

# **Bond Case Briefs**

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## **PUBLIC RECORDS - NEBRASKA**

### **Frederick v. City of Falls City**

**Supreme Court of Nebraska - January 16, 2015 - N.W.2d - 289 Neb. 864**

The issue presented in this appeal was whether certain documents in the possession of a private corporation which had an ongoing contractual relationship with a city were “public records” within the meaning of Neb.Rev.Stat. §§ 84-712 and 84-712.01.

Falls City Economic Development and Growth Enterprise, Inc. (EDGE), a Nebraska nonprofit corporation, provides economic development services to the City of Falls City, Nebraska, and other entities. A Nebraska citizen asked EDGE to produce documents relating to a specific economic development project, and EDGE denied the request on the ground that the requested documents were not public records as defined by § 84-712.01(1). The citizen then brought an action for a writ of mandamus to compel production of the requested documents. Except for certain documents which it determined to be privileged, the district court granted the writ. EDGE appealed, and Falls City cross-appealed, aligning itself with EDGE. The citizen also cross-appealed, contending the district court erred in not requiring production of all of the requested documents.

A four-part functional equivalency test is the appropriate analytical model for determining whether a private entity which has an ongoing relationship with a governmental entity can be considered an agency, branch, or department of such governmental entity within the meaning of Neb.Rev.Stat. § 84-712.01(1), such that its records are subject to disclosure upon request under Nebraska’s public records laws. The factors to be considered in applying this test are (1) whether the private entity performs a governmental function, (2) the level of governmental funding of the private entity, (3) the extent of government involvement with or regulation of the private entity, and (4) whether the private entity was created by the government.

In applying the functional equivalency test to determine whether a private entity is the equivalent of a public agency, branch, or department, it is not necessary that an entity strictly conform to each factor, but the factors should be considered and weighed on a case-by-case basis.

In its analysis, the court noted that the fact that EDGE receives 63 percent of its funding from public sources lent some support to the argument that it is the equivalent of a public agency, branch, or department, but concluded that the remaining factors lend no support to a determination that EDGE is the functional equivalent of a city agency, branch, or department. EDGE was formed by private parties. Its employees are not Falls City employees, its offices are not housed in city buildings, and its financial and other records are kept separately from those of Falls City. The city does not control EDGE’s board.