



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
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ASSISTANT ATTORNEY GENERAL

January 29, 2024

Tillman T. Henderson, [REDACTED]
[REDACTED]
[REDACTED]

RE: *Public Records Matter Involving the Omaha Police Department*
Our File No. 20241012

Dear Mr. Henderson:

This letter is in response to your petition dated January 8, 2024, and received by our office on January 12, in which you requested our review of the purported denial by the Omaha Police Department (OPD) of your November 23, 2023, public record request. At our request, Deputy City Attorney Bernard J. in den Bosch provided us a response to your petition on January 24, which included your records request and OPD's response to that request. We have considered your petition and Mr. in den Bosch's response and documentation in accordance with the provisions 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.

RELEVANT FACTS

By letter dated November 23, 2023, addressed to the "Custodian of Omaha Police Department Records," you requested the following records:

- (1) A copy of report Z69549. Writen [sic] on or about Feb 18, 2012 til March 2013.
- (2) A copy of the list with Case Number CR 12-935 that was sent to the Video and MVR System Administrator by the Douglas County Prosecution's Office

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Your request included a copy of OPD policy “Mobile/Audio Video Recorders—In-Car Video Recorders” as an exhibit.

OPD Lieutenant Neal Bonacci responded to your request by letter dated December 18, 2023. He provided you a copy of “the public reports related to Z69549.” With respect to the requested list, Lt. Bonacci stated: “I am unable to locate this ‘list’ you have described.” However, he went on to state, “This does not mean that it doesn’t exist,” and if he were to locate the list, it would be “considered exempt under Neb. Rev. Stat. § 84-712 (5) [*sic*]¹ as records developed or received by law enforcement agencies charged with duties of investigation.” Lt. Bonacci further suggested that you contact the Clerk of the Douglas County Court for possible access to this information, and clarified that the requested list “is generated by the courts, and not the [OPD].” Lt. Bonacci’s letter also included language required under Neb. Rev. Stat. § 84-712.04 in those instances a public body denies a requester access to public records.

You state in your petition that “[t]he [OPD] denied this request stating that the information sought is considered exempt under Neb. Rev. Stat. 84-712(5) [*sic*].” Mr. in den Bosch acknowledged Lt. Bonacci’s statements indicating such a list would be considered exempt from disclosure. However, he confirmed that the OPD was unable to locate the list and, therefore, is unable to provide it.

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. “Public records” are defined as “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). This office has concluded that § 84-712 does not require a public body review documents and create abstracts or other lists, to answer questions or to create documents which do not otherwise exist. Op. Att’y Gen. No. 94092 (November 22, 1994); Op. Att’y Gen. No. 94035 (May 11, 1994); Op. Att’y Gen. No. 87104 (October 27, 1987).

Access to public records is not absolute, however. 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). Neb. Rev. Stat. § 84-712.05, referenced in Lt. Bonacci’s response, contains twenty-five categories of public records that may be withheld at the discretion of the public body so long as those records have not been “disclosed in an open court, open administrative proceeding, or open meeting or disclosed

¹ Lt. Bonacci is referring to the investigatory records exception found at Neb. Rev. Stat. § 84-712.05(5).

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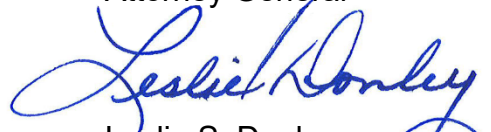
by a public entity pursuant to its duties” The public body bears the burden of showing that § 84-712.05 or 84-712.08 exempts the records from disclosure. *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 788, 943 N.W.2d 231, 240 (2020).

We have carefully reviewed your petition and Mr. in den Bosch’s response. We have identified nothing to suggest that you were denied access to public records or that the OPD failed to comply with the NPRS. Lt. Bonacci provided you reports responsive to the first item in your request. He advised you that he was unable to locate the list as described. While he discussed likely withholding a list to the extent one could be located, no records were withheld. Moreover, the fact that a public body may not have records responsive to a request does not equate to a denial of public records.

Since we have concluded that you were not improperly denied access to public records and no violation of the NPRS occurred, no further action by this office is necessary and we are closing this file. If you disagree with our analysis, you may wish to discuss this matter with your private attorney to determine what, if any, additional remedies might be available to you under the NPRS.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Bernard J. in den Bosch (via email only)

49-3437-30