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January 31, 2024

Via email at [REDACTED]
Chad Humphrey

RE: *Public Records Matter Involving the University of Nebraska*
Our File No. 20241013

Dear Mr. Humphrey:

This letter is in response to your public records petition emailed to this office on January 15, 2024, which we received on January 16. You have asked us to review the denial by the University of Nebraska (University) of your December 20, 2023, public records request. We fully considered your petition, its attached and referenced emails, and information we received from Jaclyn Klintoe, Associate General Counsel/Director of University Records, on January 24, 2024, 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

On December 20, 2023, you emailed Ms. Klintoe a public records request, summarized as seeking all documents, communications, investigations, disciplinary actions, and findings connected to your September 2023 complaint against Dr. Scott Campbell, an employee at the University of Nebraska Medical Center (UNMC), “specifically addressing allegations of offensive written communication towards veterans.”

Ms. Klintoe responded to your request the following day, stating she would “work specifically with UNMC HR to determine whether the University has any documents that might be subject to disclosure” She preliminarily assessed that the records you requested would likely be exempt from disclosure under Neb. Rev. Stat. 84-712.05(8). Additionally, she notified you that University offices would be closed from December 22 until January 2, and that “[d]ue to the timing of your request, it may take us longer than

usual to coordinate and provide a response.” She estimated that a final response could not be provided “until January 3, 2024, at the earliest.”

Email records show that you followed up with Ms. Klintoe on January 8, 2024. On January 9, Ms. Klintoe provided you a final response, confirming her original assessment “that any records responsive to this request would be exempt from disclosure pursuant to Neb. Rev. Stat. 84-712.05(8), as you [*sic*] requesting personal information about the personnel of a public body.”

During the undersigned’s conversation with Ms. Klintoe on January 24, she clarified that the University withheld certain emails from UNMC HR and the Office of Compliance, along with Dr. Campbell’s hiring paperwork.

DISCUSSION

Neb. Rev. Stat. § 84-712 (2014) sets out the basic rule for access to public records in Nebraska. That statute provides, 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, 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” are defined as follows:

Except when any other statute expressly provides that particular information or records shall not be made public, public records shall 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. Data which is a public record in its original form shall remain a public record when maintained in computer files.

Neb. Rev. Stat. § 84-712.01(1) (2014) (emphasis added). Thus, in those instances where records requested under the NPRS are exempt from disclosure by statute, there is no right of access. The burden of showing that a statutory exception applies to the 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*

Association v. Dept. of Health and Human Services Finance and Support, 255 Neb. 784, 587 N.W.2d 100 (1998).

Neb. Rev. Stat. § 84-712.05 of the NPRS is comprised of twenty-five categories of records that may be kept confidential from the public at the discretion of the agency involved 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” In the present case, the University is relying on Neb. Rev. Stat. § 84-712.05(8) as its basis to withhold responsive email and records pertaining to Dr. Campbell's hiring. This category pertains to “[p]ersonal information in records regarding personnel of public bodies other than salaries and routine directory information.”

“Statutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.” *Aksamit Resource Management LLC v. Neb. Pub. Power. Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018). The Nebraska Supreme Court has broadly construed the plain language of § 84-712.05(8) to encompass not just official personnel files, but all records containing “personal information about personnel, defined as persons employed by an organization.” *Steckelberg v. Nebraska State Patrol*, 294 Neb. 842, 850, 885 N.W.2d 44, 50 (2016). It appears to us that the records withheld by the University fall squarely within the express language of § 84-712.05(8). They contain personal information about Dr. Campbell, a UNMC employee, beyond his salary and routine directory information. Thus, we find Ms. Klintoe’s denial of your records request appropriate.

Your petition also raises “concerns about potential non-compliance with state open records laws regarding response timelines.” Neb. Rev. Stat. § 84-712(4) provides in part that “[u]pon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request” one of the following: (1) access to the records, (2) a legal basis for a denial, or (3) “if the entire request cannot with reasonable good faith efforts be fulfilled within four business days, . . . a written explanation, including the earliest practicable date for fulfilling the request” Section 84-712(4) further provides that a “[b]usiness day does not include a Saturday, a Sunday, or a day during which the offices of the custodian of the public records are closed.” (Emphasis added.)

One day after you submitted your request, Ms. Klintoe provided you a written explanation detailing that she would need to work with UNMC HR regarding your records request. She further informed you that University offices would be closed from December 22 to January 2, and that “final production will not be able until January 3, 2024, *at the earliest.*” A final response was provided to you on January 9. There is nothing that prohibits the records custodian from extending the date when the earliest practicable date does not allow adequate time to fulfill the request. In light of the timely response you

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received from Ms. Klintoe on December 21, the initial estimate of January 3, and final response on January 9, and the fact that the University offices were closed for ten days immediately following receipt of your request, we find that the University met the requirements in § 84-712(4) in responding to your request.


Finally, we note the concerns expressed in your petition that “denying [your] request could jeopardize [your] safety and well-being,” allowing Dr. Campbell “to continue degrading and harassing combat veterans with impunity, thereby hindering my ability to assess potential risks and take appropriate precautions.” For your information, “[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.” *BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 801, 943 N.W.2d 231, 247. Accordingly, this office does not consider the reason or purpose for a records request when making our determination under § 84-712.03(1)(b).

CONCLUSION

Since we have concluded that the University did not unlawfully deny you access to public records, no further action by this office is necessary and we are closing this 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: Jaclyn Klintoe (via email only)

49-3438-30