

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 432

Introduced by Baker, 30.

Read first time January 20, 2015

Committee:

- 1 A BILL FOR AN ACT relating to public records; to amend section 84-712,
- 2 Reissue Revised Statutes of Nebraska; to change provisions relating
- 3 to access to and copying of public records; and to repeal the
- 4 original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-712, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 84-712 (1) Except as otherwise expressly provided by statute, all
4 citizens of this state and all other persons interested in the
5 examination of the public records as defined in section 84-712.01 are
6 hereby fully empowered and authorized to, ~~(a) examine such records, and~~
7 ~~make memoranda, copies using their own copying or photocopying equipment~~
8 ~~in accordance with subsection (2) of this section, and abstracts~~
9 ~~therefrom, all free of charge, during the hours the respective offices~~
10 ~~may be kept open for the ordinary transaction of business and (b) except~~
11 if federal copyright law otherwise provides, obtain copies of public
12 records in accordance with subsection (3) of this section ~~during the~~
13 ~~hours the respective offices may be kept open for the ordinary~~
14 ~~transaction of business.~~

15 (2) Copies made by ~~citizens or other persons using their own copying~~
16 ~~or photocopying equipment pursuant to subdivision (1)(a) of this section~~
17 ~~shall be made on the premises of the custodian of the public record may~~
18 ~~be provided in electronic or print format at the option of the custodian~~
19 ~~unless or at a location mutually agreed to by the requester does not have~~
20 ~~the ability to receive the copies in electronic format, then and the~~
21 ~~custodian shall provide the copies in print format.~~

22 (3)(a) Copies may be provided ~~obtained pursuant to subdivision (1)~~
23 ~~(b) of this section only if the custodian has copying equipment~~
24 ~~reasonably available. Such copies may be obtained in any form designated~~
25 ~~by the requester in which the public record is maintained or produced,~~
26 including, but not limited to, printouts, electronic data, discs, tapes,
27 and photocopies. This section shall not be construed to require a
28 custodian to copy any public record that is available to the requester on
29 the custodian's web site on the Internet. The custodian of the public
30 record is required to provide the location of the public record on the
31 Internet to the requester. If the requester does not have reasonable

1 access to the Internet due to lack of computer, lack of Internet
2 availability, or inability to use a computer or the Internet, the
3 custodian shall produce copies in print format for the requester.

4 (b) Except as otherwise provided by statute, the public body, public
5 entity, or public official which is the custodian of a public record may
6 charge a fee for providing copies of such public record pursuant to
7 subsection subdivision (1)(b) of this section, which fee shall not exceed
8 the actual added cost of making the copies available. For purposes of
9 this subdivision, (i) for copies in print format photocopies, the actual
10 added cost of making the copies available shall not exceed the amount of
11 the reasonably calculated actual added cost of the copies in print format
12 ~~photocopies~~, which may include a reasonably apportioned cost of the
13 supplies, such as paper, toner, and equipment, used in preparing the
14 copies, as well as any additional payment obligation of the custodian for
15 time of contractors necessarily incurred to comply with the request for
16 copies, (ii) for printouts of computerized data on paper, the actual
17 added cost of making the copies available shall include the reasonably
18 calculated actual added cost of computer run time and the cost of
19 materials for making the copy, and (iii) for copies in electronic format
20 ~~electronic data~~, the actual added cost of making the copies available
21 shall include the reasonably calculated actual added cost of the computer
22 run time, any necessary analysis and programming by the public body,
23 public entity, public official, or third-party information technology
24 services company contracted to provide computer services to the public
25 body, public entity, or public official, and the production of the report
26 in the form furnished to the requester.

27 (c) The actual added cost used as the basis for the calculation of a
28 fee for records shall not include any charge for the existing salary or
29 pay obligation to the public officers or employees with respect to the
30 first four cumulative hours of searching, identifying, physically
31 redacting, or copying. A special service charge reflecting the calculated

1 labor cost may be included in the fee for time required in excess of four
2 cumulative hours, since that large a request may cause some delay or
3 disruption of the other responsibilities of the custodian's office,
4 except that the fee for records shall not include any charge for the
5 services of an attorney to review the requested public records seeking a
6 legal basis to withhold the public records from the public.

7 (d) State agencies which provide electronic access to public records
8 through a portal established under section 84-1204 shall obtain approval
9 of their proposed reasonable fees for such records pursuant to sections
10 84-1205.02 and 84-1205.03, if applicable, and the actual added cost of
11 making the copies available may include the approved fee for the portal.

12 (e) This section shall not be construed to require a public body or
13 custodian of a public record to produce or generate any public record in
14 a new or different form or format modified from that of the original
15 public record.

16 (f) If copies requested in accordance with subsection ~~subdivision~~
17 (1)(b) of this section are estimated by the custodian of such public
18 records to cost more than fifty dollars, the custodian may require the
19 requester to furnish a deposit prior to fulfilling such request.

20 (4) Upon receipt of a written request for ~~access to or~~ copies of a
21 public record, the custodian of such record shall provide to the
22 requester as soon as is practicable and without delay, but not more than
23 four business days after actual receipt of the request, an estimate of
24 the expected cost of the copies and ~~either (a) access to or, if copying~~
25 ~~equipment is reasonably available,~~ copies of the public record, (b) if
26 there is a legal basis for denial of ~~access or~~ copies, a written denial
27 of the request together with the information specified in section
28 84-712.04, or (c) if the entire request cannot with reasonable good faith
29 efforts be fulfilled within four business days after actual receipt of
30 the request due to the significant difficulty or the extensiveness of the
31 request, a written explanation, including the earliest practicable date

1 for fulfilling the request, an estimate of the expected cost of any
2 copies, and an opportunity for the requester to modify or prioritize the
3 items within the request. The requester shall have ten business days to
4 review the estimated costs, including any special service charge, and
5 request the custodian to fulfill the original request, negotiate with the
6 custodian to narrow or simplify the request, or withdraw the request. If
7 the requester does not respond to the custodian within ten business days,
8 the custodian shall not proceed to fulfill the request. The four business
9 days shall be computed by excluding the day the request is received,
10 after which the designated period of time begins to run. Business day
11 does not include a Saturday, a Sunday, or a day during which the offices
12 of the custodian of the public records are closed.

13 Sec. 2. Original section 84-712, Reissue Revised Statutes of
14 Nebraska, is repealed.