



February 6, 2012

Senator Bill Avery
Government, Military and Veterans Affairs Committee
Room 1114, State Capitol
Lincoln NE 68509

Chairman Avery and members of the Government, Military, and Veterans Affairs Committee,

My name is Robbie McEwen and I am a Staff Attorney at Nebraska Appleseed. Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans. On behalf of Nebraska Appleseed, I am here to testify in support of LB 363.

The Open Records Act establishes a mechanism for members of the public to request and examine certain records from public institutions, including counties and state agencies. The intent of Nebraska's Open Records Act is to provide a way for ordinary citizens to ensure governmental transparency and accountability.

In some cases, Appleseed has received prompt, clear, and fair responses to Open Records Act requests from various administrative entities. However, at other times, Appleseed has experienced instances where a governmental entity has failed to produce records for inspection, has estimated production of documents would cost a substantial amount of money, and situations where there has been confusion over exactly what must be paid for under the act. As a law firm we have found these situations to be very frustrating, confusing, and are concerned members of the public have an equally if not more frustrating and confusing experience accessing public documents. We believe that LB 363 will address some of the problems that Appleseed has experienced when submitting requests for public records.

Appleseed has submitted many Open Records Act requests to Department of Health and Human Services (DHHS) only to receive a response from the Department that the request would cost thousands, or tens of thousands, of dollars to fulfill, without a thorough explanation or breakdown of the costs. I want to give a few examples of instances from Appleseed's experience that illustrate these problems.

First, recently Nebraska Appleseed submitted an Open Records Act request to the DHHS seeking data about the number of denials and authorizations for mental health services for children at different service levels. DHHS informed Appleseed that it would cost \$ 1,000.00

to respond to our request. After some negotiation over what information would be provided, DHHS informed us that they could be responsive to roughly 80% of the request. Appleseed remitted the \$ 1,000.00 payment for the aforementioned records. However, the records we ultimately received were not responsive to the elements that had been discussed. While some of the documents we received were helpful, we did not receive many of the essential documents that we had specifically negotiated for and subsequently asked for the return of our deposit. DHHS informed us that the \$ 1,000.00 was to pay for the cost of determining *whether* the documents existed, not the actual cost to attain them. We never received the documents that we requested from DHHS.

As a second example, in another case, Appleseed sought documents related to the Department of Medicaid's methodology in determining eligibility for certain mental health services. We believed the types documents we were requesting would have been kept in Magellan Behavioral Health's regular course of business. Specifically, we requested documents that Magellan Behavioral Health had relied upon in their implementation of Medicaid policy in denying services for behavioral health issues. Although we believe that the scope of our request was arguably broad, we found DHHS' response, that it would cost \$ 126,340.00 to respond to our request, to be quite unreasonable.

Because of these and other barriers, we strongly support LB 363. Specifically, we support the provision of LB 363 that would exempt payment for the first six hours of a public officer's time spent identifying the relevant records and any time spent analyzing the legality of disclosing such documents. Similarly, we support the provision of LB 363 that allows the Attorney General to review whether or not fees charged by the public body are actual added costs or special service charges. We believe that these provisions would reduce unnecessary administrative costs that can discourage the disclosure of public records. In turn, we also believe that these provisions will lead to more transparent and accountable government action.

We also support the provision of LB 363 that specifically prohibits a custodian of documents from automatically filling a request for documents without being specifically directed to by the requester. This provision will reduce any confusion over when a person can be charged for a document request and will allow time to clarify any confusion over what the requester is being charged for.

LB 363 is an important measure that is consistent with the purposes of the Open Records Act. We thank Senator Avery and the Committee for your dedication to ensuring accountability and transparency in Nebraska's government and respectfully request that you vote to advance LB 363.

Sincerely,
NEBRASKA APPLESEED



Robert McEwen
Staff Attorney
Child Welfare Program