



STATE OF NEBRASKA  
**Office of the Attorney General**

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**MIKE HILGERS**  
ATTORNEY GENERAL

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March 26, 2024

Via email: [REDACTED]  
Katherine R. Chadek

RE: *Public Record Matter Involving Dodge County Attorney's Office*  
Our File No. 20241046

Dear Ms. Chadek:

This letter is in response to your correspondence received by this office on March 11, 2024, in which you sought our assistance regarding your written public records request to the Dodge County Attorney's Office and Dodge County Attorney Pamela Hopkins dated February 25, 2024. We considered your petition in accordance with the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2022). Our findings in this matter are set out below.

### **RELEVANT FACTS**

Per your petition to this office, you sought a copy of the report for the autopsy of Mary Lawver-Kruse in the custody of the Dodge County Attorney's Office. You indicate that these "requests were made via email on February 20, 2024, by fax on February 25, 2024, and by voicemail on February 22, 2024." Several attachments were included with your petition, including documents and correspondence ancillary to your request.<sup>1</sup> You indicate that you had yet to receive a response from Ms. Hopkins as of March 8, 2024.

This office contacted Ms. Hopkins regarding your request. In her response to the undersigned's inquiry, she provided her reasons for why the autopsy report is properly

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<sup>1</sup> We note that your petition discusses matters outside the purview of our review pursuant to the NPRS, and we will not address them in this letter.

withheld. First, Ms. Hopkins indicated that the report “is not a public record” under the NPRS. Second, Ms. Hopkins stated that you are neither “entitled to the autopsy” nor “entitled to any relief under the Public Records Statutes.” We will address the underlying specifics set out in Ms. Hopkins’ response in our discussion below.

## DISCUSSION

As a preliminary matter, the NPRS generally allow interested persons the right to examine public records in the possession of public agencies in Nebraska during normal agency business hours, to make memoranda and abstracts from those records, and to obtain copies of the records in certain circumstances. See § 84-712(1). This general principle guides our analysis of public record petitions and responses thereto, including your petition.

### The Autopsy Report as a Public Record

We begin with the contention that the autopsy report is not a public record. Ms. Hopkins stated in her response that “[a]n autopsy completed at the request of the County Attorney, is not a public record,” but is rather “a medico-legal record obtained for the purpose of investigation of potential criminal activity associated with a particular death, and to assist the County Attorney in its preparation of the deceased’s death certificate.”

The definition of public records is set forth in § 84-712.01(1), which provides:

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.

(Emphasis supplied). This definition includes “any documents or records that a public body is entitled to possess—regardless of whether the public body takes possession.” See *Evertson v. City of Kimball*, 278 Neb. 1, 9, 767 N.W.2d 751, 759 (2009).

As set forth above, § 84-712.01(1) expressly provides that all records and documents of or belonging to public bodies, including county government departments and offices such as a county attorney’s office, are public records unless otherwise provided by statute. We have identified no statute, case law, rule, regulation, or other element of Nebraska law that provides that autopsy reports prepared by or for a public body do not constitute public records under the NPRS. The contention that the autopsy report concerning Ms. Lawver-Kruse is not a public record misconstrues the provisions of

the NPRS and interpretative case law. Thus, your petition to view or receive a copy of Ms. Lawver-Kruse's autopsy report is a request for public records under the NPRS.

### **Entitlement to the Autopsy Report Under the NPRS**

Ms. Hopkins further contends that you are not a person entitled to Ms. Lawver-Kruse's autopsy report because you do not possess the legal or familial status described in other statutes relating to certain documents and records. Ms. Hopkins cites multiple statutes in support of this assertion, and we will address each in turn.

Ms. Hopkins first identifies Neb. Rev. Stat. §§ 30-2223 and 38-1427 (2016) to restrict or otherwise preclude individuals who do not fit certain relationships to the decedent from requesting to review the decedent's autopsy report or to otherwise be provided with a copy of the report under § 84-712(1). These statutes are inapposite to this matter. Section 38-1427 provides in pertinent part:

A written authorization for an autopsy given by the person listed in section 30-2223 having the right of disposition of the remains may, subject to section 23-1824 and when not inconsistent with any directions given by the decedent pursuant to section 38-1426, include authorization for the removal of any specifically named organ or organs for therapeutic or scientific purpose.

