



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

JON BRUNING
ATTORNEY GENERAL

NATALEE J. HART
ASSISTANT ATTORNEY GENERAL

August 28, 2013

Lawrence E. Jones, 39063
PO Box 11099
Omaha, NE 68111-0099

RE: *File No 13-R-120; Lincoln Police Department; Lawrence Jones*

Dear Mr. Jones:

This letter is in response to your Public Records complaint received by us on August 15, 2013 in which you requested our review of a request made by your for records of the Lincoln Police Department ("LPD"). We have carefully reviewed your request and the response of the LPD received by our office under the Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2008, Cum. Supp. 2012). Our findings in this matter are set forth below.

FACTS

Our understanding of the facts in this case is based on your public records complaint. You made a public records request to the LPD on or about July 19, 2013 for the record of a recorded interview of you taken by an LPD Officer. You did not provide either a copy of your request, or the response from the LPD to your request. However, the LPD did provide us a copy of their denial of your public records request. The LPD denied your request on July 23, 2013 as an investigatory record under Neb. Rev. Stat. § 84-712.05(5) and also as a record relating to the security of public property and the people thereon under Neb. Rev. Stat. § 84-712.05(8) of the Nebraska Public Records Statutes.

ANALYSIS

The Nebraska Public Records Statutes are found at Neb. Rev. Stat. §§ 84-712 through 84-712.09. Neb. Rev. Stat. § 84-712.05 (2009) provides for public records which may be withheld from the public by the custodian:

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;

(8) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; or lock combinations.

We are unsure how the LPD believes the record to be “solely pertaining to protection of the security of public property and person on or within public property” such as vulnerability assessment or specific response plans under Neb. Rev. Stat. § 84-712.05(8). However, the records of the LPD certainly qualify as investigatory records of a law enforcement agency under Neb. Rev. Stat. § 84-712.05(5). In your letter of July 16, 2013, you state that the interview was given regarding an “incident that occurred” in your presence and that the people involved were arrested, convicted, and sentenced. It is clear to us that the LPD was conducting a specific investigation, and the record of your interview is part of that investigation. The LPD may choose to withhold any such records, including those of the interview conducted of you. Therefore, we conclude that you have not been denied access to public records, as the record can be properly withheld, at the discretion of the LPD, under Neb. Rev. Stat. § 84-712.05(5).

CONCLUSION

For the reasons stated above, we do not believe that you have been denied access to public records. If you disagree with our analysis under the Public Records Statutes set out above, 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,

JON BRUNING
Attorney General

A handwritten signature in black ink, appearing to read "Natalee J. Hart". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Natalee J. Hart
Assistant Attorney General

cc: Tonya Peters, LPD Legal Advisor

02-374-30