



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 30, 2023

Herbert L. Campbell, [REDACTED]
[REDACTED]
[REDACTED]

RE: *Public Records Matter Involving the Omaha Police Department and Request for Public Records*
Our File No. 20231168

Dear Mr. Campbell:

This letter is in response to your correspondence dated October 10, 2023, and received by our office on October 13, in which you requested our review of the denial by the Omaha Police Department (OPD) of your record requests submitted in July-September 2023. In response to our request, Deputy City Attorney Bernard in den Bosch provided a response to your correspondence on October 20. We have 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. Our response to your purported request for public records immediately follows those findings.

RELEVANT FACTS

According to the materials we received from the parties, on or about July 8, 2023, you mailed a public records request to the OPD, addressed to Omaha Mayor Stothert and OPD Chief Schmaderer. Your request sought "public records related to case number 48950T." We understand that Lt. Bonacci may have mistakenly provided you the wrong document in his response dated August 21, 2023. You followed up with two more requests, dated August 25 and September 20, seeking "all public reports, all investigative reports/photos/recordings/transcripts, and all court documents related to case number T48950." Lt. Bonacci responded to you by letter dated October 9, providing you a copy of OPD's incident report. However, he informed you that "[y]our request related to any and all investigative documents/photos/recordings/transcripts related to this incident is

denied pursuant to Neb. Rev. Stat. 84-712 (5) as records developed or received by law enforcement agencies charged with duties of investigation.” Lt. Bonacci further advised you to contact “the Douglas County Attorney's Office to request these investigative documents or any related court documentation you're seeking. Some of your requests are not the responsibility of the [OPD], but the court/prison system.”

DISCUSSION

In Nebraska, “public records . . . include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing.” Neb. Rev. Stat. § 84-712.01(1) (2014). While access to public records is broad, it is not absolute. The NPRS allow access “[e]xcept as otherwise expressly provided by statute” (§ 84-712(1)) or “[e]xcept when any other statute expressly provides that particular information or records shall not be made public” (§ 84-712.01(1)). Consequently, you have no right to access public records in those instances where the Legislature has made the records expressly confidential or subject to withholding under § 84-712.05.¹

The OPD has cited 84-712.05, subsection (5), as its basis to withhold the requested records. 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.² We

¹ Section 84-712.05 currently contains 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”

² 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);

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 OPD is a law enforcement agency, and is charged with duties of investigation of persons, institutions, and businesses. The records at issue here were either developed or received by the OPD in the course of its investigation of case number T48950. Consequently, we find that the requested records may be withheld under § 84-712.05(5).

REQUEST FOR RECORDS

The remainder of your correspondence appears to be a request for records from the Nebraska Department of Justice. For example, you state in your post-script, in part:

“Please include the copy of wire tap transcript tape recordings put in place by Northwestern bill [*sic*] phone company.” Under No. OPD RB: 48950T. In addition please provide a copy of the report of Latent Fingerprint Section Identification Division by the Federal Bureau of Investigation in Washington, D.C. 20537 under FBI File No. 32-30703 Latent No. C-57001.

As we previously informed you in our letter dated September 7, 2023, § 84-712(4) of the NPRS requires requests for public records to be submitted in writing to the *custodian* of records being sought. The Nebraska Department of Justice is not the lawful custodian of the records listed above. Consequently, this office has no records responsive to your request.

CONCLUSION

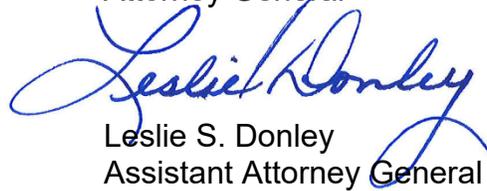
Based on the foregoing, we conclude that the requested records developed or received by OPD pertaining to case number 48950T may be withheld under the exception to disclosure in § 84-712.05(5). Since you have not been unlawfully denied access to public records, no further action by this office is necessary and we are closing our file.

Herbert L. Campbell
October 30, 2023
Page 4

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: Bernard in den Bosch (via email only)

49-3378-30