



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

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**MIKE HILGERS**  
ATTORNEY GENERAL

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ASSISTANT ATTORNEY GENERAL

March 22, 2023

Via email at [REDACTED]  
Shaun Caldarelli

RE: *Public Records Matter Involving Legislative Records*  
File No. 20231027

Dear Mr. Caldarelli:

This letter is in response to your public records petition emailed and received by this office on March 7, 2023. You have requested the assistance of the Attorney General relating to your public records request submitted to State Senator Tom Briese on February 28, 2023. We considered your petition in accordance with the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022). Our findings with respect to this matter are set out below.

### RELEVANT FACTS

Your February 28 request sought the following records:

All phone records, transcripts, emails, and correspondence between Tanner DeBoer Chief of Staff to former State Senator Patty Pansing Brooks and Julie Rogers of the Ombudsman office.

The dates for the request is August 4 2022 August 5 2022 to November 2 2022.

Senator Briese responded to your request on March 6. He denied your request on the basis of Neb. Rev. Stat. § 84-712.05(13)<sup>1</sup> and Neb. const. art. III, § 26. Senator Briese also referred you to former Senator Patty Pansing Brooks regarding access to records involving her staff.

<sup>1</sup> Renumbered subsection (14) as a result of 2022 Neb. Laws LB 1246, § 5.

You state in your petition:

I made a request for all phone records transcripts e-mail's correspondence from the Ombudsman and Former State Senator Patty. The request was denied because of the sensitivity information. Which the information is not a sensitive matter but actually a matter of credibility of both parties. One party says they were contacted by phone the other party has nothing to say. This information that is a matter of public record could be proof of a possible infraction of ethics under the code of ethics by a lawyer in Nebraska.

Furthermore the statute that is being used to deny my request has nothing to do with the request.

### DISCUSSION

Section 84-712 of the NPRS generally allows Nebraska citizens and other interested persons the right to examine public records in the possession of public agencies during normal agency business hours and to obtain copies of records in certain circumstances. The process to request public records is set out in Neb. Rev. Stat. § 84-712(4). That subsection provides, in pertinent part:

(4) Upon receipt of a written request for access to or copies of a public record, *the custodian of such record* shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, an estimate of the expected cost of the copies and either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request. . . .

(Emphasis added.)

You directed your request for records to Senator Briese. However, Senator Briese is not the custodian of any records that may have been exchanged between Mr. DeBoer and Ms. Rogers. As stated in Senator Briese's response, "former Senator Pansing-Brooks is the lawful custodian of her staff's legislative records, and legislative immunity/privilege extends to her staff. You will need to contact her directly to request her staff's communications." We agree that this is the proper course to obtain any

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responsive records from Mr. DeBoer in his capacity as legislative aide to Senator Pansing Brooks, and would suggest that you direct any future requests accordingly.

However, please keep in mind that your access to public records is not absolute. Section 84-712 "provide[s] that exceptions may be created by express and special provisions." *Orr v. Knowles*, 215 Neb. 49, 55, 337 N.W.2d 699, 703 (1983). As indicated in Senator Briese's response, Neb. Rev. Stat. § 84-712.05(14) and Neb. Const. art. III, § 26 provide two bases to withhold records "related to the performance of duties by a member of the Legislature in whatever form."


### CONCLUSION

Based on the foregoing, we conclude that former Senator Patty Pansing Brooks is the lawful custodian of the records you seek, not Senator Briese. Since your February 28 request was not directed to the custodian of the records, you did not meet the requirements in § 84-712(4). We further conclude that you have not been denied access to public records at this time, and we are closing this file.

If you disagree with the conclusions reached above, you may wish to review the other remedies available to you under Neb. Rev. Stat. § 84-712.03.

Sincerely,

MIKE HILGERS  
Attorney General

  
Leslie S. Donley  
Assistant Attorney General

c: Trevor Fitzgerald (via email only)

49-3179-30