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November 2, 2015

Via email at joshrenth@gmail.com
Joshua Renth

RE: *File No. 15-R-145; Nebraska State Patrol; Joshua Renth, Petitioner*

Dear Mr. Renth:

We are writing in response to your email correspondence received by this office on October 16, 2015, in which you requested our assistance in obtaining certain public records belonging to the Nebraska State Patrol ("NSP"). 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 Wendy A. Wussow, Agency Legal Counsel, and requested a response to your petition, which we received on October 20, 2015. 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 NSP.

On September 23, 2015, at 7:06 p.m., you emailed a public records request to the NSP. According to your request, your ex-wife was involved in a traffic stop conducted by the NSP in Otoe County on August 17, 2015. You indicate that ". . . I was informed that she was issued citations for possession of marijuana of less than a gram and also drug paraphernalia. I am asking that any information of this citation be released such as but not limited to a copy of the issued ticket, a case number and statute of the case."

By letter dated September 24, 2015, the NSP denied your request for police reports based on the exception to disclosure set out in Neb. Rev. Stat. § 84-712.05(5) (investigatory records). The NSP further noted that the case for which you sought the police reports was still pending. You subsequently contacted our office for assistance in obtaining the requested records.

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).

Also as an initial matter, Neb. Rev. Stat. § 84-712[1] does not require any showing by a person requesting access to public records of the reason for his or her review of those records. We note that your correspondence to this office contained the underlying reason for your public records request. However, this information is not relevant in determining whether the NSP has complied with these statutes, and we do not consider the reason you may want the records in our analysis. *See State ex rel. Sileven v. Spire*, 243 Neb. 451, 500 N.W.2d 179 (1993).

Investigatory Records Exception

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 eighteen 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 police reports. That subsection provides, in pertinent part:

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1 Neb. Rev. Stat. § 84-712 provides, in pertinent part:

> (1) 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.)

> 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.[2] In the present case, there is little question that the Nebraska State Patrol is a law enforcement agency, and that the record at issue was created as a result of, and in response to, the traffic stop occurring on August 17, 2015. Consequently, we believe that the records at issue fall squarely within the claimed exception.[3]

CONCLUSION

For the reasons explained above, we believe that the requested investigatory records created and possessed by the Nebraska State Patrol may be lawfully withheld under Neb. Rev. Stat. § 84-712.05(5). We further believe that the Nebraska State Patrol did not unlawfully deny your records requests, and that no further action by this office is warranted. Accordingly, we are closing this file.

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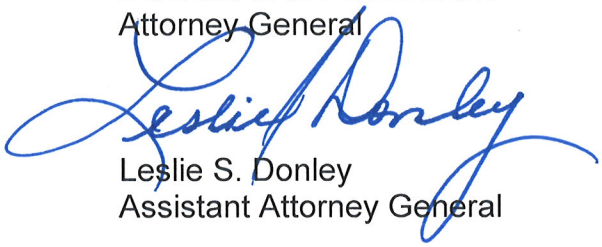
[2] The term "law enforcement" is defined as "1. The detection and punishment of violations of the law . . . [and] 3. Police officers and other members of the executive branch of government charged with carrying out and enforcing the criminal law." BLACK'S LAW DICTIONARY 714 (abridged 7th ed. 2000).

[3] We note that the NSP's denial letter indicated that part of the basis for the denial of your request was the fact that the case was still "pending." However, the investigatory records exception contains no language which distinguishes between open and closed investigatory files. The Nebraska Legislature has not made the "status" of an investigation a factor as to whether certain records made be lawfully withheld under § 84-712.05(5). As a result, we do not consider it in our analysis.

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



Leslie S. Donley
Assistant Attorney General

c: Wendy A. Wussow
Agency Legal Counsel

49-1439-29