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March 3, 2016

Jacob Cappel
801 Harris Ave
Cincinnati, OH 45205

RE: *File No. 16-R-107; Lancaster County Sheriff's Office; Jacob Cappel, Petitioner*

Dear Mr. Cappel:

We are writing in response to your correspondence received by this office on February 17, 2015, in which you requested our assistance in obtaining certain public records belonging to the Lancaster County Sheriff's Office ("Sheriff"). We construed your correspondence to be a petition for access to records under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014) ("NPRS"). As is our normal practice with such requests, we contacted the public body named in your correspondence. In this case, we contacted Capt. Joseph Lefler, of the Sheriff's Administrative Support Division, and requested a response to your petition. 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 solely on your correspondence and the response we received from the Sheriff.

On or about February 3, 2016, you mailed a public records request to the Lancaster County Sheriff's Office. You requested the vehicle dashboard camera footage from a traffic stop made by the Sherriff of you on January 13, 2016. You filed your petition in this matter with us via a complaint form mailed United States Postal Service on February 11, 2016. Your petition states that as of February 11, you had not received a response to your public record request and you were seeking our assistance in obtaining the requested record.

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DISCUSSION

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 from those records, and to obtain copies of records in certain circumstances. 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).

The NPRS require a public body to respond within four business days after the "actual receipt" of a written request for records. Neb. Rev. Stat. § 84-712(4). You complain that the Sheriff did not respond within four business days. It appears to us that your records request was mailed on or about February 3, 2016. Given that the petition you filed with this office was mailed on February 11 and was not received by us until February 17, we will assume a transit time of six days for your public records request to have been received by the Sheriff. The Sheriff then would have received your public record request on or about February 9, 2016. The Sheriff provided us with their response, which is dated February 10, 2016, which is within four business days of the actual receipt of your request. We do not believe the Sheriff was out of compliance with the requirement of Neb. Rev. Stat. § 84-712(4) to respond within four business days.

In its response, the Sheriff's Office denied access to camera footage you seek as "Law Enforcement investigative records." While the Sheriff did not provide a citation to the specific statute under which your request was denied, we understand the denial to have been made under Neb. Rev. Stat. § 84-712.05(5).

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 of the NPRS 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 its 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. In the present case, there is little question that the Lancaster County Sheriff is a law enforcement agency, and that the record at issue was created as a result of the traffic stop that occurred on January 13, 2016. Consequently, we believe that the record at issue falls squarely within the claimed exception.

We would note that the denial letter from the Sherriff's Office did not fully comply with all provisions of the NPRS. Neb. Rev. Stat. § 84-712.04 (2014) governs denials of public records requests and provides:

> (1) Any person denied any rights granted by sections 84-712 to 84-712.03 shall receive in written form from the public body which denied the request for records at least the following information:
>
> (a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial;
>
> (b) The name of the public official or employee responsible for the decision to deny the request; and
>
> (c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

The denial letter of February 10, 2016 did not contain each of these required elements. We will simply remind the Sheriff's Office, through a copy of this letter, that each denial letter must contain all the information as required by Neb. Rev. Stat. § 84-712.04.

CONCLUSION

For the reasons explained above, we believe that the requested investigatory records created and possessed by the Lancaster County Sheriff may be lawfully withheld under Neb. Rev. Stat. § 84-712.05(5). We further believe that the Sheriff did not unlawfully deny your records requests, 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 consider 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: Capt. Joe Lefler
Lancaster County Sheriff's Office

02-610-29