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July 8, 2013

Pat Venditte
1235 Park Wild Ave.
Omaha, NE 68108

RE: *File No. 13-R-117; Douglas County Board of Commissioners; Pat Venditte, Petitioner*

Dear Mr. Venditte:

We are writing in response to your correspondence received by this office on June 24, 2013, in which you requested our assistance in obtaining certain public records belonging to the Douglas County Board of Commissioners (the "Board"). We considered your correspondence to be a petition for access to records under the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008 & Cum. Supp. 2012). Our findings in this matter are set forth below.

RELEVANT FACTS

Our understanding of the facts in this case is based on the information contained in your petition, including your June 18, 2013, request for public records addressed to the Board, and the response you received from Deputy Douglas County Attorney Theresia M. Urich, dated June 19, 2013.

In your request letter, you indicate that you appeared before the Board on June 4, 2013, and "requested verbally or in writing the Douglas County Board's first bid on the Greyhound property that was for sale by Investors Realty." You indicate that the attorneys representing Douglas County advised that the county was not required to release the information. You go on to state:

> I am formally requesting that the Douglas County Board provide me with the first bid made by the County to purchase the Greyhound property.

In her denial letter, Ms. Urich indicates that your request for the records was being denied "[a]t this time." Ms. Urich advised that she was withholding the requested records pursuant to Neb. Rev. Stat. § 84-712.05(6)—"negotiation records concerning the purchase or sale by a public body, of an interest in real property, prior to completion of the purchase or sale may be withheld from public disclosure." (Emphasis in original.) Ms. Urich further advised that since the purchase/sale had not been completed, your request was denied.

DISCUSSION

Generally speaking, the Nebraska Public Records Statutes allow interested persons in Nebraska the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those public records, and to obtain copies of public records in certain circumstances. Under those statutes, every record "of or belonging to" a public body is a public record which individuals may obtain a copy of unless the custodian of the record can point to a specific statute which allows the record to be kept confidential. The burden of showing that a statutory exception to disclosure applies to particular records rests upon the custodian of those records. *State ex rel. Nebraska Health Care Association v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998).

Neb. Rev. Stat. § 84-712.05 of the NPRS is comprised of eighteen categories of documents which may be kept confidential from the public at the discretion of the agency involved. In the present case, the Board has claimed the exception set out in subsection (6) as its basis for denying you access to the requested records. That subsection provides, in pertinent part:

> The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:
>
> (6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

Consequently, a public body may lawfully withhold from public disclosure any appraisal or negotiation records relating to the public body's purchase or sale of real or personal property. We note that subsection (6) is the only exception out of the eighteen set out in § 84-712.05 that expressly "expires"—in this case when the purchase or sale is completed.

We have carefully considered whether "the first bid made by the County to purchase the Greyhound property" falls within this exception. As we noted in previous correspondence to you, this bid process involved selling privately owned real estate using a private broker. As such, it is not subject to any particular bidding process or statutory scheme. Here, the Board submitted an initial offer, or bid, to purchase the property. Notwithstanding any representations made to you after the submission of the initial bids, the broker subsequently requested that the bidders submit a "best and final offer." The Board submitted another offer, which was ultimately accepted. Consequently, we believe that the Board's offers to purchase the real estate at issue constituted "negotiation records" as that term is used in subsection (6). As a result, the Board's reliance on this exception to withhold the first bid was appropriate.

Our conclusion is further supported by certain comments made during the committee hearing on LB 86 [1979 Neb. Laws, LB 86, § 5], which created the first nine exceptions from disclosure in the NPRS. With respect to subsection (6), Alan Peterson, who according to the bill's introducer drafted the bill, stated:

> Number six is pretty self-explanatory. If you're going to buy public property or thinking of it, the public's interest is in getting that property for a fair and reasonable price. Advance publicity may damage that possibility. There are public bidding requirements, of course, in many areas, contracts and purchases, and we're not overruling those. No existing law is overruled.

Committee Records on LB 86, 86th Neb. Leg., 1st Sess. 6 (February 9, 1979). In this regard, the Legislature determined that the public interest is served by allowing public bodies to keep records pertaining to real and personal property transactions confidential, in the same manner individuals and private entities purchase and sell real and personal property. Had the sale of this property been subject to "public bidding requirements," both you and the Board would have been bound by those constraints. That was not the case here, however, and the Board was able to withhold disclosing the bid at its discretion.

Finally, having concluded that the Board can withhold the requested record, we note again that this exception from disclosure lasts only until the purchase of the Greyhound property is completed. At that time, the record must be disclosed to you. We will request that Ms. Urich, by sending her a copy of this disposition letter, forward you the requested records immediately once the Board has completed its purchase.

CONCLUSION

We believe that the requested documents belonging to the Board may be kept confidential under the exception set out in Neb. Rev. Stat. § 84-712.05(6). Since we conclude that the Douglas County Board of Commissioners did not unlawfully deny your request under the Nebraska Public Records Statutes, no further action by this office is warranted, and we are closing this records file.

If you disagree with our legal analysis set out herein, you may wish to consult with your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

JON BRUNING
Attorney General

Leslie S. Donley
Assistant Attorney General

cc: Theresia M. Urich

49-1008-30