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September 20, 2017

Bryon Jones


RE: *File No. 17-R-139; Douglas County Sheriff's Office; Bryon Jones, Petitioner*

Dear Mr. Jones:

We are writing in response to your correspondence received by this office on September 5, 2017 in which you petitioned for our review of the response to your request for certain public records belonging to the Douglas County Sheriff's Office ("Sheriff") under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2014, Cum. Supp. 2016). As is our normal practice with such requests, we contacted the public body named in your correspondence. In this case, we provided your petition to Shakil Malik, legal counsel for the Sheriff, and he provided a response to us on September 12, 2017. We have now completed our analysis of this matter and our findings are set forth below.

RELEVANT FACTS

Our understanding of the facts in this matter is based on your petition and the response we received from the Sheriff. In a letter dated June 7, 2017 and received by the Sheriff on June 13, 2017, you made a request to the Sheriff's office "to inspect or obtain copies of public records regarding Douglas County Report #D93964 [[s]pecifically, any police reports, witness statements, list of any other requestors of records of this case, and any other details of the case deemed fit under this request.]" On June 16, 2017, Mr. Malik responded to your request and stated additional time was needed to research the request, due to its size. You were given the opportunity to modify or prioritize your request at that time. On July 5, 2017, Mr. Malik responded to your records request, advising that the motor vehicle accident report for this case was available for a fee and may be requested under the Sheriff's procedures established under Neb. Rev. Stat. § 60-699. The remainder of the records you requested were withheld under Neb. Rev. Stat. § 84-712.05(5), records developed or received by law enforcement agencies. Your

petition to this office seeks a review of this denial. In support of your petition, you state that the records should be provided to you because (1) the case is over 20 years old, (2) the investigation is closed, (3) new evidence has been provided to law enforcement but was not acted upon, and (4) the records contain evidence of "great concern."

DISCUSSION

The Nebraska Public Records Statutes ("NPRS") generally allow interested persons the right to examine public records in the possession of public agencies in Nebraska during normal agency business hours, to make memoranda and abstracts from those records, and to obtain copies of records in certain circumstances. Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files. Neb. Rev. Stat. § 84-712.01(1). 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 applies to disclosure of 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).

Your petition concerns the availability of records of the Sheriff concerning an investigation performed by that agency. As to your request for these records, the Sheriff denied your request, in part, for these records under Neb. Rev. Stat. § 84-712.05(5). You argue to us that because the investigation was conducted over 20 years ago and is now concluded, you are entitled to the records you seek. Although the NPRS provide for access to public documents, they are not absolute. The NPRS also provide for exceptions to disclosure by express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983). Neb. Rev. Stat. § 84-712.05 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 Sheriff has claimed the exception set out in subsection (5) as his basis for denying you access to the requested record. 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:

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person.

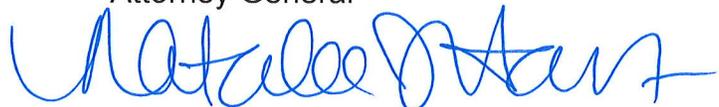
In Nebraska, in the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. *Swift and Company v. Nebraska Department of Revenue*, 278 Neb. 763, 773 N.W.2d 381 (2009). The plain and ordinary reading of § 84-712.05(5) indicates that a law enforcement agency may withhold records it develops or receives in the course of its investigations. The Sheriff is a law enforcement agency and the records maintained by that office as to investigation #D93964 are investigatory. The NPRS do not limit the time during which a public body is permitted to withhold an investigatory record and there is no requirement to release the record upon conclusion of the investigation. Nor do the NPRS provide for release of records which may be of "great concern" if they may otherwise be properly withheld. Your statements concerning the development of new evidence, likewise, do not impact the ability of the Sheriff to withhold its investigatory records under the NPRS. The Sheriff is not required to release the records you seek under the NPRS, as those records at issue fall squarely within the claimed exception.

CONCLUSION

For the reasons explained above, we conclude the Sheriff has not violated the NPRS with respect to your request for records, and that no further action by this office is warranted. Accordingly, we are closing this file. If you disagree with the analysis we have set out above, you may wish to consult an attorney to determine what additional remedies may be available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Natalee J. Hart
Assistant Attorney General

cc: Shakil Malik