



STATE OF NEBRASKA  
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December 13, 2021

Via email to [cdunker@journalstar.com](mailto:cdunker@journalstar.com)  
Chris Dunker  
Lincoln Journal Star

RE: *File No. 21-R-144; University of Nebraska; Chris Dunker, Lincoln Journal Star, Petitioner*

Dear Mr. Dunker:

This letter is in response to your petition received by this office on November 30, 2021, in which you challenge the denial of the Lincoln Journal Star's November 12, 2021 public records request by the University of Nebraska-Lincoln ("UNL"). In accordance with our normal procedure with respect to such complaints, we forwarded a copy of your complaint to UNL for a response. We received a response from Bren Chambers, Associate General Counsel for UNL, on December 8, 2021. We have considered your petition and UNL's response in accordance with 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.

### **FACTS**

In November of 2021, UNL announced that it had restructured the terms of football head coach Scott Frost's employment contract. The Second Addendum to Coach Frost's employment contract, which memorialized the new terms of his employment, was published on UNL's website. The Second Addendum provides that Coach Frost's base annual salary will be \$4 million and includes a provision that his base annual salary will increase to \$5 million beginning on January 1, 2023 "[i]n the event Coach Frost performs as Head Coach for the Program for the 2022 season and the Program achieves metrics mutually agreed to by the Parties." The "metrics mutually agreed to" were not incorporated into the employment contract or released to the public.

On November 12, 2021, the Lincoln Journal Star requested a copy of the "mutually agreed metrics" referred to in the Second Addendum. On November 16, 2021, UNL notified the Lincoln Journal Star that the document would be withheld because it constitutes "personal information in records regarding personnel of public bodies other

than salaries and routine directory information” pursuant to Neb. Rev. Stat. § 84-712.05(7) (Supp. 2021).

## DISCUSSION

The basic rule for access to public records in Nebraska 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 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).

UNL asserts that the Second Addendum may be lawfully withheld pursuant to Neb. Rev. Stat. § 84-712.05(7) which provides that:

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:  
. . . (7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information.

UNL contends, and we agree, that it has previously disclosed the two items required to be released pursuant to this section. Specifically, directory and salary information relating to Coach Frost. The Second Addendum discloses Coach Frost’s current salary and the amount of a potential future salary increase.

The question which remains is whether the performance metrics referenced in the Second Addendum may be withheld as “personal information in records regarding personnel of public bodies.” Neb. Rev. Stat. § 84-712.05(7). “Statutory interpretation begins with the text, and the text is to be given its plain and ordinary meaning. An appellate court will not resort to interpretation to ascertain the meaning of words which are plain, direct, and unambiguous.” *State ex rel. Peterson v. Shively*, 310 Neb. 1, 14, 963 N.W.2d 508, 518 (2021). Personal is a broad term and is defined, in part, as “of, relating to, or affecting a particular person” and “relating to an individual or an individual’s character, conduct, [or] motives.” <https://www.merriam-webster.com/dictionary/personal>. We find that the performance metrics are personal in that they relate to, and affect, a particular person, Coach Frost.

This office has previously opined that Neb. Rev. Stat. § 84-712.05(7) “would clearly allow a public agency to keep employee evaluations and bonus information in an employee’s personnel file confidential.” Op. Att’y Gen. No. 90015 at 2 (February 27, 1990). Performance metrics and goal setting are individual to the employee and an integrated part of an employee’s evaluation. See *Versaci v. Superior Court of San Diego*, 127 Cal. App. 4<sup>th</sup> 805 (2005) (finding that superintendent’s performance goals were not part of her employment contract and were exempt from disclosure as personal files); *Oregonian Pub. Co. v. Portland School Dist. No. 1J*, 329 Or. 393, 401, 987 P.2d 480, 484 (1999) (stating that “personnel files” usually include “job performance, evaluations . . . or other information useful in making employment decisions regarding an employee.”). For these reasons we find that the requested document, the “metrics mutually agreed to by the Parties,” falls within the language of Neb. Rev. Stat. § 84-712.05(7) and that UNL has a sufficient statutory basis to continue to withhold it.

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## CONCLUSION

For the reasons explained above, we believe that the requested document may be lawfully withheld pursuant to Neb. Rev. Stat. § 84-712.05(7). Since you have not been unlawfully denied access to public records, no further action by this office is necessary and we are closing our file.

If you disagree with the analysis we have set out above, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Elizabeth O. Gau  
Assistant Attorney General

c: Bren Chambers (via email)

03-006-30