



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

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 68509-8920  
(402) 471-2682  
TDD (402) 471-2682  
FAX (402) 471-3297 or (402) 471-4725

**DOUGLAS J. PETERSON**  
ATTORNEY GENERAL



**SUBJECT:** Whether Members and Staff of the Nebraska Accountability and Disclosure Commission May Provide Confidential Records to the Auditor of Public Accounts

**REQUESTED BY:** Frank J. Daley, Jr., Executive Director  
Nebraska Accountability and Disclosure Commission

**WRITTEN BY:** Douglas J. Peterson, Attorney General  
Lynn A. Melson, Assistant Attorney General

You have requested an opinion from this office "whether members of the Commission and the Commission staff may provide confidential records to the Auditor of Public Accounts pursuant to § 84-305 despite the confidentiality provisions of § 49-14,124.01." For the reasons set forth below, we conclude that Commission members and staff must provide confidential records when a request is made by the Auditor of Public Accounts in the performance of his or her duties.

### RELEVANT STATUTES

The Nebraska Accountability and Disclosure Commission ["NADC" or "Commission"] acts as the primary civil enforcement agency for violations of the Nebraska Political Accountability and Disclosure Act ["NPADA"]. Neb. Rev. Stat. §§ 49-1401 to 49-14,142 (2010, Cum. Supp. 2016 and Supp. 2017). The NADC is directed to conduct preliminary investigations of alleged violations pursuant to Neb. Rev. Stat. § 49-14,124 (Cum. Supp. 2016). As you point out in your request letter, three statutes pertain to the confidentiality of NADC records and proceedings.

First, Neb. Rev. Stat. § 49-14,124.01 (Cum. Supp. 2016) provides, in part, that:

All commission proceedings and records relating to preliminary investigations shall be confidential until a final determination is made by the commission unless the person alleged to be in violation of the Nebraska Political Accountability and Disclosure Act requests that the proceedings be public.

Neb. Rev. Stat. § 49-14,115 (2010) provides that:

No member or employee of the commission shall disclose or discuss any statements, reports, records, testimony, or other information or material deemed confidential by the Nebraska Political Accountability and Disclosure Act unless ordered by a court or except as necessary in the proper performance of such member's or employee's duties under the act. Any member who violates this section shall be guilty of a Class III misdemeanor.

Further, § 49-14,135(1) (2010) provides that "any person who violates the confidentiality of a commission proceeding pursuant to the act shall be guilty of a Class III misdemeanor."

Turning next to the statutes pertaining to the Auditor of Public Accounts ["APA" or "Auditor"], Neb. Rev. Stat. § 84-305(1) (Supp. 2017) states the following:

The Auditor of Public Accounts shall have access to any and all information and records, confidential or otherwise, of any public entity, in whatever form or mode the records may be, unless the auditor is denied such access by federal law or explicitly named and denied such access by state law.

And, Neb. Rev. Stat. § 84-305.01 (Cum. Supp. 2016) then provides that "[A]ny person who willfully fails to comply with the provisions of section 84-305 . . . shall be guilty of a Class II misdemeanor."

## DISCUSSION

You have asked whether § 84-305 requires Commission members and staff to provide confidential records to the Auditor despite the confidentiality provisions of the NPADA. Pertinent to your inquiry, we note that § 84-305 gives the Auditor a broad right of access to the records of any public entity, whether "confidential or otherwise" and limited only if "denied such access by federal law or explicitly named and denied such access by state law" (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).

With those rules of statutory construction in mind, it seems to us that the language of § 84-305 is plain, direct, and unambiguous. While the NPADA states that all Commission proceedings and records relating to preliminary investigations are confidential and prohibits Commission members and employees from disclosing confidential records, there is no language in the NPADA which "explicitly names" the Auditor in regards to confidential records or which specifically denies the Auditor access to these records. Therefore, in our view, § 84-305 does require Commission members and staff to provide these confidential records to the Auditor.

This conclusion is consistent with our prior opinions. In Op. Att'y Gen. No. 04022 (August 13, 2004) we discussed a prior version of § 84-305 which provided that the Auditor was authorized to review all records of a public entity, including a state agency, "unless the auditor's access to the records is specifically prohibited or limited by federal or state law." We noted therein that § 84-305 "was designed to guarantee the Auditor access to all records." *Id.* at 2. We also discussed the prior version of the statute in Op. Att'y Gen. No. 02030 (December 2, 2002), where we stated that "we believe that the APA has broad authority to review any and all records of public entities, including state agencies, in the performance of his or her proper duties, absent a state or federal law which specifically limits the Auditor's access." *Id.* at 6. In our view, the Auditor has the same broad authority under the language of the current version of § 84-305(1), which provides that the Auditor's access to records, "confidential or otherwise," is limited only if the Auditor is "explicitly named and denied such access by state law."

We note that, while the Auditor has broad authority to review records made confidential by NADC statutes, there are statutory restrictions on the use and release of that information by the Auditor. Neb. Rev. Stat. § 84-305(7) (Supp. 2017) provides as follows:

No provisions of state law shall be construed to change the nonpublic nature of the data obtained as a result of the access. When an audit or investigative finding emanates from nonpublic data which is nonpublic pursuant to federal or state law, all the nonpublic information shall not be made public.

Further, under Neb. Rev. Stat. § 84-311(2) (Supp. 2017), if the Auditor or an employee of that office "knowingly divulges or makes known in any manner not permitted by law any record, document, or information, the disclosure of which is restricted by law," that person may be prosecuted for a Class III misdemeanor or removed from office.

### CONCLUSION

Based on the above discussion, it is our opinion that Commission members and staff must provide records to the Auditor pursuant to § 84-305, even if the records are otherwise made confidential by § 49-14,124.01.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Lynn A. Melson  
Assistant Attorney General

Approved by:

  
\_\_\_\_\_  
Attorney General