

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

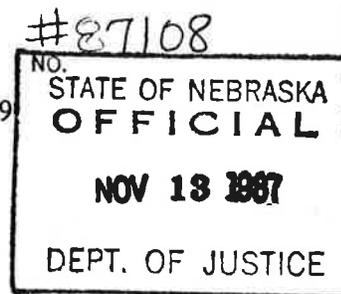
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DATE: November 4, 1987

SUBJECT: Release of public railroad grade crossing inventory.

REQUESTED BY: G. C. Strobel
Director-State Engineer
Nebraska Department of Roads

WRITTEN BY: Robert M. Spire, Attorney General
Sharon M. Lindgren, Assistant Attorney General

This is in response to your letter of October 20, 1987. In that letter, you indicated that the Nebraska Department of Roads maintains an inventory of all public railroad grade crossings in Nebraska that is used to develop a computer ranking of all public crossings in the State and that when there is a crossing accident, attorneys representing accident victims frequently request information from the State concerning the crossing, including the rank of the crossing.

You question whether a portion of the 1987 Federal Highway Bill allows the Nebraska Department of Roads to legally withhold information regarding the inventory, ranking, and studies of railroad grade crossing, and if so, what information may be legally withheld. Further, you ask if the federal law does not authorize the withholding of such information, what State laws need to be amended to allow the Department to withhold such information.

The relevant portion of the 1987 Federal Highway Bill provides:

This section amends Title 23 to provide that no report, survey, schedule, list or data compiled for the purpose of complying with any requirements of Section 130, 144 and 152 of Title 23, United States Code, or for developing any highway safety construction improvement project which may be implemented with Federal-Aid highway funds shall be required to be admitted into evidence or used in any action for damages arising from matters mentioned or addressed in such documents.

This portion of the Federal Highway Bill potentially would prohibit the use of the inventory and ratings data in a law suit seeking damages, but does not prohibit the release of such

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information. Therefore, the release of the railroad grade crossing information would be governed by Nebraska law.

In Nebraska, public access to governmental records is governed by Neb.Rev.Stat. sections 84-712 through 84-712.09 (Reissue 1981 and 1986 Cum.Supp.). Section 84-712.01 provides, in relevant part: "Except where 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 . . . or any agency, branch, department, boards . . . of any of the foregoing." Section 84-712.05 designates records that may be withheld. However, the inventory of public railroad crossings and the ratings are not records that might be withheld under this section. Likewise, there are no state statutes that specifically exempt the railroad crossings inventory or the ratings developed by the Department of Roads from the disclosure requirements.

Section 84-712.08 provides:

If it is determined by any federal department or agency or other federal source of funds, services, or essential information, that any provision of this act would cause the denial of any funds, services, or essential information from the United States government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

There are no federal statutes that would require the withholding of funds, services or essential information from the Nebraska Department of Roads, if the information contained in the railroad crossing inventory was released by the Department of Roads. Therefore, section 84-712.08 would not authorize the Department to deny the public access to the railroad crossing records.

Under Nebraska law, the information contained in the inventory of all public railroad grade crossings in Nebraska and the ratings of such crossings are public records which the public must be allowed to examine and copy in the manner set forth in the statutes governing the disclosure of public records. The federal law does not prohibit the release of such records, but only their use in certain legal proceedings.

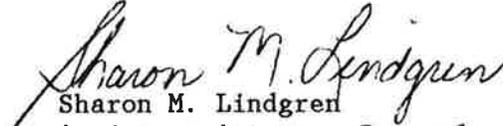
If the Department of Roads desired to amend the statutes in order to make the information contained in the inventory of all public railroad grade crossing and the ratings confidential, either section 84-712.05 would have to be modified so that such documents would be

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included in the listing of records that may be withheld, or a separate statute would have to be enacted to make such records confidential.

Sincerely,

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SML/ta

APPROVED:



Attorney General