This statute merely restricts the class of persons that are authorized to **request an autopsy** and the removal of certain organs belonging to the decedent to those having certain relationships with the decedent. In conjunction with § 38-1427, § 30-2223 identifies those classes of person who may request an autopsy and the priority in which such authority vests. Neither statute concerns who may submit a public records request for a decedent's autopsy report.

Ms. Hopkins further cites to Neb. Rev. Stat. §§ 71-612 and 71-649 (2018), as well as generally referring to rules and regulations of the Nebraska Department of Health and Human Services ("DHHS"), for the same proposition. As applicable to this matter, § 71-612(1) requires DHHS to "supply to any applicant for any proper purpose, as defined by rules and regulations of the department, **a certified copy of the record of any . . . birth, [or] death.**" This statute solely concerns DHHS's obligation to provide applicants with a certified copy of a decedent's death certificate for certain purposes. In a similar vein, § 71-649 defines unlawful acts relating to the making, copying, and acquisition of those certificates, records, and reports required to be filed pursuant to the Vital Statistics Act, Neb. Rev. Stat. §§ 71-601 to 71-649 (2018, Cum. Supp. 2022, Supp. 2023). It is unnecessary to discuss these statutes and correlating rules and regulations further, as they concern who may seek to view or otherwise request a certified copy of a decedent's death certificate from DHHS. Neither statute concerns autopsy reports produced by or for a public body.

## **Entitlement to Relief Under the NPRS**

Finally, Ms. Hopkins asserts that “[e]ven if the autopsy [report] is a public record,” there has been no showing you are a person able to seek the relief contemplated by § 84-712.03 in this matter. As set forth in § 84-712(1), the NPRS provides the right for “all citizens of this state and all other persons interested in the examination of” public records to examine or otherwise obtain copies of such public records. As discussed above, the statutes relied upon by Ms. Hopkins concerning the classes of individuals who may request an autopsy of a decedent and a certified copy of the decedent’s death certificate are inapposite to the current matter regarding the autopsy report of Ms. Lawver-Kruse.

Moreover, we conclude that the information presented to this office sufficiently established your status as a person “interested in the examination of” public records in this matter. You are identified as the sister of Ms. Lawver-Kruse and a co-personal representative of her estate. As the Nebraska Supreme Court has observed:

In enacting the public records statutes, the Legislature has determined that the welfare of the people is best served through liberal public disclosure of the records of the three branches of government. Such expressed policy in favor of public disclosure of government records has been in effect since our State’s founding.

See *State ex rel. Veskrna v. Steel*, 296 Neb. 581, 598, 894 N.W.2d 788, 800 (2017). Without discussing the outer bounds of who constitutes a person “interested in the examination of” public records under the NPRS, it is clear in this case that your status as a sibling and co-personal representative of Ms. Lawver-Kruse’s estate establishes you as a person contemplated by § 84-712(1).

## **Applicability of Exceptions to Duty to Disclose Public Records**

Although the NPRS provide for access to public documents, they are not absolute. The NPRS provides for exceptions to disclosure by express and special provisions. These exceptions are set forth in § 84-712.05, comprising twenty-five categories of documents which may be kept confidential from the public at the discretion of the agency involved. While we note that Ms. Hopkins’ response does not specifically name the statutory exceptions to disclosure, we construe her response to have asserted two exceptions to disclosure under § 84-712.05: (1) the “investigatory records” exception and (2) the “medical records” exception. Section 84-712.05 provides in pertinent part:

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

...

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person; records of elections filed under section 44-2821; and patient safety work product under the Patient Safety Improvement Act;

. . .

(5) 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 training, except that this subdivision shall not apply to records so developed and received:

(a) Relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person; or

(b) Relating to the cause of or circumstances surrounding the death of an employee arising from or related to his or her employment . . . .

