Comer, Dale

From: Comer, Dale
Sent: Tuesday, May 04, 2010 9:54 AM
To: 'bernie@dishmail.net'
Cc: Kingery, Shannon
Subject: Complaint

Mr. Barton:

Your email complaint, which you sent to us on Friday, April 30, 2010, has been referred to me for a response. Apparently, you believe that certain activities of officers of the Nebraska State Patrol in connection with your arrest west of North Platte, Nebraska on May 9, 2009, violated your civil rights.

Our only jurisdiction with respect to the matters discussed in your complaint arises in connection with our duties under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Supp. 2009). In that regard, we considered your complaint to be a petition for access to public records under § 84-712.03.

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 therefrom, and to obtain copies of records in certain circumstances. However, while the Nebraska Public Records Statutes do provide for access to public documents, they are not absolute, and they also provide for exceptions to disclosure by express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983). For example, § 84-712.05 sets out a number of categories of documents which may be kept confidential from the public at the discretion of the agency involved, and one such category is set out at § 84-712.05 (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, and informant identification, or strategic or tactical information used in law enforcement training . . .

It appears to us that the dashcam video which you seek in the present instance falls squarely within the parameters of § 84-712.05 (5), as it is clearly a record developed or received by a law enforcement agency charged with duties of investigation, and a record which is part of an investigation. As a result, we believe that the Patrol can rely on § 84-712.05 (5) as a basis to keep the video which you seek confidential, and we cannot require the Patrol to provide you with a copy of that video.

If you disagree with our analysis under the Nebraska Public Records Statutes set out above, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, are available to you under those statutes. You also may wish to discuss your civil rights allegations with your private attorney as well.

-- D. Comer

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