



STATE OF NEBRASKA  
**Office of the Attorney General**

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January 22, 2019

Erik W. Fern  
Attorney at Law  
2650 North 48<sup>th</sup> Street  
Lincoln, NE 68504

RE: *File No. 19-R-103; North Platte Police Department; Erik W. Fern on behalf of Mark Charron, Petitioner*

Dear Mr. Fern:

This letter is in response to your correspondence dated January 3, 2019, and received by this office on January 4, 2019, in which you seek our assistance in obtaining records regarding your client, Mark Charron, from the North Platte Police Department ("Department"). On January 4, 2019, we contacted City Attorney Douglas Stack, who handled your request, and advised him of the opportunity to provide this office a response to the petition. We received Mr. Stack's response on January 7, 2019. On January 10, 2019, the undersigned contacted Mr. Stack to clarify portions of his response to the petition. We have now had the opportunity to fully consider your petition and the Department's response in accordance with the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2018) ("NPRS"). Our findings in this matter are set forth below.

### **FACTS**

Our understanding of the facts in this matter is based upon your petition, the documentation you provided this office, and the response and information we received from Mr. Stack.

On November 21, 2018, you mailed a request for public records to the Department, addressed to the Department's Records Custodian. Specifically, you sought the following records:

[A]ll police reports, audio/video recordings, dispatch call logs, investigative reports, and otherwise related documents or information in relation to the North Platte Police Department's interaction with Mark Charron at the Super 8 hotel in North

Platte, Nebraska on or about March 12, 2017. This request is intended to be construed as a broad request for all information not prohibited from disclosure by statute in relation to Mark Charron, the Super 8 Hotel, and law enforcement in relation to the March 12, 2017 interaction.

In a letter dated November 27, 2018, Mr. Stack denied your request for records, citing to Neb. Rev. Stat. § 84-712.05(5) as his basis for denial, and stating that the records requested were gathered by the Department for law enforcement purposes.

On January 3, 2019, you sent a letter to our office asking us to review the Department's refusal to produce the requested records. Specifically, your letter states that the Department's refusal was generally based on the investigatory records exception; however, the Department did not identify any documents or information that were being withheld.

The Department's response to the petition states that the only record pertaining to Mr. Charron in the possession of the Department is a single document entitled "North Platte Police Prosecutor Report," containing incident details, dispatch details, name details, and narrative details. On January 10, 2019, the undersigned contacted Mr. Stack for clarification of his letter, specifically, further details on the "North Platte Police Prosecutor Report." Mr. Stack explained that incident details included: time of the dispatch call and location which police were dispatched to; dispatch details included: caller's name and specifics of the call to police; name details included: names of interested parties, i.e., complainant's name and subject's name; narrative details included: summary of the police officer's actions/observations while at the scene of the call.

## DISCUSSION

Neb. Rev. Stat. § 84-712 sets out the basic rule for access to public records in Nebraska. That statute provides, in pertinent part:

*Except as otherwise expressly provided by statute, all citizens of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.*

(Emphasis added.) "Public records" are defined as follows:

*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) (2014) (emphasis added). Thus, in those instances where records requested under the NPRS are exempt from disclosure by statute, there is no right of access.

Although the Nebraska Public Records Statutes 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 twenty-one categories of records that may be kept confidential from the public at the discretion of the agency involved. 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).

In the present case, the Department has claimed the exception set out in subsection (5) of § 84-712.05 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 . . . .

The Security, Privacy, and Dissemination of Criminal History Information Act, Neb. Rev. Stat. §§ 29-3501 through 29-3528 (2016, Cum. Supp. 2018), which you cite in your letter, provides further guidance to our analysis. In particular, Neb. Rev. Stat. § 29-3521 (2016) states, in pertinent part:

In addition to public records under section 29-3520, information consisting of the following classifications shall be considered public record for purposes of dissemination:...(2) original records of entry such as police blotters, offense reports, or incident reports maintained by criminal justice agencies .... (Emphasis added.)

“In construing a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.” *Piska v. Nebraska Dep’t of Social Services*, 252 Neb. 589, 594, 567 N.W.2d 544, 547 (1997). “[A]n appellate court must look to the statute’s purpose and give to the statute a reasonable construction which best achieves that purpose, rather than a construction which would defeat it.” *Henery v. City of Omaha*, 263 Neb. 700, 705, 641 N.W.2d 644, 648 (2002). “Statutory language is to be given its plain and ordinary meaning in the absence of anything indicating to the contrary.” *PSB Credit Services, Inc. v. Rich*, 251 Neb. 474, 477, 558 N.W.2d 295, 297 (1997).

The plain language of section 29-3521 referenced above requires the production of police offense reports and police incident reports. Mr. Stack’s letter explained there were four sections contained in the “North Platte Police Prosecutor Report”: incident details, dispatch details, name details, and narrative details. Mr. Stack further explained to the undersigned that the entire report was essentially a summary of what occurred at the scene where police were dispatched, in addition to call and name details. Mr. Stack also indicated that no investigation occurred after the initial encounter with Mr. Charron on or about March 12, 2017 at the Super 8 Hotel in North Platte. Regardless of what the Department calls the report in its possession, it appears to be nothing more than an incident/offense report since it only contains details of Mr. Charron’s initial encounter with police. As a result, we do not believe the report rises to the level of an investigatory record which may be withheld under § 84-712.05(5).

Additionally, the manner in which Mr. Stack responded to you was deficient under the NPRS. In that regard, Neb. Rev. Stat. § 84-712.04 requires a public body to provide the following information, in writing, any time it denies a requester any rights granted to him or her under §§ 84-712 to 84-712.03:

- (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.

Neb. Rev. Stat. § 84-712.04 (2014). Here, while Mr. Stack's response did include information relative to (b) and (c), there was no description of the contents of the records. Consequently, we will advise Mr. Stack, by sending a copy of this disposition letter to him that, in the future, strict adherence to Section 84-712.04 is required at any time access to public records is denied.

### CONCLUSION

For the reasons explained above, we believe that the record responsive to the public records request, i.e., the North Platte Prosecutor Police Report, may not be lawfully withheld under the exception to disclosure in § 84-712.05(5) set out in the Department's denial letter. Therefore, we conclude that the report at issue should be provided to you in response to your public records request, and we direct the Department to do so by a copy of this letter to its counsel.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General

  
Laura A. Nigro  
Assistant Attorney General

c: Douglas Stack