

RESPONDING TO PUBLIC RECORDS REQUESTS




2015 Education Forum

James B. Gessford

jgessford@perrylawfirm.com

Derek A. Aldridge


daldridge@perrylawfirm.com



The Basics

- **Nebraska Public Records law**
 - Neb. Rev. Stat. 84-712 et seq.
- Not to be confused with . . .
 - Freedom of Information Act (FOIA) – federal law
 - Applicable to federal government


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The Basics

- Who may request records?
 - **Anyone.** “[A]ll citizens of this state, and all other persons interested in the examination of the public records . . .”
 - **All** that is required is a “written request.”
 - No explanation of the request is required.

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What is Requested?

- Is it a public record?

Public records are “all records and documents, regardless of physical form, of or belonging to . . . any . . . political subdivision . . .”
- Public body is not required to **produce** or generate any records in a new or different form than the original public record


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What is Requested?

- Is it a public record?
 - These are public records, but may be kept confidential*:
 - Personal info in records regarding students.
 - Medical records.
 - Attorney work product.
 - Appraisals concerning purchase/sale of property.
 - Personal information in records regarding personnel, e.g. employee evaluations.


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How big is the request?

- How many public records are requested?
 - Legislative history of public records statutes indicates that in the case of a voluminous request, the records custodian may take whatever time is needed to fulfill the request.


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Cost of compliance?

- Fees may be charged for complying with the request.
 - Can charge for paper copies, computer run time, necessary analysis and programming, and the actual cost of the staff time required to pull, separate, and copy the records.
 - Also take into account “gatherer’s” hourly rate.


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Do you need legal advice?

- What other issues apply to gathering records?
 - Legislative history of the public records statutes makes it clear that a *reasonable delay* in providing copies may be based on the need to obtain legal advice as to the confidential nature of any records at issue.


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Time to respond?

- Public body has 4 business days to respond.
 - Legislative history indicates that the 4 business days does not include the day the written request is received.


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Time to respond?

- If the response is going to be delayed, e.g. longer than 4 business days, the public body must:
 - Explain the delay;
 - State the “earliest practicable date” for fulfilling the request;
 - Include an estimate of the cost of any copies; and
 - Provide an opportunity to modify or prioritize the request.


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Denial of Access

- If a request is denied, public body must provide the requester:
 1. A description of the contents of the records withheld and a statement of the specific reasons for denial;
 2. The name of the official who made the decision to deny access; and
 3. Notification of his right to administrative or judicial review
- Public body must maintain denial letters


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Denial of Access

- An aggrieved requester may:
 - Petition the AG to review the matter
 - File a writ of mandamus
 - Bring suit or petition AG to bring suit
 - Violations may result in impeachment, criminal sanctions, and a fine

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