



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

December 17, 2021

Via email at [REDACTED]
Steven Stec

[REDACTED]

RE: *File No. 21-R-142; Hastings Police Department; Steven Stec, Petitioner*

Dear Mr. Stec:

This letter is in response to your petition emailed to this office on November 16, 2021. You have requested the Attorney General's review of the partial denial of your records request submitted to the Hastings Police Department ("Department") on or about October 12, 2021. Upon receipt of your petition, we forwarded it to Hastings City Attorney Clint Schukei and requested a response, which we received on November 23, 2021. At our request, Mr. Schukei supplemented his response on November 29. On November 30, we wrote to you indicating that we had conducted a preliminary investigation of your petition, and it appeared to us that the Department had properly responded to your request. However, we indicated that our response would be delayed so that we could finalize our decision. We have now fully considered your petition and the Department's responses in accordance with § 84-712.03(1)(b) of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2020, Supp. 2021). Our findings in this matter are set forth below.

RELEVANT FACTS

Your petition concerns your request for "a copy of the entire footage from the body cam video from the incident." The "incident" involves your attempt to tow a vehicle from the scene of a motor vehicle accident occurring at the intersection of South Burlington and E Street in Hastings on June 18, 2021. In describing the incident, you state that "a vehicle on a rollback wrecker came unhooked, rolled off the bed, and hit a Police Officer and police cruiser. In which it caused injury to the officer and damage to the police cruiser." You indicate that you are seeking the video in order to "shed light on what

happened.”¹ We understand that the Nebraska State Patrol (“NSP”) prepared a report relating to the incident, a copy of which was provided to you by the Department.

By email on October 19, 2021, Captain Doremus denied your request for body cam video, stating: “Body camera recordings of the Hastings Police Department are considered to be records that are developed by law enforcement with duty of investigation. As such, Nebraska Revised Statute 84-712.05² provides that such records may be withheld. Therefore, no camera footage is being provided in response to your request.” In his responses to this office, which included copies of the accidents reports from the motor vehicle accident and subsequent incident, Mr. Schukei confirms that the Hastings Police Department investigated the accident occurring on June 18, 2021. The accident report lists Hastings Police Officer Borgeling as the investigating officer. In addition, the NSP report notes that the first accident was being investigated by the Hastings Police Department. It is the Department’s position that Officer Borgeling was investigating the first accident until terminated by the incident.

DISCUSSION

The basic rule for access to public records is set out in Neb. Rev. Stat. § 84-712(1) (2014). That provision states:

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.

“Public records” in Nebraska “include all records and documents, regardless of physical form, of or belonging to” governmental entities in the state, “[e]xcept when any other statute expressly provides that particular information or records shall not be made public.” Neb. Rev. Stat. § 84-712.01(1) (2014). Thus, there is no absolute right to access public records in those instances where records are exempt from disclosure by statute. The

¹ Please note that “[t]he public records statutes apply ‘equally to all persons without regard to the purpose for which the information is sought.’ As a general rule, citizens are not required to explain why they seek public information.” *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, 943 N.W.2d 231, 247 (2020). Accordingly, this office does not consider the reason or purpose for a records request when making our determination under § 84-712.03(1)(b).

² We believe that Captain Doremus intended to cite to § 84-712.05, *subsection (5)*.

burden of showing that a statutory exception applies to disclosure of particular records rests upon the custodian of those records. *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 788, 943 N.W.2d 231, 240 (2020); *Aksamit Resource Mgmt. LLC v. Neb. Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018).

The Department is relying on the exception to disclosure in § 84-712.05(5) as its basis to deny you access to the body cam video. This exception allows the following records to be withheld at the discretion of the public body unless publicly disclosed in an open court, administrative proceeding, or meeting or disclosed by a public entity pursuant to its duties:

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 training³

This office has previously considered the propriety of withholding body cam video under the exception to disclosure in § 84-712.05(5). In *File No. 21-R-115; Omaha Police Department; Christopher Fielding, Petitioner* (June 10, 2021), the petitioner sought body cam video of his interactions with police officers whom he had called for assistance. The Omaha Police Department (“OPD”) represented that the officers activated the cameras at the scene, and the video was part of two investigations relating to petitioner’s calls for service. We concluded that the OPD could withhold the video based in large part on the plain language of the exception,⁴ which expressly allows *law enforcement agencies* to withhold records developed or received by the agencies which relate to investigations of persons, institutions or businesses. In the present case, there is no question that the Department is a law enforcement agency, and that investigating traffic accidents is one of the Department’s prescribed duties.⁵ Mr. Schukei represents and the accidents reports

³ There are two exceptions to the exception: (1) records relating to the presence of drugs or alcohol in any body fluid of any person; and (2) records relating to the cause of death arising out employment once an investigation is concluded when requested by a family member of the deceased.

⁴ 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. See *Aksamit*, 299 Neb. at 123, 907 N.W.2d at 308; *Farmers Cooperative v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017).

⁵ See Neb. Rev. Stat. § 16-225 (Cum. Supp. 2020) (authorizing a city of the first class to regulate its police force); Hastings, Nebraska Code of Ordinances, Sec. 12-102 (version Nov. 19, 2021) (“The Chief of Police, under the direction of the Mayor, shall have the superintendence of the Police. He and the Policemen of the City are empowered to arrest all offenders against the laws of the State or of the City, by day or night, in the manner as a Sheriff or a Constable and to keep them in the county jail or other place to prevent their escape, until a trial or examination may be had before the proper officer, and shall have the same power as the County Sheriff in relation to all criminal matters and to all process issued by the

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confirm that Officer Borgeling was conducting an investigation at the scene of the traffic accident prior to the incident involving the towed vehicle. Consequently, since the body cam video is a record developed by the Department relating to its duty to investigate the traffic accident, those records may be properly withheld under § 84-712.05(5).⁶

CONCLUSION

For the reasons explained above, we conclude that the body cam video relating to the incident described above may be lawfully withheld under Neb. Rev. Stat. § 84-712.05(5). Since the Hastings Police Department did not unlawfully deny this portion of your records request, no further action by this office is warranted. Accordingly, we are closing this file.

If you disagree with our analysis, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, may be available to you under the NPRS.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Clint Schukei (via email)

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appropriate court in connection with a violation of the City Code. He shall devote particular attention to street and traffic control." (Emphasis added.)).

⁶ Other files in which the Attorney General concluded that the law enforcement agency involved could withhold investigatory records under § 84-712.05(5) include: *File No. 21-R-141; Omaha Police Department; Amanda Coleman, Petitioner* (November 3, 2021); *File No. 21-R-139; Nebraska State Patrol; Chris Dunker, Lincoln Journal Star, Petitioner* (October 20, 2021); *File No. 21-R-115; Omaha Police Department; Christopher Fielding, Petitioner* (June 10, 2021); *File No. 19-R-130; City of Omaha Police Department; David Earl, KETV NewsWatch 7, Petitioner* (December 20, 2019); *File No. 19-R-106; Omaha Police Department; Reginald L. Young, Petitioner* (January 31, 2019); *File No. 18-R-106; Lincoln Police Department; Juanita Phillips, Petitioner* (March 22, 2018); *File No. 17-R-133; Alliance Police Department; Cheryl Spencer, Petitioner* (July 18, 2017); and *File No. 17-R-121; Wymore Police Department; Wayne and Sandi Gridley, Petitioners* (April 20, 2017). Copies of our disposition letters relating to these files are accessible at <https://ago.nebraska.gov/disposition-letters>.