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Office of the Attorney General

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September 12, 2023

Via email to [REDACTED]
Jeremy Cichowski

RE: *Public Record Matter Involving the Nebraska State Patrol*
Our File No. 20231130

Dear Mr. Cichowski:

This letter is in response to correspondence received by this office on August 28, 2023, in which you requested our assistance in obtaining certain public 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). On September 12, 2023, we contacted NSP legal counsel Jessica Forch about your petition. At our request, Ms. Forch provided us all documentation pertaining to this matter, including the NSP's basis for denial.¹ We have now completed our review of all materials provided. Our findings in this matter are set forth below.

RELEVANTS FACTS

On August 2, 2023, you submitted the following request to the NSP:

I need to get trooper Bell's dash cam and body cam footage from 1:30pm-3:00pm on. [sic] May 28th 2023 please.

¹ Your submission to this office only included the NSP's August 8, 2023, correspondence delaying its final response to September 7, 2023.

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Following a brief delay, timely communicated to you by NSP staff on August 8, Ms. Forch denied your request on August 11. She indicated that the NSP considered the requested videos to be investigative in nature and was denying you access to them under Neb. Rev. Stat. § 84-712.05(5).

You subsequently requested our review of NSP's denial. Your petition states as follows:

This woman will not provide me with the public records that I need. She is withholding this information because the public records will show a public official unlawfully pulling over a citizen of Nebraska. The public records that were requested will also show that the reason the stop was unlawful was because the trooper lied about the citizen taking an illegal left turn, which never happened. The only driver in the requested video who did any traffic violations was the trooper who did not signal when cutting across lanes prior to the stop. It will also show a public official contacting another government agency (Nebraska sheriff's department) and discussing ways to solicit [sic] more charges against a citizen of Nebraska. Public citizen was held for almost an hour only to receive 1 ticket for not having his vehicle registration on his person. Trooper made up a fictitious reason for the stop and proceeded to try to get the citizen to lose their wages or freedom. These videos clearly show rights being violated and criminal practices taking place by public servants in hopes of forcing the public to pay with fines or loss of freedom. This public information is the only thing that can prove these allegations, and that is the only reason it is not being released. The state of Nebraska should be ashamed of the criminal tactics used to try and extort money or freedoms from individuals, and the blatant cover-up and refusal to provide PUBLIC records. I pay for those dash cams and those body cams. There is no reason I should be denied ANY requests I make for videos.

Your petition contains no information, assertions or arguments showing how the NSP's reliance on the exception in § 84-712.05(5) to withhold the requested videos was improper.

DISCUSSION

As an initial matter, we note that your petition focuses on an allegedly illegal traffic stop and that the requested videos will “clearly show rights being violated and criminal practices taking place by public servants” However, “[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) [*BH Media Group*]. Accordingly, we do not consider the reason or purpose for a records request when making our determination under § 84-712.03(1)(b).

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

The NSP is relying on § 84-712.05(5) as its basis to deny you access to the dash cam and body cam videos. 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 training²

This office has previously considered the propriety of withholding videos created by law enforcement under the exception to disclosure in § 84-712.05(5). For example, 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

² 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.

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,³ 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 NSP is a law enforcement agency charged with duties of investigation. In this respect, Neb. Rev. Stat. § 81-2004 (2014) states that "[t]he Nebraska State Patrol, its subordinate officers such as lieutenant colonel, majors, captains, lieutenants, sergeants, corporals, patrolmen, and other employees shall be used primarily for the enforcement of the traffic and motor vehicle laws of the State of Nebraska and the handling of traffic within the state." In addition, § 81-2005 gives NSP officers

the power:

(1) Of peace officers for the purpose of enforcing the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, the Nebraska Rules of the Road, and any other law regulating the registration or operation of vehicles or the use of the highways;

(2) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of the Motor Vehicle Operator's License Act, the Motor Vehicle Registration Act, the Nebraska Rules of the Road, or any other law regulating the operation of vehicles or the use of the highways, if and when designated or called upon to do so as provided by law

Neb. Rev. Stat. § 81-2005 (2014). Consequently, since the dash cam and body cam videos at issue here were records developed by the NSP relating to its duty to enforce the state's traffic laws, and investigate violations of those laws, those records may be properly withheld under § 84-712.05(5).

CONCLUSION

For the reasons explained above, we conclude that the dash cam and body cam videos relating to the May 28, 2023, traffic stop may be lawfully withheld under Neb. Rev. Stat. § 84-712.05(5). Since the NSP did not unlawfully deny your records request, no further action by this office is warranted. Accordingly, we are closing this file.

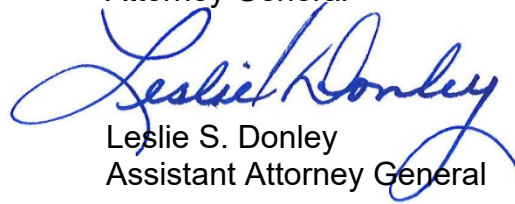
³ Statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. See *Aksamit*, 299 Neb. at 123, 907 N.W.2d at 308; *Farmers Cooperative v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017).

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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,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Jessica Forch (via email only)

49-3330-30