

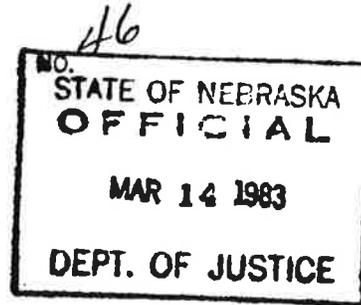
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

March 7, 1983

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Senator Vard R. Johnson  
Member of the Legislature  
State Capitol Building  
Lincoln, Nebraska 68509

Dear Senator Johnson:

You have asked whether correspondence and memoranda of a state senator are presently covered by Neb.Rev.Stat. §§84-712 et seq. (Reissue 1981), of the Freedom of Information Act.

In response we first point out that §84-712.01 (Reissue 1981) provides in part:

(1) 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 . . . branch, . . . of any of the foregoing.

In the past we have said:

[I]t may be said that a public record is one that is kept by virtue of a duty imposed by law upon an agency or officer which is not expressly or by necessary implication made confidential, privileged, or private by statute. A further definition of public records is contained in § 81-1117.04, [ (Reissue 1981) ] . . . With these definitions it may be said that all records generated by state officers or agencies are public except where made private, confidential or privileged by law. . . .

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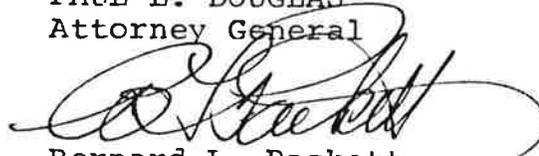
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In this regard we have said that records of phone calls paid for by public funds are generally available for public inspection but that such records pertaining to work done by individual members of the Legislature as a part of their duties of "investigation and examination", are exempt from public disclosure. This leaves the question of what constitutes records which are a part of a member of the Legislature's duties of "investigation and examination" a question of fact, in each case determinable pursuant to the provisions of §84-712.03 (Reissue 1981), and not a question of law to which we could address ourselves.

In summary, it is our conclusion that all documents in the possession of a member of the Legislature which are generated or received in the course of their exercising their duties as members of the Legislature, are a public record and subject to examination unless they are developed or received under a legislator's powers of "investigation and examination".

Very truly yours,

PAUL L. DOUGLAS  
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cc: Patrick J. O'Donnell  
Clerk of the Legislature