Turning first to the “investigatory record” exception, we conclude that the autopsy report for Ms. Lawver-Kruse may be withheld under this exception. The Nebraska Supreme Court has determined that

a public record is an investigatory record where (1) the activity giving rise to the document sought is related to the duty of investigation or examination with which the public body is charged and (2) the relationship between the investigation or examination and that public body’s duty to investigate or examine supports a colorable claim of rationality.

*See State ex rel. Nebraska Health Care Ass’n v. Dept. of Health and Human Services Finance and Support*, 255 Neb. 784, 792, 587 N.W.2d 100, 106 (1998) (“*Nebraska Health Care Ass’n*”). As indicated in Ms. Hopkins’ response, Ms. Lawver-Kruse’s autopsy and the report created thereafter were, in part, “for the purpose of investigation of potential criminal activity associated with” Ms. Lawver-Kruse’s death. When applying the framework described by the Supreme Court in *Nebraska Health Care Ass’n, supra*, it appears to us that the autopsy report is an investigatory record (1) of a public body (the Dodge County Attorney’s Office) charged with duties of investigation or examination of persons, institutions, or businesses and (2) its investigation concerning the death of Ms. Lawver-Kruse is rationally related to the office’s duties of investigation and examination. Consequently, the autopsy report may be withheld under § 84-712.05(5).<sup>2</sup>

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<sup>2</sup> Consistent with this conclusion, this office has concluded that autopsy reports held by a law enforcement agency fall within the exception in § 84-712.05(5). *See, e.g., File No. 21-R-131; Nebraska State Patrol; Harry N. MacLean, Petitioner* (dated September 13, 2021); *File No. 16-R-109; Cedar County*

As we have concluded that the autopsy report may be withheld under the “investigatory record” exception, it is not necessary to examine whether the report may be withheld under the “medical record” exception. However, for completeness, we will address this exception briefly. The purpose of an autopsy is to record the decedent’s medical condition based on observations apparent after the decedent has passed. Based on an autopsy report’s recording of such medical conditions as they relate to the decedent’s cause of death, we believe that Ms. Lawver-Kruse’s autopsy report may also be withheld under § 84-712.05(2).<sup>3</sup>

Notwithstanding the foregoing, we again highlight that the withholding of public records such as the autopsy report in this matter is at the discretion of the public body having custody over the record. See § 84-712.05 (Public records falling into an exception to disclosure “may be withheld from the public by the lawful custodian of the records.”).

### **Obligations of Public Bodies to Respond to Public Record Requests**

In consideration of the sequence of events related to your petition, we will take this opportunity to remind the Dodge County Attorney’s Office, by sending a copy of this letter to Ms. Hopkins, that, in the future, a timely response must follow any request for public records. Section 84-712(4) provides:

Upon 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, either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

The NPRS does not mandate that a public records request be submitted in any particular format to be effective, and we believe that the written requests submitted in this matter

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*Attorney, Cedar County Sheriff; David Domina o/b/o Estate of Frank Potts, Jr., Petitioner* (dated March 10, 2016).

<sup>3</sup> We have previously recognized that autopsy reports may be withheld under the medical records exception. See *File No. 11-R-119; Omaha Police Department; Petitioner Tony Secret, United Heartland Insurance Company* (dated June 2, 2011).

Katherine R. Chadek  
March 26, 2024  
Page 7

adequately conveyed that the autopsy report was requested under the NPRS. A response from the Dodge County Attorney's Office was therefore required under § 84-712(4).

### CONCLUSION

For the reasons set forth above, we conclude that the requested autopsy report is a public record under the NPRS and may be properly withheld under the exceptions from disclosure set forth in § 84-712.05(2) and (5). We again note that the withholding of the report is discretionary. We believe that no further action by this office is warranted. Accordingly, we are closing this file. If you disagree with the analysis set out herein, you may wish to seek additional remedies available under the Nebraska Public Records Statutes.

Sincerely,

MIKE HILGERS  
Attorney General

A handwritten signature in black ink that reads "Ryan Baker". The signature is written in a cursive, flowing style.

Ryan D. Baker  
Assistant Attorney General

c: Pamela Hopkins  
55-025-30