



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

MIKE HILGERS
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

October 25, 2023

Via email at [REDACTED]
Wendy-Jo Chapman

RE: *Public Records Matter Involving the Nebraska Department of Health and Human Services – Vital Records*
Our File No. 20231159

Dear Ms. Chapman:

This letter is in response to the petition you submitted to this office on October 10, 2023. You have requested the Attorney General's review of the denial by the Nebraska Department of Health and Human Services (DHHS) – Vital Records (Vital Records) relating to your request for certified copies of two long-form birth certificates. In response to our request, Vital Records Administrator, Sarah Bohnenkamp, provided this office a response to your petition on October 18. We have now considered your petition and Ms. Bohnenkamp's response in accordance with 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.

RELEVANT FACTS

Our understanding of the facts in this case is based on your petition and the materials you provided as well as Ms. Bohnenkamp's response.

You submitted a public records request to Vital Records on or about July 24, 2023, requesting certified copies of your personal birth certificate. Two certified copies were provided to you by Vital Records on July 26. On September 13, you mailed a notarized letter by certified mail to Ms. Bohnenkamp, Secretary of State Robert B. Eeven, and Attorney General Hilgers indicating that you ordered and paid for two copies of your birth certificates, but "did not receive the Long-Form as I expected." You further indicated that

Vital Records staff informed you “that the office was no longer providing Long-Form Birth Certificates” and you asserted that Vital Records is refusing to provide you existing records. You consequently requested the following records from the officials listed above under “5 U.S. Code Sec. 552A (d)(1), (f)(1), (g)(1)(B) and (D)”:¹

1. [T]he long-form, full, complete, entire copies of any and all records associated with, pertaining to, in connection with, my live birth which may or may not have the autographs of the doctor and parents. . . . Please send me the certified, complete, long-form, front and back copies of **both my known certificates and any additional registered birth certificates.** (Your emphasis.)
2. [A]ny and all records within any and all departments of the STATE OF NEBRASKA that are pertaining to me outside of the birth certificates.

You indicate in your petition that you received a response from DHHS regarding request no. 2 on September 25, but have received no “communications regarding the complete copies of my birth records.” You further state:

I am aware that my birth was registered twice (see original letter for certificate numbers). I am respectfully demanding the full, complete, entire, multi-page, front and back, anything and everything pertaining to my “long-form” birth certificates for both registration numbers, and not the truncated, cut-off, half-sheet that I was given pertaining to one registration number.

Ms. Bohnenkamp states in her response that Vital Records provided you certified copies of your birth certificates in the form maintained by her office. She indicates that the portion of the “birth record designated as being for health data and statistical research pursuant to Neb. Rev. Stat. § 71-602(2),² no longer exists and was deleted in accordance with department retention schedules.” Ms. Bohnenkamp further indicates that even if that portion of the record still existed, you would not be entitled to a copy under applicable statutes and regulation. With respect to the existence of two certificates, Ms.

¹ As we informed you in our letter dated October 4, 2023, the federal Freedom of Information Act pertains to federal agencies, not governmental entities in Nebraska.

² This provision states:

All information designated by the department on all certificates as being for health data and statistical research shall be confidential and may be released only to the United States Public Health Service or its successor, government health agencies, or a researcher as approved by the department in accordance with its rules and regulations. The department may publish analyses of any information received on the forms for scientific and public health purposes in such a manner as to assure that the identity of any individual cannot be ascertained. The release of such information pursuant to this section shall not make otherwise confidential information a public record. (Emphasis added.)

Bohnenkamp informs us that since you were born in Douglas County, your certificate was initially filed with the Douglas County Health Department and assigned a number. The health department then forwarded your certificate to the State of Nebraska, where it was given a state registration number. Ms. Bohnenkamp states, in this respect: “This results in a birth certificate being assigned two distinct registration numbers, one for the county level and one for the state level. Birth certification information retained by Douglas County is not a record of or belonging to DHHS.”

DISCUSSION

In Nebraska, birth certificates are public records.³ The basic provision for access to public records is found in Neb. Rev. Stat. § 84-712, which states, in pertinent part:

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, [and] 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) (emphasis added). Consequently, you have no absolute right to access public records in those instances where the Legislature has made the records confidential or prescribed the manner in which certain records may be accessed.

In the present case, the Vital Statistics Act, Neb. Rev. Stat. §§ 71-601 to 71-649 (2018, Cum. Supp. 2022), amended 2023 Neb. Laws LB 514, governs your access to your birth certificate. As discussed above, the portion of your certificate designated by Vital Records as constituting health data or statistical research is confidential and available only to the parties designated in § 71-602(2). According to Ms. Bohnenkamp, this information has been purged in accordance with applicable retention schedules. In addition, Vital Records does not have the certificate registered by the Douglas County Health Department. That is a record “of or belonging to” Douglas County, not a state agency.

³ *State ex rel. Adams County Historical Society v. Kinyoun*, 277 Neb. 749, 755, 765 N.W.2d 212, 217 (2009) (“Under Neb. Rev. Stat. § 84-712.05(2) . . . [m]edical records, *other than records of births and deaths*, may generally be withheld from the public. (Emphasis supplied.)”).

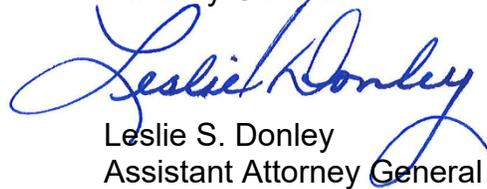
CONCLUSION

Based on the foregoing, we conclude that Vital Records has provided the certificates you requested in accordance with the Vital Statistics Act. To the extent you seek other information that may have appeared on a certificate at one time, that information no longer exists. Finally, the "other" certificate you seek is a record "of or belonging to" Douglas County, not the state Vital Records. Your access to county records requires you to contact Douglas County for assistance.

Since we have concluded that Vital Records did not unlawfully deny you access to records under the NPRS, no further action by this office is warranted and we are closing this file. If you disagree with our analysis, 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