



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

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September 8, 2023

Via email to [REDACTED]  
Caleb Woodman

RE: *Public Record Matter Involving the Nebraska State Patrol*  
Our File No. 20231128

Dear Mr. Woodman:

This letter is in response to your email correspondence received by this office on August 24, 2023, in which you requested our assistance in obtaining certain records from the Nebraska State Patrol ("NSP"). We construed your correspondence to be a petition under § 84-712.03(1)(b) of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022). Our findings in this matter are set forth below.

### **RELEVANTS FACTS**

On July 5, 2023, you requested the following records from the NSP:

All investigation/supplemental reports, scene photos/videos, body/dash cam footage, CCTV footage, 911 calls/logs, witness statements, EMS/Fire cams, scene reenactments/depictions/drawings, etc. pertaining to the accident involving Antoinette S. Kowalski that took place at the intersection of Highway 20 and Highway 14 in Nebraska on April 5, 2023. . . .

NSP attorney Jessica Forch responded to your request on August 1. She indicated that responsive documents were accessible by logging into the Public Records Center. However, Ms. Forch informed you that certain information, i.e., drivers' license numbers,

addresses, and DMV information used for criminal justice purposes only, had been redacted pursuant to Neb. Rev. Stat. §§ 60-2905(2) *et seq.* and 84-712.05(5). Ms. Forch further informed you that the NSP considered the videos investigative in nature and were withholding them under § 84-712.05(5).

You subsequently requested our review of the partial denial of your request. Your petition contains no information, assertions or arguments showing how the NSP's partial denial was improper.

## 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 that

*[e]xcept 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.*

(Emphasis added.) “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. *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009); *State ex rel. Nebraska Health Care Ass’n v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 587 N.W.2d 100 (1998).

The NSP has cited 84-712.05(5) as one basis to withhold the redacted information and videos. Section 84-712.05(5) is one of twenty-five categories of records that may be withheld at the discretion of the records custodian so long as those records have not been “publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties . . . .” The exception specifically pertains to

[r]ecords 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 training . . . .

Neb. Rev. Stat. § 84-712.05(5) (Cum. Supp. 2022).

This office has considered the propriety of law enforcement agencies withholding investigatory records under § 84-712.05(5) on multiple occasions through the years.<sup>1</sup> We have consistently held that such withholding is permissible, relying in large part on the plain language of the exception, which expressly permits law enforcement agencies to withhold records developed or received by those agencies in the course of an investigation. We have no basis to conclude otherwise with respect to your particular request. There is no question that the NSP is a law enforcement agency, and is charged with duties of investigation of persons, institutions, and businesses. *See generally* Neb. Rev. Stat. §§ 81-2004 and 81-2005 (2014). The records at issue here were either developed or received by the NSP in the course of its investigation of the accident occurring on April 5, 2023. Consequently, we find that the requested records may be withheld under § 84-712.05(5).<sup>2</sup>

Finally, since we conclude that the NSP's reliance on § 84-712.05(5) was appropriate, it is not necessary to consider whether § 60-2905(2) *et seq.* provides a sufficient statutory basis to redact the information listed above.

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<sup>1</sup> See, e.g., *File No. 23-R-124; City of Fremont/Police Department; Jeff Forward, The Fremont Tribune, Petitioner* (July 10, 2023); *File No. 22-R-136; Douglas County Sheriff; Kathleen Foster, Petitioner* (July 29, 2022); *File No. 21-R-142; Hastings Police Department; Steve Stec, Petitioner* (December 17, 2021); *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); and *File No. 18-R-106; Lincoln Police Department; Juanita Phillips, Petitioner* (March 22, 2018). You may access the disposition letters for these files at <https://ago.nebraska.gov/disposition-letters>.

<sup>2</sup> While not relied on by the NSP, § 29-3506 of the Security, Privacy, and Dissemination of Criminal History Information Act provides an additional basis to withhold the requested records by expressly excluding "intelligence or investigative information" from the definition of criminal history record information. *See BH Media Group*, 305 Neb. at 796, 943 N.W.2d at 245 ("We concluded that '[t]he information requested by the relator consists of records concerning an investigation of him and is specifically excluded from review under § 29-3506 as well as § 84-712.05(5)[,]' quoting *State ex rel. Sileven v. Spire*, 243 Neb. 451, 457, 500 N.W.2d 179, 183 (1993)).

## CONCLUSION

Based on the foregoing, we conclude that drivers' license numbers, addresses, certain DMV information restricted to criminal justice purposes, and videos may be redacted/withheld under the exception to disclosure in § 84-712.05(5). 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 NPRS.

Sincerely,

MIKE HILGERS  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: Jessica Forch (via email only)