin from the Douglas County Attorney's Office for "any" financial assistance to include rents, travel, cash, checks, motel/hotel, dinning, room and board, penny cash during the period of Sept-ember 16, 1997 to January 1, 2002.
3. All documents, records, logs, receipts, ect. offered to Willie Martin from the Douglas County Attorney's Office for assistance of any kind pertaining to cooperation with this office involving Michael McLemore.
4. All documents, records, logs, receipts, ect. offered to Willie Martin from the Douglas County Attorney's Office for any assistance to and from the Douglas County Court House during the year 1999.
5. All documents, records, logs, receipts, ect. from the Douglas County Attorney's Office to Willie Martin or family of Willie Martin pertaining to any financial assistance whatsoever in exchange for Willie Martin's testimony pertaining to Michael E. McLemore's trail during 1999.
6. All documents, records, logs, ect. from the Douglas County Attorney's Office offered to Willie Martin for financial assistance to relocate from Omaha, NE. to any other location outside of Nebraska.
7. All documents, records, logs, request, ect. from Willie Martin to the Douglas County Attorney's Office pertaining to plea negotiations for Melvin Martin in exchange for testimony against Michael Mclemore.
8. All documents, records, logs, request, ect. from the Douglas Country Attorney's Office for "any" future assistance to Willie Martin in exchange for cooperation with the State Of Nebraska against Michael Mclemore.
9. All documents, records, logs, request, offers, ect. from the Douglas Country Attorney's Office to Melvin Martin pertaining to any financial assistance.
10. All documents, records, logs, request, ect. from the Douglas Country Attorney's Office offered or exchanged to Willie Martin before, during, and after his trail testimony against Michael McLemore; this is to include, cash, check, payments, rents, bills paid, regardless of amounts to Willie Martin from the Douglas Country Attorney's Office.
11. All documents, records, logs, request, notes, ect. pertaining to the Douglas Country Attorney's Office to their investigator who traveled to Texas to interview Willie Martin in 1998 to 1999; this is to include "all" expenses with receipts to and from Omaha, NE. to Texas and back.
12. All documents, records, logs, request, receipts, ect. from the Douglas Country Attorney's Office authorized by Donald Kleine or Shelly Stratman to Willie Martin during the years 1997 to 2002.

Following a series of delays, communicated to you by letters dated October 25, December 8 and December 30, 2021, Mr. Rooney provided you a final response by letter dated

January 13, 2022.² He indicated that records responsive to your request, located in a DCAO case file, were being withheld under the exceptions to disclosure in Neb. Rev. Stat. §§ 84-712.05(1), 84-712.05(4), and 84-712.05(5). Mr. Rooney informed you that to the extent certain duplicate records were filed or offered in court, the Clerk of the Douglas County District Court was the custodian of those records, not the DCAO. Mr. Rooney also informed you that the NPRS should not be used to circumvent the rules of discovery available to you in any post-conviction relief you may seek as the defendant in the case.

You state in your petition that

[t]he records I requested has to do with any and all “financial records and expenditures” of public funds involving the Douglas County Attorney’s Office and its agencies pertaining to Willie Lee Martin involving the criminal case against State v. McLemore. The Douglas County Attorney’s Office is attempting to shield these records under statutes pertaining to “work product of an attorney” which has noting [sic] to do with expenditures of public funds. The courts have long determined that expenditures of public funds are public records that must be disclosed at the request of citizens of this state. ID.

You have requested that we review the records located by the DCAO “to determine if they can be withheld from disclosure.”

In his response, Mr. Rooney represents that he reviewed the voluminous prosecution file relating to your criminal case, and “locate[d] various records mentioning Willie Martin and/or Melvin Martin” Those records included: (1) the prosecutor’s handwritten notes; (2) an Omaha Police Department report outlining Willie Martin’s recorded statement; and (3) correspondence from attorney Michael Malone to the prosecutor. Mr. Rooney further represents that

[g]iven the breadth of Mr. McLemore’s request, it’s not clear whether any of these records are responsive to his request. The letter from attorney Malone requests materials regarding previous plea deals with Willie Martin. The remaining materials relate to the facts and prosecution of the case and make no mention of any plea agreement to which Willie Martin was a party or any reference to money or other consideration provided to Mr. Martin. Nor do any of the documents reference Willie Martin’s travel, lodging or any other logistical matters relating to Mr. Martin. DCAO is not in possession of any financial record or receipts relating to Willie Martin. I would submit that the above identified records are not responsive to Mr. McLemore’s [sic] request. In any event, the listed records are withholdable

² You indicate that you received no further response until you “filed a Writ of Mandamus.” Mr. Rooney acknowledged this purported filing in his letter to you dated August 21, 2023, in which he informed you that the DCAO had provided a final response to your records request by letter dated January 13, 2022. A copy of the January 13, 2022, letter was attached to his letter.

[sic] pursuant to Nebraska Revised Statute §§ 84-712.05(1),³ 84-712.05(4), and 84-712.05(5). (Emphasis added.)

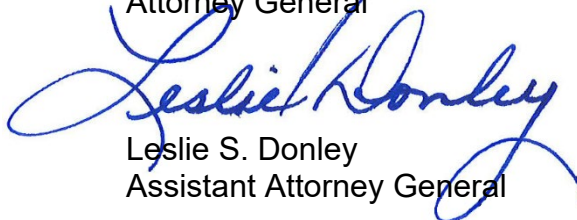
DISCUSSION

Your petition pertains to records showing financial benefits paid to Willie Martin by the DCAO in the context of your criminal case. You correctly state that § 84-712.01(3) requires that provisions of the NPRS “be liberally construed” when financial records of governmental entities are involved.⁴ However, based on Mr. Rooney’s reexamination of the case file, and his representations to this office set out above, we are satisfied that no records responsive to the items in your public records request exist. Thus, it is not necessary to determine whether any of the exceptions to disclosure cited by Mr. Rooney were appropriate. Since you have not been unlawfully denied access to public records, no further action by this office is necessary and we are closing our file.

If you disagree with the conclusion reached in this matter, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: William E. Rooney III (via email only)

49-3381-30

³ We believe that Mr. Rooney intended to cite to § 84-712.01(1), which defines “public records” for purposes of the NPRS.

⁴ See *Aksamit Resource Management LLC v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 122, 907 N.W.2d 301, 307-08 (2018) (“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.’”).