



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

DOUGLAS J. PETERSON
ATTORNEY GENERAL

NATALEE J. HART
ASSISTANT ATTORNEY GENERAL

September 26, 2017

Leon Phillips


RE: *File No. 17-R-141; Nebraska State Patrol; Leon Phillips, Petitioner*

Dear Mr. Phillips:

We are writing in response to your correspondence received by this office on September 11, 2017, in which you petitioned for our review of the response to your request for certain public records belonging to the Nebraska State Patrol ("NSP") under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2014, Cum. Supp. 2016). As is our normal practice with such requests, we contacted the public body named in your correspondence. In this case, we provided your petition to Frederick King and Wendy Wussow, legal counsel for the NSP, and that office provided a response to us. 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 on your petition and the response we received from the NSP. On or about June 29, 2017, NSP Legal received a copy of a request for documents, styled as a "request for production," from you relating to a traffic stop on June 14, 2017 of the vehicle you were driving. Specifically, your request seeks the following:

1. Copy of the report filed by the officer including but not limited to all notes written by the officer concerning this report.
2. Copies of any audio and/or video recordings of the issuance of the examination report in this case.
3. Copies of all statements or other written documents concerning this report.
4. Names and addresses of all people who have information about this case.

We understand that your commercial vehicle was stopped and that you were given a warning from the NSP. No citations were issued, but the violations appear on your commercial driving record. We also understand from the NSP that there is a procedure for appealing the violations called a "DataQ." As of the date of your request for records from the NSP, no DataQ was on file. As a result, the NSP responded to your "request for production" under the Nebraska Public Records Statutes rather than as a discovery request. The NSP denied your request as to the records you seek as investigatory records under Neb. Rev. Stat. § 84-712.05(5). However, the NSP advised you that you may be entitled to "pertinent documents" should you decide to initiate a DataQ.

DISCUSSION

The Nebraska Public Records Statutes ("NPRS") generally allow interested persons the right to examine public records in the possession of public agencies in Nebraska during normal agency business hours, to make memoranda and abstracts from those records, and to obtain copies of records in certain circumstances. Except when 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, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files. Neb. Rev. Stat. § 84-712.01(1). 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).

As to your request for documents, the NSP denied your request for records 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 is comprised of twenty categories of documents which may be kept confidential from the public at the discretion of the agency involved. In the present case, the NSP has claimed the exception set out in subsection (5) as its basis for denying you access to the requested records. 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. The NSP is a law enforcement agency and the documents you seek were created during the traffic stop of your vehicle on June 14, 2017. The NSP previously advised you of the possibility of obtaining these documents via the DataQ process; however, the NSP is not required to release them under the NPRS, as the records at issue fall squarely within the claimed exception.

CONCLUSION

For the reasons explained above, we conclude the NSP has not violated the NPRS with respect to your request for records, 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 consult an attorney to determine 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: Wendy Wussow
Fred King