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July 20, 2011

Mr. Scott Bledsoe
P.O. Box 4935
Crestline, CA 92325

Re: *File No. 11-R-124; Nebraska State Patrol; Bledsoe*

Dear Mr. Bledsoe:

This letter is in response to the email which you sent to us on Saturday, July 2, 2011. In that email, you petitioned this office under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2010), to determine if the Nebraska State Patrol (the "Patrol") improperly denied you copies of certain public records involving a traffic stop on June 25, 2011. Our response to your petition is set out below.

FACTS

Our understanding of the facts in this matter is based upon your email and materials submitted to us by the Patrol. We have also discussed this matter with staff at the Patrol.

On June 25, 2011, you were the subject of a traffic stop on I-80 conducted by State Troopers Mobley and Knight. At the time you were stopped, you were driving a black F150 with a California license plate. The traffic stop was initiated because you allegedly ran a red light at the intersection of the off ramp and Nebraska Highway 31. Ultimately, you were issued a Violation Warning Form as a result of the red light infraction. After you were issued the warning, the Patrol brought a drug dog to the site to search your vehicle for contraband. When the search by the drug dog was completed, you proceeded on your journey.

You allege that you did not run a red light on June 25, and that the whole situation involving the traffic stop and Troopers Mobely and Knight was pretextural. You allege further that your civil rights were violated, and that the officers' intent was to

harass you and to violate your rights based upon a bogus traffic stop. As a result, you filed an official internal affairs complaint with the Patrol, by email, on Sunday, June 26. The Patrol's Internal Affairs Division then conducted an investigation of your complaint.

On Sunday, June 26, 2011, you also filed an email public records request with the Patrol requesting a copy of "the dash board camera video" from the traffic stop on June 25. The Patrol responded to your public records request on July 1, 2011. The Patrol denied your request for a copy of the "in-car camera video" of the traffic stop at issue based upon § 84-712.05 (5) pertaining to investigatory records. However, in a subsequent letter dated July 6, 2011, Colonel Sankey offered to allow you to view the videotape at issue at the Patrol's Omaha office during normal business hours. The Patrol's denial of your request for a copy of the videotape precipitated your petition to this office.

ANALYSIS

The Nebraska Public Records Statutes generally allow interested persons in Nebraska the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts therefrom, and to obtain copies of records in certain circumstances. However, while the Nebraska Public Records Statutes do provide for access to public documents, they are not absolute, and they also provide for exceptions to disclosure by express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983). For example, § 84-712.05 sets out a number of categories of documents which may be kept confidential from the public at the discretion of the agency involved, and one such category, set out at § 84-712.05 (5), is at issue in this instance:

> 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, and informant identification, or strategic or tactical information used in law enforcement training . . .

We have previously taken the position that, under the plain language of § 84-712.05 (5), there is no time limitation for application of the investigatory records exception, i.e., there is no requirement that an investigation be open or ongoing. There is also nothing in § 84-712.05 (5) that gives complainants a special right to view investigatory records regarding their own complaint, although that situation might lead a public agency to exercise its discretion under § 84-712.05 (5) and make the records available.

In the present instance, the Patrol maintains that the records which you seek are investigatory records in connection with its investigation of your complaint involving Troopers Mobely and Knight. You maintain that the video of the traffic stop is simply part of the Patrol's general agency monitoring of its programs and employees which is not an investigatory record under the analysis set forth in *State ex rel. Neb. Health Care Assn. v. Dept. of Health*, 225 Neb. 784, 587 N.W.2d 100 (1998) and *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009).

In our view, the video of the traffic stop is an investigatory record. As noted above, you filed a citizen complaint against Troopers Mobely and Knight alleging specific illegal acts including violations of your civil rights and other improper conduct. As a result, it is our understanding that the Patrol's Internal Affairs Division conducted an investigation of your complaint, and had it been found to have merit, it presumably could have resulted in civil or criminal sanctions against those officers. *See* Neb. Rev. Stat. § 28-926 (2008). Since the Patrol's Internal Affairs Division took possession of the videotape, it was developed or received by that law enforcement agency. For all those reasons, we believe that the entire videotape is an investigatory record under *Evertson,* where the court stated:

> We agree that an investigation of a public body's employee is "for law enforcement purposes" if the alleged acts could result in a civil or criminal sanction. * * * [W]e also agree that § 84-712.05(5) should only apply to an investigation of a public body's employees if the investigation focuses on specifically alleged illegal acts.

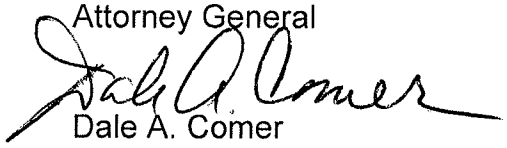
Evertson, 278 Neb. at 17, 767 N.W.2d at 764.

We also believe that the bulk of the videotape is an investigatory record under § 84-712.05 (5) because it constitutes a part of the Patrol's investigation of your alleged traffic infraction and whether you were transporting illegal contraband.

Therefore, we believe that the Patrol's refusal to provide you with a copy of the videotape at issue did not violate the Public Records Statutes, and you have not improperly been denied access to public records. Consequently, we plan no further action regarding this matter, and we are closing this file. If you disagree with our analysis under the Public Records Statutes, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, are available to you under those statutes.

Sincerely yours,

JON BRUNING
Attorney General



Dale A. Comer
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Chief, Legal Services Bureau

cc.. Wendy Wussow, Nebraska State Patrol

05-284-30