



STATE OF NEBRASKA
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November 22, 2022

Via email at [REDACTED]
Jesse E. Stanley
1306 Birch Street
Aurora, NE 68818

RE: *File No. 22-R-161; Aurora Police Department; Jesse Stanley, Complainant*

Dear Mr. Stanley:

This letter is in response to your public records petition received by this office on November 7, 2022, in which you sought our assistance in obtaining certain records from the Aurora Police Department ("APD"). We considered your petition under the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022). In accordance with our normal practice, we forwarded a copy of your petition to Aurora Chief of Police Paul Graham, and requested a response from his office. We received correspondence from attorney Ross Luzum on behalf of the APD on November 8, 2022. We have now completed our review of your petition and the APD's response. Our findings in this matter are set forth below.

FACTS

On November 1, you submitted a public records request to the APD. Specifically, you requested "public records that involve my interactions with one of your officers and my juvenile daughter from a request made by the Grand Island Police Department concerning alleged theft that occurred on or around October 8, 2022."

Police Chief Paul Graham responded to you on November 2 and explained that the requested records would be withheld pursuant to Neb. Rev. Stat. § 84-712.05(5).

In a letter to our office, Mr. Luzum explained that APD officers contacted your daughter after the Grand Island Police Department asked for assistance in locating a suspect vehicle related to a theft that occurred in Hall County. He asserted that any investigative reports related to that contact may be withheld pursuant to Neb. Rev. Stat. § 84-712.05(5).

DISCUSSION

The NPRS provide that persons have the right to access public records “except as otherwise expressly provided by statute.” Neb. Rev. Stat. § 84-712(1). The types of public records which may be withheld from the public are enumerated in Neb. Rev. Stat. § 84-712.05. Subsection (5) provides that records may be withheld from the public if they are

[r]ecords 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

Pursuant to this subsection, the APD may lawfully withhold the records you have requested because it is a law enforcement agency charged with investigating crime and its contact with your daughter was related to the investigation of a theft that occurred in Hall County.

In your petition to this office, you indicate that you have received investigative reports relating to your daughter from the Grand Island Police Department. You question why the APD may withhold records when the Grand Island Police Department has provided you similar records. This office has enforcement authority over the NPRS. As previously explained, a law enforcement agency is not required to grant access to investigative reports under the NPRS. Because the exception for investigatory records in § 84-712.05(5) is discretionary, a law enforcement agency may either assert the exception or elect to disclose such records. APD is within its rights to assert the exception and decline to provide the records. Also, it is possible that similar records may have been disclosed as part of court proceedings. The courts, and not this office, have the authority to enforce the rules of discovery and determine what must be disclosed as part of a legal proceeding.

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CONCLUSION

For the reasons stated above, we conclude that the Aurora Police Department may lawfully withhold the records you requested pursuant to Neb. Rev. Stat. § 84-712.05(5). We do not believe that further action by this office is necessary at this time and we are closing this file. If you disagree with our analysis, you may wish to discuss this matter with a private attorney to determine what additional remedies, if any, are available under the NPRS.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Elizabeth O. Gau
Assistant Attorney General

CC:
Ross Luzum
Chief Paul Graham
03-057-30